

# **Housing for Victims of Miscarriages of Justice**

**A report for Commonweal Housing**

**CASE report 97**

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## **About LSE Housing and Communities**

LSE Housing and Communities is a research unit within the Centre for Analysis of Social Exclusion (CASE) at the London School of Economics led by Professor Anne Power. CASE is a multi-disciplinary research centre which focuses on the exploration of different dimensions of social disadvantage, particularly from longitudinal and neighbourhood perspectives, examining the impact of public policy. We aim to understand the social dynamics of disadvantaged neighbourhoods; promote models of housing and neighbourhood management; develop ways to support community and resident self-help action, especially in social housing areas; and shape government policy.

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## Executive Summary

- This paper sets out the background to “miscarriages of justice”, which arise where a convicted criminal is subsequently found innocent after referral to the Criminal Cases Review Commission (CCRC) (or Scottish equivalent). Commonweal Housing commissioned this study to look in more detail at the housing and other problems faced by victims of these miscarriages on release after their sentence has been quashed – including lack of any formal support
- The legal and practical issues around miscarriages of justice are set out first. There are currently an average of 12 miscarriage decisions made every year; the needs of the victims can be very varied, although all are likely to suffer from mental health problems, and need immediate support with housing, benefits, family and community re-integration, and long term support. The victims come from all over the UK.
- From this analysis we set out three key stages of housing need – immediate housing on the day of release and for a short period; intermediate housing while they begin to rebuild their lives and make choices about the future; and long term housing. Support is needed at each stage
- We also consider a range of options – access to local authority housing through acceptance as being vulnerable and in priority need; access to local authority housing through choice based lettings; direct access to RSL housing; direct access to private rented housing; and the original Libra model devised by Commonweal. The opportunities, drawbacks, and possible mitigation actions of each option are set out and conclusions drawn
- Our overarching conclusions are:
  1. **Pre-release:** There is a need to prepare options once the victim gets near the final appeal, if they are able and willing at that stage to engage in contingency planning
  2. **Case types:** There are a small number of very different types of case. This requires a portfolio of options which can be individually tailored, geographically based, and flexible enough to take advantage of the actual state of housing need and supply in the local area the victim wants to live in, medium or long term.
  3. Nevertheless there are clear common elements, including trauma and a need for time to take stock and try to rebuild their lives, and to decide what to do. This requires considerable support which needs to be provided by local agencies in the area the victim wants to live in.
  4. **Agencies:** Local agencies need to supply support; and to do this Commonweal (and RCJAB) can provide both initial clear guidance (perhaps briefing notes and checklists on something like advisor.net) as well as a dedicated expert who can talk a local agency through the issues to be addressed, and how best to move forward. This may also involve personal visits by this expert to the local area to work with the local agency for a few days
  5. These local agencies know the services and opportunities in their own town, and are best placed to identify potential long term and specialist services for the victim, as well as the best housing option

6. **Housing options:** There is no one housing option which is best. We have set out a range of options, any of which might be best for an individual, a place, or a stage in their journey back to integration. All of these should be available
7. The best way to make them available may be to build permanent relations with a series of RSLs, a network of CAB and advice agencies, and a range of Private Renting access agencies, so that these protocols can be invoked when needed.
8. **Financial support** may be needed, for all of the tenure options. This will particularly be the case for the private rented sector – particularly around cost and security of tenure. This is likely to involve providing financial guarantees, deposits, and in some cases temporary rent subsidies. There are already schemes in place working with private landlords sympathetic to a more socially responsible approach to letting
9. **Commonweal's Libra model** still has benefits for the long term, but is not suitable for the immediate or intermediate housing stages

## Section 1: Background to “miscarriages of justice”

Commonweal wished to publish a short Heads Up report, to provide a reasoned argument calling for policy and operational change in the treatment of victims of miscarriages of justice who find themselves homeless as a result of the effects of their wrongful imprisonment by the State. This CASE report was commissioned to provide background analysis and options.

### What is a “miscarriage of justice”?

#### Overview

There has been much discussion, case law, and recent legislation around the question of what constitutes a “miscarriage of justice”, and hence who might be the “victim” of such a miscarriage. The urgency of the issue has been in the context of defining the scope of compensation payments which may be due to victims of miscarriages of justice<sup>1</sup>. The most recent definition was set out in Section 175 of the Anti-social Behaviour, Crime and Policing Act 2014. The change now states<sup>2</sup> that there will have been a miscarriage of justice “if and only if the new or newly discovered fact [in the case being appealed] shows beyond reasonable doubt that the person did not commit the offence” The stated purpose of was this clarification was set out to be<sup>3</sup>:

*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 claims, and would make decisions on eligibility more transparent, and less likely to be the subject of legal challenge*

It seems, therefore, that the need for a definition was driven by the financial and compensation implications of accepting that a miscarriage had occurred, rather than wider considerations of assessing in the round whether people who had had their convictions quashed might (or might not) have a legitimate expectation of some assistance or special treatment from public services on release from prison.

Being clear about the definition of a miscarriage of justice also raises important presentational issue. Any campaign to establish additional recognition of victims’ needs has to confront the risk of public attitudes around “no smoke without fire”. Many will view “victims of miscarriages of justice” as hardened criminals with sharp lawyers, rather than people who deserve sympathy for their entirely unjustified detention in prison. In fact the new statutory definition is framed in a way that very specifically seeks to avoid the “sharp lawyer” type of case – and indeed was subject to considerable parliamentary debate<sup>4</sup> about whether it was too narrow and restrictive. Opposition to the new clause was in large part due to the need to have shown

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<sup>1</sup> The general provision for such compensation payments is set out in section 133 of the Criminal Justice Act 1988

<sup>2</sup> Through a new subsection 1ZA inserted into section 133 of the 1988 Criminal Justice Act

<sup>3</sup> Ministry of Justice, Impact Assessment , Clarifying the circumstances under which compensation is payable for Miscarriages of Justice (England and Wales), 9 May 2013, p2

<sup>4</sup> Insert footnote reference to debate

that the freed prisoner was innocent “beyond reasonable doubt” (a reversal of the normal presumption of innocence unless guilty beyond reasonable doubt).

### **Leading Cases and Statutory Changes**

The 2014 statutory definition was introduced partly in response to the 2011 Supreme Court Judgement in the case of Adams, and the subsequent 2012 High Court consideration of the cases of Ali and others in the light of the Supreme Court judgement. The 2011 judgement started with Lord Phillips’ statement of the four categories of circumstance in which a conviction may be quashed on the basis of the discovery of fresh evidence.

- **Category 1:** where the fresh evidence shows clearly that the defendant is innocent of the crime of which he has been convicted;
- **Category 2:** where the fresh evidence is such that, had it been available at the time of the trial, no reasonable jury could properly have convicted the defendant;
- **Category 3:** where the fresh evidence renders the conviction unsafe in that, had it been available at the time of the trial, a reasonable jury might or might not have convicted the defendant; and
- **Category 4:** where something has gone seriously wrong in the investigation of the offence or the conduct of the trial, resulting in the conviction of someone who should not have been convicted.<sup>5</sup>

The court was (by a majority) of the view that limiting the scope of section 133 to category 1 cases would be too narrow, and:

*... deprive some defendants who are in fact innocent and who succeed in having their convictions quashed on the grounds of fresh evidence from obtaining compensation. It will exclude from entitlement to compensation those who no longer seem likely to be guilty, but whose innocence is not established beyond reasonable doubt. This is a heavy price to pay for ensuring that no guilty person is ever the recipient of compensation.*<sup>6</sup>

This concern mirrors the concerns expressed during the parliamentary debate. The judgement therefore held that the test for a section 133 miscarriage of justice should be based on a more robust version of category 2 cases (which would also incorporate category 1 cases):

*A new or newly discovered fact will show conclusively that a miscarriage of justice has occurred when it so undermines the evidence against the defendant that no conviction could possibly be based upon it*<sup>7</sup>

It was this judgment, and the subsequent 2012 High Court case judgements, that the 2014 new statute was intended to overturn, restricting the definition of “miscarriages of justice” to only category 1 cases.

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<sup>5</sup> [R \(Adams\) v Secretary of State for Justice \[2011\] UKSC 18](#), para 9

<sup>6</sup> *Ibid* para 50

<sup>7</sup> *Ibid* para 55

## The Criminal Cases Review Commission and its cases

“Miscarriage of justice” cases only occur when a serving prisoner has already exhausted the prior processes of appeal against their conviction, which may take several years to complete. Thereafter they will have had to petition the English Criminal Cases Review Commission (CCRC) –or the equivalent body in Scotland – for a further opportunity to lodge an appeal. This will almost always only occur when there is some new evidence or other new issue that might provide grounds for a fresh appeal. This process was put in place by the Criminal Appeal Act of 1995, following the 1995 report of the Royal Commission on Criminal Justice. The changes were also partly as a result of a series of convictions subsequently deemed unsafe including The Guilford Four (1974); The Birmingham Six (1975); The Maguire Seven (1976) and Judith Ward (1974). These cases were shown to feature a mixture of false confessions, police misconduct, non-disclosure and issues about the reliability of expert forensic testimony.

The CCRC started work in April 1997. Between then and 28 February 2015 it has:<sup>8</sup>

- Received a total of 19,028 applications (including all ineligible cases). As part of this, applications to the Commission have risen by more than 50% since 2012.
- Completed 17,565 cases.
- Referred 577 cases (3.3%)
- Of those 548 have been heard by the appeal courts.
- 378 appeals were won (71%) and
- 154 appeals were lost
- 814 cases are currently under review and 649 are awaiting review

Looking in more detail at recent cases, in the period 2010-2014 there were 53 successful appeals. This is an overall rate of about 13 a year, which is below the longer term average of around 21 successful appeals since the start of the CCRC's work in 1997. Nevertheless it is clear that overall the numbers are low.

We have undertaken a detailed analysis of these successful appeal cases, and the table below indicates the prevalence of sexual crime and false documentation of different kinds<sup>9</sup>:

<b>Types of Case Overturned 2010-14</b>	
Rape and sexual crime	15
False identity documents	8
Drugs	7
Immigration documentation	5
Murder	5
Wounding	5
Avoiding duty charges	3
Driving no insurance	1
Firearms	1
Fraud	1
Interfering with passengers	1
Obtain services by deception	1
<b>Total</b>	<b>53</b>

<sup>8</sup> <http://www.ccrc.gov.uk/case-statistics/> accessed 3.4.15

<sup>9</sup> Information compiled from annexes to the published annual reports of the CCRC for the four years 2010-11 to 2013-14

More information can be found in the CCRC evidence to the recent Parliamentary Justice Select Committee inquiry into the effectiveness of the Criminal Cases Review Commission<sup>10</sup>. This evidence addressed the nature of the Commission's caseload, as follows:

*We have recently seen some new strains of miscarriage of justice arising alongside the disappointingly familiar ones such as those caused by the non-disclosure of material that could have been useful to the defence, investigative tunnel vision, failure to make adequate background checks on witnesses and complainants and changes in the medical or scientific understanding of evidence.*

*The most significant new strain of cases has involved refugees or asylum seekers. Over the last few years, we have identified a series of cases where refugees or asylum seekers have been prosecuted for offences relating to their entry into the UK, such as having a false passport, having no passport or attempting to obtain services by deception. The Commission is concerned about those cases where there has been a failure to deploy available defences which are designed to protect people escaping persecution. In a number of cases individuals have been prosecuted and advised to plead guilty when a statutory defence was available.*

*We have raised awareness of the issues with charities and other organisations working with people who may be wrongly convicted in this way. We have also raised awareness with the judiciary, the defence and the prosecution to seek to minimize the risk of further wrongful convictions. Nevertheless, we continue to receive applications from people convicted in these circumstances, some quite recently. Between November 2011 and November 2013, we received approximately 80 applications of this type. Since our last report to this Committee, we have referred fourteen such cases; twelve convictions have been quashed; one person abandoned their appeal and one case remains to be heard. There is likely to be a significant further stock of such cases from people who are unaware that their conviction is unsafe. We are working with Crown Prosecution Service to identify these.*

*Another new type of case that concern us are those involving victims of human trafficking who may have been compelled to commit the crime for which they are convicted and, thus, have a defence. Those convicted are often children or young adults.*

### **Implications for Commonweal**

The numbers of cases in total who have their sentences quashed at the end of this process is low – currently around 12 a year. The range of offences covered is wide and increasingly linked to refugees and asylum seekers. The issues around housing and support to refugees and asylum seekers are often different and more complex than those for UK citizens or others with the right to remain in the UK and to full access to public funds. There are other projects which specifically address these issues, including one being developed by Commonweal in partnership with Praxis. There is therefore a question about how these two sets of issues (around miscarriages of justice and around refugees and asylum seekers) might be brought together.

Second, the legal definition of “miscarriage of justice” (currently only category one cases in the taxonomy of overturned sentences set out above) appears to be much narrower than the wider definition used by the CCRC in its public facing literature, which appears to use the term

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<sup>10</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-work-of-the-criminal-cases-review-commission/written/5320.html> accessed 3.4.15

to cover all cases where a sentence is quashed or reduced following a referral by the Commission to an appeal court. Given the small number of cases, and the fact that the category of a quashed conviction may be a matter of controversy, it may not matter to Commonwealth which category the case may most likely be in, only that the victim is in need of support. The potential problem is that including people who may have been released on a “technicality” may undermine potential public support for the general cause being presented here. This is not likely to be the case in practice as Commonwealth could decide not to support some specific cases where there is a suspicion that the “victim” is in fact less innocent than the quashed sentence might suggest – though the overall presentational risk remains (basically that the public will always believe, in most if not all cases, that “there is no smoke without fire”).

Third, the Commonwealth brief focuses only on cases referred by the CCRC, and not cases where serving prisoners are freed as part of the “normal” appeal process. This may be because this process is available as a part of normal procedure following the original conviction, and would not result in a “miscarriage of justice” as currently (or previously) defined. Nevertheless these people may well have experienced traumatic and highly damaging consequences including periods of imprisonment for two to three years, as a result of what may be technically the normal process of justice. Looking at the extent of this issue, Ministry of Justice figures for Court of Appeal criminal case appeals against conviction are set out below for 1995-2013<sup>11</sup>. This shows that there were around 370 a year in this period, with an overall 20% success rate, and just under 7,000 people exonerated (not including appeals against sentence).

**Table 1: Applications and outcomes for leave to appeal, Court of Appeal Criminal Division 1995-2013**

<b>Appeals against conviction</b>			
	<b>No. Made</b>	<b>No. Granted</b>	<b>% won</b>
<b>1995</b>	2393	472	20
<b>1996</b>	2288	419	18
<b>1997</b>	2318	589	25
<b>1998</b>	2099	542	26
<b>1999</b>	2104	480	23
<b>2000</b>	2068	508	25
<b>2001</b>	1943	438	23
<b>2002</b>	1914	405	21
<b>2003</b>	1787	472	26
<b>2004</b>	1782	348	20
<b>2005</b>	1661	360	22
<b>2006</b>	1596	291	18
<b>2007</b>	1508	288	19
<b>2008</b>	1588	212	13
<b>2009</b>	1435	275	19
<b>2010</b>	1488	242	16
<b>2011</b>	1535	221	14
<b>2012</b>	1697	252	15
<b>2013</b>	1554	168	11

Source: Ministry of Justice

<sup>11</sup> Ministry of Justice Court Statistics Quarterly series, 2014  
<https://www.gov.uk/government/statistics/court-statistics-quarterly-january-to-march-2014>

In the period 2003-13 there were an average of 1,147 appeals each year to the Civil Division, of which 39% were successful.

The question for Commonweal here is whether they might extend the scope of their support to people who have served a prison sentence and are successful at their first appeal. It may be that in these cases there is less harm caused by the appeal process, due to the shorter time, and the sense that there is still a chance to be proved innocent by the normal process, and not the trauma of having exhausted these immediate remedies of appeal. Nevertheless some will be in need of support, and could be seen as victims of “miscarriages of justice” in a more general sense of the term. The Royal Courts of Justice Advice Bureau (RCJAB) already provides support for successful appeal cases of this kind (described in more detail below) so there is some precedent for this option.

The next stage is to look at who actually presents for advice and assistance.

## Section 2: Overview of victims' needs

### RCJAB evidence

The Royal Courts of Justice Advice Bureau (RCJAB) have been providing assistance within the precincts of the Royal Courts of Justice since 1978. Since 2003 they have also provided the Miscarriages of Justice Support Service (MJSS). This is a service which is offered to all successful CCRC miscarriage of justice appellants, and starts at the point where prisoners are given leave to re-start their appeal by CCRC. RCJAB works with them on the appeal and offers to provide further assistance immediately following release, to those whose appeal is successful (currently over two thirds of cases) and subsequently for as long as they need it. As noted above, RCJAB also offers a support service to clients who have been successful with "in time" appeals, on a self-referral basis (even although these clients are not technically "miscarriage of justice" victims, as explained above).

Many of these people do not take advantage of the offer, but the majority of clients for the Commonweal Housing service will have come through this route. Amongst other things, the RCJAB service assists victims of miscarriages of justice with:

- Finding accommodation
- Establishing income
- Applying for National Insurance credits
- Registering with a GP and accessing appropriate healthcare and counselling

Specific detailed figures on the general characteristics of miscarriage cases dealt with by the RCJAB over the past few years are not currently available. In the absence of this information, discussion with key RCJAB staff indicates that these clients are primarily male, without previous convictions, had a range of different types of need, often suffered from what might be diagnosed as post traumatic or other mental health problems, were geographically distributed, often showed the most severe symptoms of problems several months after release rather than immediately, and were often the objects of local stigma in their previous home town or neighbourhood. They also can sometimes seek assistance immediately on release, but in other cases only do so after a period of many months.

A 2011 report<sup>12</sup> set out some of the main housing issues based on a sample of clients, which indicated:

- 33% were homeless on release
- 28% were owner occupiers
- 22% returned to rented accommodation
- 12% returned to their families residence
- 5% fell into another category e.g. bail hostel.

The report also sets out some of the main housing issues:

- *The months following release can be the most chaotic for our clients. They can experience several moves in their accommodation: stay with family first few weeks, relationship break downs, move in with friends, present to local authority, experience homelessness, experience further trauma.*

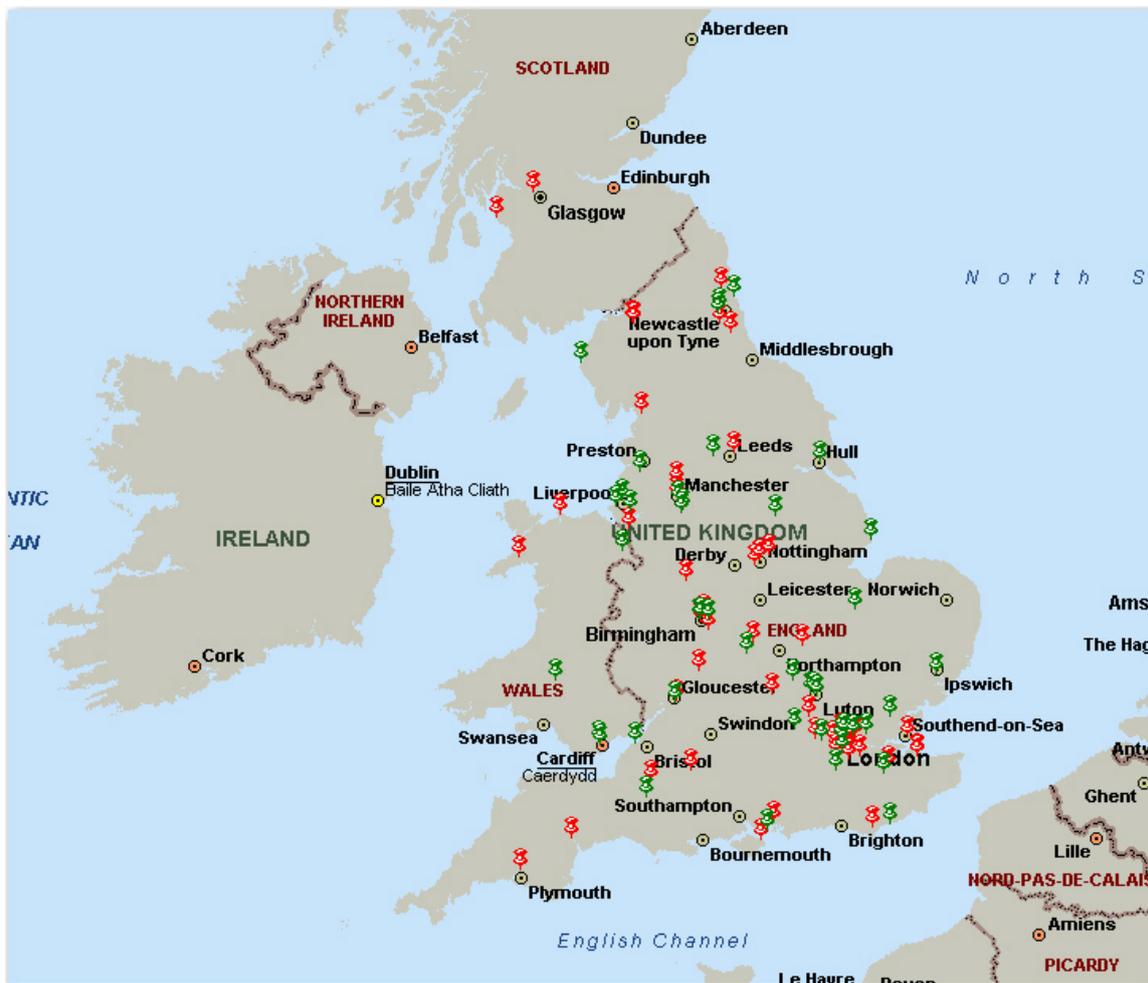
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<sup>12</sup> RCJ Advice Bureau Miscarriages of Justice Support Service Paper for Commonweal November 2011 (supplied by Commonweal Housing)

- Our clients report a lack of ‘appropriate’ accommodation e.g. where they feel safe, where local services can be accessed, away from factors that will affect them e.g. drugs, family ties, noise or large number of people.
- There are issues in retaining housing across all categories of tenants. This is focused around family relationships, access to appropriate health care, ability to form new social relationships, access to support.

Victims also can require resettlement in any part of the UK (and beyond). The current approximately 12 cases annually are spread around the country including in Scotland, Wales, and Northern Ireland, as shown by the RSJAB map below.

**Figure 1: Map of RSJAB Case Clients locations - 2014**



**Key – green pins indicate active cases, red pins are closed cases. Source: RCJ Advice Bureau**

This geographical spread is important as:

- different housing and homelessness legislation and guidance arrangements apply in the **different countries** (and there may be an issue about the Republic of Ireland and French cases)
- **availability and costs vary geographically** across the UK, with housing demand, costs, and supply being in different areas. The homelessness crisis is most acute in London, but there is low demand for social housing in other parts of the country, as well as lower private sector rents.

A further element the RCJAB description of needs is that the released victim needs both immediate housing and support, but also will need time to adjust to their new freedom, think about what they want and need to do next, including considering housing options. RCJAB note that sometimes victims do not contact them until almost a year after release, but need significant assistance at that point.

Annex A provides some illustrative case studies which RCJAB have supplied to show the range of needs and circumstances presented by victims.

## Overview of housing needs

On the basis of the RCJAB evidence above, interviews we have conducted, and a review of the wider evidence, we suggest that need can be divided into three stages of housing need. Cases will differ, and not each of these stages will necessarily be appropriate. Similarly, the stages may become necessary at different times, and the timetable and sequence may differ from case to case (with immediate housing perhaps being necessary following an initial period of attempted family reunion). Nevertheless the stages or elements (which are an extension of the original two stage Libra model) appear to be:

- **immediate housing** (in London or elsewhere) immediately following the court of appeal decision. This is probably short term (maybe even just a hotel room for a night) or temporary housing for a week to a month
- **intermediate housing** in a place where the victim can have time to re-adjust, receive medical attention and counselling, reflect, learn new skills, plan, and get to a point of being able to make informed long term decisions. This could be for a medium term period, perhaps six months to a year, or more.
- a longer term **permanent housing** solution as the victim's life and intentions become more stable and focused

Different options are available for each of these stages. Support of a different and changing kind will also be needed during each of these stages, and in fact the long process of appeal would allow for some contingency planning during the pre-decision period (although some victims may be unwilling to think beyond winning the appeal, or may think it would increase their difficulties should the appeal be unsuccessful).

Looking in more detail at what type of housing might be needed at these stages, the elements which emerge are:

- **changing and flexible options** are a feature in the first two stages of housing. Victims need immediate support and will be feeling their way throughout the first few months, but where and with whom they decide live may change may remain uncertain for some time
- **control and choice** will be important – having been institutionalised, and given the complexity of needs, the victim will need to be in a position to choose carefully an appropriate housing solution to meet his needs, as far as is possible
- **non-institutional** housing seems to be a strong desire of victims, and to avoid any further involvement with what might seem to be a continuation of the institutional, penal, and coercive Justice system from which they have just been released,. This means that any temporary accommodation would be unlikely to be acceptable if it were owned or managed by Probation Services (as these services are for people convicted

of crimes). This also probably precludes any type of managed or supported housing option such as supported housing for homeless people, or any similar “institutional” model of care.

- the **quality, safety, and security** of the accommodation will be important to the victims. It seems reasonable to think they will feel entitled to good quality accommodation, which reflects their new status as free citizens entitled to respect and support. RCJAB provided a number of case studies as part of this research, including one where the victim was offered accommodation which was uninhabitable, by a social landlord via the local authority. Whatever solution is adopted by Commonweal, attention to the quality and appropriateness of the accommodation will be of great importance.
- the **size** of accommodation may also be an issue. The housing provided may need to be large enough to allow family visits – including potentially an additional bedroom for visiting partners or children – in private and welcoming surroundings, certainly in the second housing stage above.
- as is explored further, the **cost** of the accommodation will be an issue. Few will be able to afford high rents, or have deposits for house purchase and the regular income to pay a mortgage

## **Housing related practical and financial needs**

As well as identifying an appropriate dwelling, victims may well require additional support to be able to create a new home:

**Support with material goods.** The most obvious ones here are furniture and furnishings, including white goods for any new accommodation. This is important, and might be provided through Commonweal or other similar charities providing both routes to high quality second hand furnishing, or (more likely) a reasonable sized grant with which the victim can choose to spend on what he sees as priorities. The option of second hand furniture, while an obvious option, may both bring stigma, and poor value, and should not be assumed to be the correct choice<sup>13</sup>. It is also important to recognise that some form of internet access, including a smart phone, will be essential to enable the victim to be a fully integrated citizen in the fast moving modern world into which they have been thrown. No DWP benefits can now be obtained without on-line claiming, and notifications about job interviews, health appointments, and other essential day to day matters are almost entirely done using forms of digital notification or mobile telephony.

**Support with ineligible housing costs.** Several of the housing options considered below involve costs which may not be eligible for housing benefit payments. These could include residual payments of council tax, bedroom tax payments where an extra bedroom is considered essential (as set out above), rent deposits for private rented flats, and top ups for housing benefit where the victim is subject to the under 35 (shared housing) restrictions, or has identified a private rented property costing more than the Local Housing Allowance rate (which replaces Housing Benefit in the private rented sector). There may also be new restrictions which emerge over the period of the next parliament. Note that in the exploration of options set out below we point out that care must be exercised in the supply of any support

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<sup>13</sup> See, for example, the LSE Housing assessment of the LB Haringey Emergency Payments scheme [REF] which found many people believed being forced to use second furniture stores was neither good value nor able to meet their needs

of this kind. Rent deposits or furniture provision can be made without affecting income related benefits, but other money provided to support unfunded regular payments of rent runs the risk of being deemed income and hence deducted from benefits in payment. The use of a one off capital grant of under £3,000 might be a way to address this risk in the short term.

## **Mental Health Needs**

The question of victims' medical need, and in particular their mental health needs, was flagged as a key issue by Commonweal and RCJAB interviewees. Additional information from Dr Adrian Grounds suggests that the enduring effects of wrongful imprisonment include persistent and disabling personality change and new personal characteristics, such as:

- hostile or mistrustful attitude towards the world
- social withdrawal
- feelings of emptiness or hopelessness,
- chronic feeling of threat
- estrangement.

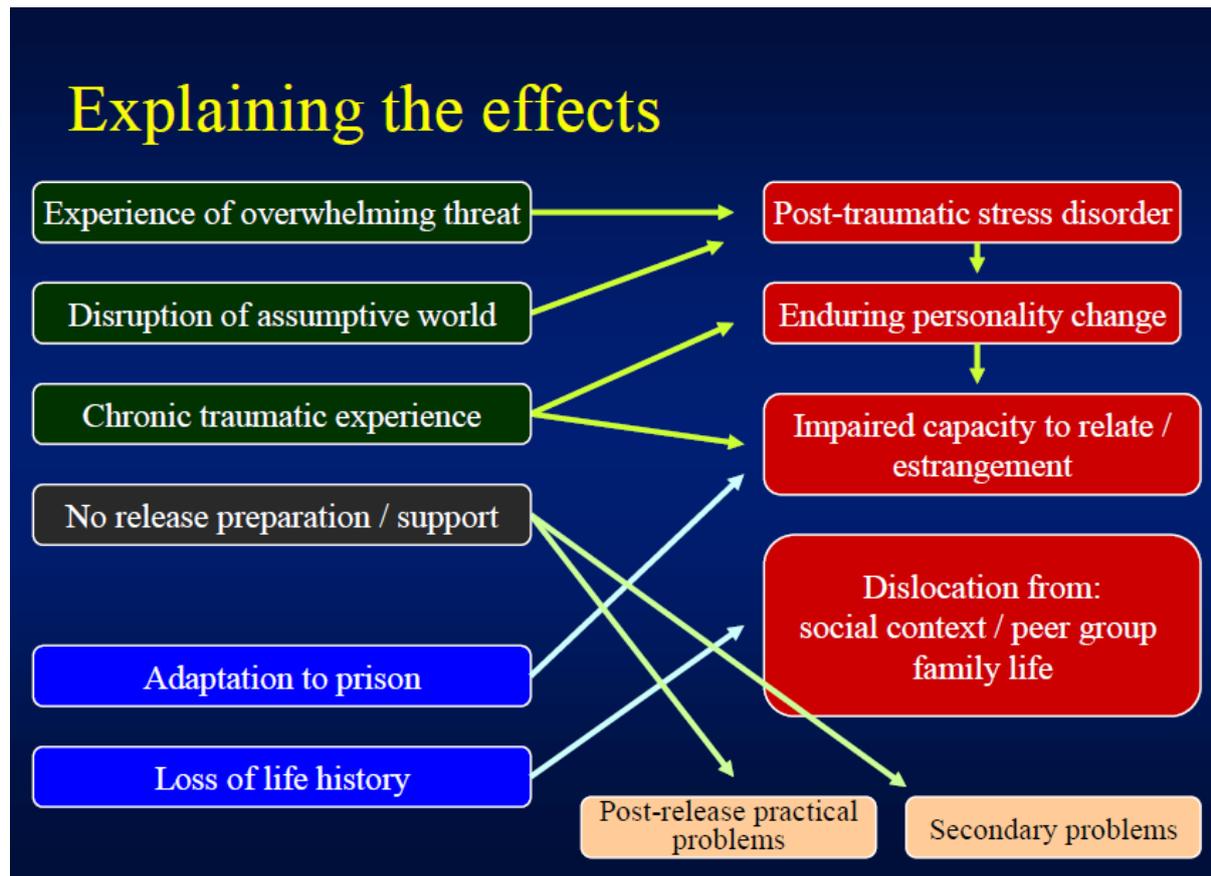
These can persist for at least two years and are mainly not due to pre-existing disorders. Similarly common is post-traumatic stress disorder (PTSD), and in many cases these conditions are accompanied by depressive disorders, paranoid symptoms, and alcohol/drugs dependency. The underlying explanations are as set out in the slide below<sup>14</sup>

A key issue here is the recognition of this set of problems as requiring specialist treatment and an approach which is specifically tailored to the experiences of this group – not unlike arrangements made in certain cases for military personnel who are recognised to form a special group. In the absence of such an approach the symptoms may be misdiagnosed and poorly treated.

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<sup>1414</sup> Slide and other material from Dr Ground's *Post-traumatic stress, injustice and long-term imprisonment*, presentation to the UKPTS Annual Conference, 23 February 2010. See also Grounds, A.T., *Understanding the Effects of Wrongful Imprisonment* Crime and Justice, Vol. 32, (2005), pp. 1-58

Figure 2: Mental Health impacts



Dr Grounds also proposed that treatment and support needs include psycho-educational advice before release occurs, the availability of housing and financial support immediately on release, perhaps in a specialist residential facility, and continuing support thereafter including specific treatment interventions, longer term individual counselling, family support, and compensation.

These health and mental health issues are not the only difficulties being faced. A wide package of measures is needed to address the need to learn new practical skills, to cope with a quickly changing world, to overcome the effects of adaptation to the regime of prison life and re-establish a sense of independence, and the problems of stigma and notoriety which commonly occur when trying to re-establish a new life. Some communities will not accept the victim back in their community, often thinking that a “no smoke without fire” attitude justifies stigmatisation and a refusal to accept the innocence of the released victim. Re-establishing family ties with partners and children may also be a major area of difficulty.

### Advice and support needs

This section recaps on the likely need for some overarching coordination of support, perhaps provided by a CAB or other advice agency case worker, who maintains an overview of how the victim is coping and intervenes where needed to bring in other agencies:

**Initial (and triage) support:** Victims already receive the offer of comprehensive support from the RCJAB. This may often involve referral to other agencies including local CABs or local advice and support agencies in the town where the victim wishes to be. This is likely to involve immediate support during the first few turbulent days and weeks where the victim makes initial

steps to re-engage with his previous family, friends, community, and networks, and comes to terms with being released. Assessment of his needs, including health needs, housing needs, income support needs, and opportunities and options around meeting these needs will be the focus of this period

**A medium term package of support** which emerges from this first period. What this looks like could take some time to emerge and stabilise, but may include elements such as long term counselling and mental health specialist support, employment re-training, family mediation, planned accommodation search, assistance with compensation claims and other legal advice, and regular fun activities. This may involve moving from one town to another as the best support solution emerges.

**Specialist awareness of the nature and complexity of their needs.** There are very few cases of victims of miscarriage of justice, and consequently most general or CAB advisors will be unaware of the range of complex issues raised by their cases. Commonwealth may wish to consider that one element of any package of measures they put in place could be a short and practical briefing pack for advisors. This should be made widely available and include details of the main issues facing victims, checklists of questions to explore, references to background documentation and sources of further assistance including mental health and other specialists, and case studies illustrating good practice. If widely publicised, and made prominent by means of letters given to victims or other means, this could be an effective way of improving the victim's chance of an appropriate service.

**Summary Needs Framework**

We can now summarise the needs of victims in relation to which possible housing options can be assessed. The basic framework we adopt is to review each of the three stages of housing (immediate, intermediate, and long term); to assess the strengths and weaknesses of each option in relation to their ability to meet these needs; and to consider mitigation actions which could influence the assessment. This leads to the summary table below, which is presented in the final section following detailed discussion of the strengths and weaknesses of each option in the following sections. The table summarises some of the more detailed points above into wider categories, but the detailed issues are set out in the discussion of each option. The table is:

**Figure 3: Analysis framework for options**

<b>[Housing option being assessed]</b>			
<b>Need</b>	<b>Immediate</b>	<b>Intermediate</b>	<b>Long term</b>
<i>Extent of control, choice, and flexibility for victim</i>			
<i>Good quality, adequate, non-institutional, safe accommodation</i>			
<b>Cost</b>			
<i>Access to family and external support and healthcare</i>			

## Section 3: Options

This section will look at the main ways in which different housing tenures and solutions could meet victims' needs as set out in the section above. It will first provide a description of the opportunities and drawbacks of different housing and tenure options, then move to a structured comparison of the strengths and weaknesses of each housing option in meeting each of the three stages of the victims housing need set out above – immediate, medium term, and long term.

### Housing by acceptance as “vulnerable in priority need”

This is an option which Commonwealth has specifically identified as one they wish to pursue actively. Note that this is an access route and not a tenure as the Localism Act 2011<sup>15</sup> has enabled local authorities (since 9 November 2012) to discharge their duty towards homeless households in priority need by using privately rented housing irrespective of whether the household is in agreement with this.

The first issue to consider is how successful victims might be in a homelessness application, despite vulnerable ex-prisoners already being identified as a priority needs group. Authorities' duties towards homeless people are contained in Part 7 of the 1996 Housing Act (as amended). If an applicant has become homeless unintentionally the authority must assess whether they, or a member of their household, falls into a 'priority need' category. These categories are set out in section 189 of the 1996 Act, which was subsequently amended by the Homelessness (Priority Need for Accommodation) (England) Order 2002 which came into force on 31 July 2002. This 2002 amendment included adding the following section relating to ex-prisoners:

#### **Vulnerability: institutional backgrounds**

5 [.....]

(3) A person who is vulnerable as a result of—

(a) having served a custodial sentence (within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000)(a);

(b) having been committed for contempt of court or any other kindred offence;

© having been remanded in custody (within the meaning of paragraph (b), (c) or (d) of section 88(1) of that Act).

This (along with other provisions in relation to 16-17 year old children, young people under 21, looked after children, people fleeing domestic violence, and ex-service personnel) was an addition to the previous list which was set out at S189 of Part VII of the 1996 Act as:

189. (1)

(a) a pregnant woman or person with whom she resides or might reasonably be expected to reside

(b) a person with whom dependent children reside or might reasonably be expected to reside

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<sup>15</sup> Localism Act 2011 (Commencement No.2 and Transitional Provisions) (England) Order 2012, (S.I. 2012/2599)

*(c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside*

*(d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster*

Local authorities interpret this legislation locally, with the additional guidance the 2006 “Code of Guidance on Homelessness” and of case law. The code of guidance addresses the question of assessment following custody or detention, without making any mention of miscarriage of justice cases, and as such can be seen as addressing those cases (since there is no doubt these people have been in custody). It does include mention of probation and other post release services, but does so conditionally and does not presume these are in place; note that in miscarriage of justice cases, probation will not be in place.

*Having been in custody or detention*<sup>16</sup>

**10.24.** A person who is vulnerable as a result of having served a custodial sentence, been committed for contempt of court or remanded in custody has a priority need for accommodation. This category applies to applicants who are vulnerable as a result of having:

i) served a custodial sentence within the meaning of the *Powers of Criminal Courts (Sentences) Act 2000*, s.76. (This includes sentences of imprisonment for those aged 21 or over and detention for those aged under 21, including children.);

ii) been committed for contempt of court or any other kindred offence (kindred offence refers to statutory provisions for contempt as opposed to the inherent jurisdiction of the court, e.g. under the *Contempt of Court Act 1981*, s.12 (magistrates’ court) and *County Court Act 1984*, s.118 (county court)). (Committal may arise, e.g. where an applicant has breached a civil injunction.);

iii) been remanded in custody within the meaning of the *Powers of Criminal Courts (Sentencing) Act 2000*, s.88(1)(b), (c) or (d), i.e. remanded in or committed to custody by an order of a court; remanded or committed to housing authority accommodation under the *Children and Young Persons Act 1969* and placed and kept in secure accommodation; or, remanded, admitted or removed to hospital under the *Mental Health Act 1983*, ss. 35, 36, 38 or 48.

**10.25.** Applicants have a priority need for accommodation only if they are vulnerable (see paragraph 10.13 above) as a result of having been in custody or detention. In determining whether applicants who fall within one of the descriptions in paragraph 10.24 are vulnerable as a result of their period in custody or detention, a housing authority may wish to take into account the following factors:

i) the length of time the applicant served in custody or detention (although authorities should not assume that vulnerability could not occur as a result of a short period in custody or detention);

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<sup>16</sup> From DCLG (2006) *Homelessness Code of Guidance for Local Authorities* ISBN 9781851128600 available from <https://www.gov.uk/government/publications/homelessness-code-of-guidance-for-councils-july-2006> (accessed 12.4.15)

- ii) whether the applicant is receiving supervision from a criminal justice agency e.g. the Probation Service, Youth Offending Team or Drug Intervention Programme. Housing authorities should have regard to any advice from criminal justice agency staff regarding their view of the applicant's general vulnerability, but the final decision on the question of vulnerability for the purposes of the homelessness legislation will rest with the housing authority;
- iii) the length of time since the applicant was released from custody or detention, and the extent to which the applicant had been able to obtain and/or maintain accommodation during that time;
- iv) whether the applicant has any existing support networks, for example family or friends, and how much of a positive influence these networks are likely to be in the applicant's life.

**10.26.** In many cases a housing needs assessment may have been completed in respect of offenders by the Probation Service, Prison Services, Youth Offending Team, Criminal Justice Intervention Team or a voluntary organisation acting on behalf of one of these agencies. Where such an assessment identifies an individual as needing help in finding accommodation and judges the individual to be particularly vulnerable and the applicant makes an application for housing assistance, this information will be made available to the relevant housing authority.

**10.27.** In addition to the question of priority need, when assessing applicants in this client group difficult issues may arise as to whether the applicant has become homeless intentionally. Housing authorities must consider each case in the light of all the facts and circumstances. **Housing authorities are reminded that they cannot adopt a blanket policy of assuming that homelessness will be intentional or unintentional in any given circumstances** (see Chapter 11 for guidance on intentional homelessness).

The question of intentionality (in 10.27, above) is important here. We have been told of cases where prisoners have been declared intentionally homeless since the investigation has looked at the accommodation they had prior to imprisonment, and decided that it was due to their own actions (crime) that they became. Whether or not this is a justification in non-miscarriage cases, the fact that a victim was wrongly imprisoned could be seen as strong evidence to rebut a claim of intentionality. It might, however, need an appeal and subsequent case law to establish this point.

In fact this category is little used. Many people interviewed remarked on their perception that few ex-prisoners were housed, and official figures show the low number in the overall category which includes this group ("other" in the table below, defined in note 2).

**Figure 4: Homelessness acceptances 2002-2014**

	Total number of households accepted <sup>1</sup>		Other <sup>2</sup>	
	Number	%	Number	%
2003	<b>135,590</b>	100%	11,140	8%
2004	<b>127,760</b>	100%	8,990	7%
2005	<b>100,170</b>	100%	6,220	6%
2006	<b>76,860</b>	100%	4,610	6%
2007	<b>64,970</b>	100%	3,230	5%
2008	<b>57,510</b>	100%	2,690	5%
2009	<b>41,780</b>	100%	1,900	5%
2010	<b>42,390</b>	100%	1,850	4%
2011	<b>48,510</b>	100%	1,790	4%
2012	<b>53,480</b>	100%	2,040	4%
2013	<b>53,150</b>	100%	2,070	4%
2014	<b>53,250</b>	100%	2,010	4%

<sup>1</sup> Households found to be eligible for assistance, unintentionally homeless and falling within a priority need group, and consequently owed a main homelessness duty by a local housing authority.

<sup>2</sup> From July 2002, "Young person" covers 16- to 17-year-olds and 18 to 20 year old care leavers. 'Other' incorporates other special reasons and the following priority need categories: those vulnerable as a result of time spent in care, in custody or in HM forces and those fleeing home because of violence or the threat

**Source: DCLG Homeless Statistical Tables 2015 Live Table 773**

Moving to other case law issues, the Supreme Court judgement in the case of Johnson vs Solihull MBC ([2015] UKSC 30) addressed (*inter alia*) the use of the 'Pereira test', originating from a 1998 Court of Appeal decision, which considers whether the applicant 'is, when homeless, less able to fend for himself than an ordinary homeless person so that injury or detriment to him will result when a less vulnerable person would be able to cope without harmful effects'. The judgement<sup>17</sup> allowed the appeal against the use of this "Pereira test". The impact of this judgement is still being worked through in how local authorities will make homelessness decisions in future. The issue of local connection is also important here (covered in Chapter 18 of the Code of Guidance). This cuts two ways. First, a victim may wish to establish a local connection to his previous home town, if he wants to return there. The Code of Guidance at 18.16 sets out that:

*detention in prison (whether convicted or not) does not establish a local connection with the district the prison is in. However, any period of residence in accommodation prior to imprisonment may give rise to a local connection under s.199(1)(a).*

Clarifying "local connection", paragraph 18.9 sets out that:

<sup>17</sup> Available at <https://www.supremecourt.uk/cases/uksc-2014-0230.html> (accessed 20 November 2015)

*Section 199(1) provides that a person has a local connection with the district of a housing authority if he or she has a connection with it:*

- i) because he or she is, or was in the past, normally resident there, and that residence was of his or her own choice; or*
- ii) because he or she is employed there; or*
- iii) because of family associations there; or*
- iv) because of any special circumstances.*

This might suggest that establishing a local connection would be reasonably straightforward. The problem, however, could be that authorities may not come to this conclusion for a range of reasons. If unable to show evidence of a current local address, it may be difficult to satisfy the local connection requirement. This may partly be because although local authorities have a duty to assess applicants for housing, concerns are frequently raised about how effectively they undertake the required investigations and assessments, as also evidenced in a recent report<sup>18</sup>

The alternative scenario is that the victim wants to move to another area, with which he has only a tenuous connection (perhaps a supportive friend or similar reasons). At 18.11 the Guidance sets out that *“The overriding consideration should always be whether the applicant has a real local connection with an area”*, which may be difficult to establish.

These points echo the remarks made in the RCJAB report cited above which set out that:

- The clients that are homeless on release face challenges to be accepted as a priority for social housing. This can be because:
  - They present as single and able bodied so disabilities and needs are not recognised [which is to say they are not accepted as being “vulnerable”]
  - They often apply to a local authority where they have no local connection because they do not want to return to their home town
  - Individuals do not have proof of identity

It may, finally, be the case that greater success in establishing “vulnerability” would be achieved if any mental health issues were clearly identified and presented to the local authority as part of the application.

### **Priority need in Scotland, Wales, and Northern Ireland**

Different provisions apply in Scotland and Wales. Priority needs groups no longer form part of the Scottish legal homelessness provisions<sup>19</sup>. Instead local authorities make enquiries in relation to three “tests” which are:

- whether you are homeless
- whether your homelessness is “intentional”
- whether you have a local connection

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<sup>18</sup> See, for example, Dobie s., Sanders B., and Teixeira L., (2014) *Turned Away – the treatment of single homeless people by local authority homeless services in England* Crisis, London, which used “mystery shoppers” to test out the thoroughness of local authority investigations and advice, and identified considerable variation in the thoroughness and accuracy of the investigations and outcomes

<sup>19</sup> Enacted through The Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012, which was enabled by Section 2 of The Homelessness etc. (Scotland) Act 2003

The Welsh Government has recently (March 2015) closed its consultation exercise on the Welsh Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness 2015, and issued a new code in August 2015<sup>20</sup>, making multiple provisions for addressing the needs of ex-offenders in general.

In Northern Ireland there is a “4 Test” process. This derives from The Housing Northern Ireland Order 1988 S5<sup>21</sup>, although ex-prisoners are explicitly listed. The Housing Rights Manual covers the order and other relevant legal issues. The Homelessness Strategy for Northern Ireland 2012-2017<sup>22</sup> sets out an average of 186 homelessness acceptances a year due to “release from hospital/prison or other institution” during the period of 2004-11.

### **Opportunities, drawbacks, and mitigation: local authority priority needs route**

#### **Opportunities**

- Immediacy: key strength of being accepted as homeless and in priority need is that this creates an obligation on the local authority to house the applicant immediately, and in temporary accommodation if necessary until a suitable permanent flat is available.
- Cost: the rent levels in social housing are mainly reasonably low compared to most private rented options – although the nomination may be to an “affordable” rent RSL tenancy or to more expensive private rented flat
- Permanence: the tenancy offered may be a secure tenancy; but it may also be a fixed term (one year) assured shorthold tenancy if in the private sector; and may be an introductory or starter tenancy if in the RSL or council sector.

#### **Drawbacks**

- Lack of control: making a homelessness application can be a difficult and fraught process, with many of the issues outlined above. To make a successful case for acceptance, the victim would most likely require both specialist and dedicated support (and good medical evidence which may not be immediately available), may need to appeal, may be put in temporary accommodation for a period then refused, or may receive a summary refusal at the first hurdle with little understanding of the issues and problems
- Lack of choice: the victim is likely to have one offer only; this could be in any tenure; the duty to rehouse could be to another local authority far from the area the victim has a connection to (particularly if the victim’s local connection is in an inner London borough); and the suitability of the accommodation in terms of quality and suitability may be low (particularly if the offer is to a hard to let property on a large system built estate).
- Access to support: the lack of choice means that the accommodation may not be near any specialist support agencies used by the victim; but there are already likely to be teams of housing and social workers who are already in place to deal with problems experienced by social housing tenants

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<sup>20</sup> <http://gov.wales/docs/desh/publications/150424-code-of-guidance-for-local-authorities-on-allocation-of-accommodation-and-homelessness-en.pdf>

<sup>21</sup> see <http://www.legislation.gov.uk/nisi/1988/1990/article/5>

<sup>22</sup> [http://www.nihe.gov.uk/homelessness\\_strategy\\_for\\_northern\\_ireland\\_2012-2017.pdf](http://www.nihe.gov.uk/homelessness_strategy_for_northern_ireland_2012-2017.pdf)

## Mitigation and Overall Assessment

This route may be appropriate for some victims, but currently is subject to many uncertainties. First, the circumstances of each victim's need to be taken into account. Some may have immediately evidenced special vulnerabilities (perhaps around mental health assessments) which make it more likely they will be accepted as vulnerable in priority need. Others may have a more limited prima facie case for a full homelessness investigation and assessment. Second, the assessment of needs varies by country and by local authority area – in addition to the different legislative frameworks and codes of guidance, there are local policies and practices which mean that different authorities deliver their duties in different ways. In many cases this variation reflects the availability of different types of accommodation locally, or in the case of London Boroughs the very limited availability of accommodation of any type.

Commonweal have indicated they wish to consider mounting a campaign to increase the priority accorded to these cases. We have indicated above the likely importance of the recent Supreme Court appeal judgement in the case of Johnson et al. We are also aware that Crisis are hoping to launch a post-election (and post judgement) campaign to improve the operation of homelessness legislation and local assessments, involving like-minded organisations. There may well be an opportunity for Commonweal to work jointly as part of this campaign, and with like-minded partners in the near future, as we explore in more detail below.

One issue here, however, is about how “miscarriage” cases might be defined in any legislative change to priority needs categories. As set out in section one above, the current statutory definition of a miscarriage of justice is set out in the Anti-social Behaviour etc. Act 2014 as applying “*if and only if the new or newly discovered fact [in the case being appealed] shows beyond reasonable doubt that the person did not commit the offence*”. It is at least probable that this definition would be cited for the purposes of any new priority needs category, but this may well be considered too restrictive by Commonweal, who could wish to cover the category 2 (or even 3) cases, and perhaps also ex-prisoners released after in time appeals (as discussed above). An alternative approach, based on non-statutory and more informal guidance might be considered – some form of high profile Ministerial statement or announcement to promote more favourable treatment of this group. This would certainly help; but in the current and increasingly difficult crisis of homelessness and housing need, it is highly unlikely that an informal announcement of encouragement could deliver the kind of guaranteed improvement in priority which these cases require.

Even if accepted, however, the lack of choice of location, size, and quality of accommodation presents challenges to any victim. It may be that they are in a local authority area where there is sufficient, or even an abundance, of good accommodation and an administration who is receptive to taking account of the victim's wishes. Often this will not be so, particularly in London, but in Wales and Scotland, or the north of England, there is a better chance. In relation to temporary housing, either pending an assessment or for a short period, the quality of accommodation, and in particular whether it is some form of institutional homeless hostel which may well not suit the victim's needs, is again a problem. There is likely to be even less choice in relation to such temporary accommodation. The RCJAB commented<sup>23</sup>

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<sup>23</sup> In background documentation supplied to us

*Local authority temporary accommodation e.g. YMCA, often unsettles clients and places them in locations where there is more likely to be high drug usage, high level of crime etc.*

That said, in some cases this will be a good option for both temporary and permanent housing. The victim can be referred on to RSL or private sector housing; and indeed it may be of great assistance to be nominated to a neighbouring borough if the victim wishes to remain in the area but out of the immediate neighbourhood he was originally from, to avoid stigma. Some authorities will treat these cases with sympathy and understanding, and could quickly find a very suitable flat or house.

Our conclusion, therefore, is that this is an option with many drawbacks, but one which should in all cases be explored, and one where the individual circumstances of the victim, and where he wants to live may make it a good option – but certainly not in all cases.

### Summary Table

**Figure 5: Analysis of Local Authority priority needs route**

<b>Acceptance as in Priority Need</b>			
<b>Need</b>	<b>Immediate</b>	<b>Intermediate</b>	<b>Long term</b>
<i>Extent of control, choice, and flexibility for victim</i>			
<i>Good quality, adequate, non institutional, safe accommodation</i>			
<i>Cost</i>			
<i>Access to family and external support and healthcare</i>			

Good
Neutral or varied
Poor/ not available

### Local authority housing via Choice Based Lettings

Another route to local authority housing is via choice based lettings schemes. This also operates in some parts of Scotland (where there are eight schemes), Wales, and through a pilot scheme which has been running in Northern Ireland since 2014. Choice based lettings schemes were introduced by the 1996 Housing Act, and currently operate as amended by the 2002 Homelessness Act, and (in England) under the 2008 Code of Guidance<sup>24</sup>. We will concentrate on the English scheme here, as the main principles can be explored without considering the specific variations in the other nations.

<sup>24</sup> DCLG (2008) *Allocation of housing – Choice Based Lettings - Code of Guidance for local authorities* ISBN: 978-1-4098-0440-6

“Reasonable preference” in the setting of choice based letting priorities (S167) should be given to:

2(a) people who are homeless (within the meaning of Part 7);

(b) people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any such authority under section 192(3);....

...(e) people who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others).

The scheme can also take account to

2A. ....(c) any local connection (within the meaning of section 1999)<sup>25</sup> which exists between a person and the authority’s district.

This provides more flexibility in terms of local connection, which would in many cases be sufficient to allow a victim to register on the Choice Based Lettings scheme of other local authorities than those with which his primary local connection was based, particularly in areas of over provision.

Once registered on the list, bids can be made for properties which become available, and the local authority will decide who amongst the people bidding has the highest priority to get an offer. The properties under offer may include RSL or private sector properties depending on how the authority has organised its scheme. There are also different local arrangements around timing of new lists of properties, and the rules around bidding. Authorities are encouraged, in the code of guidance, to take account of potential applicants who may have difficulty bidding, and not penalise people who subsequently turn down an offer<sup>26</sup>. Banding and points systems may be in place, and provisions to allow some vulnerable people to have a longer period to decide – but these are matters for local authority discretion, in line with their wider housing strategy.

## **Opportunities, drawbacks, and mitigation: Local authority housing via choice based letting**

### **Opportunities**

- choice and flexibility: this scheme allows the victim to choose the property, city, and neighbourhood. It may include a choice of RSL properties, or good quality private rent
- as above, the cost is likely to be low
- as above, the tenancy is likely to be permanent

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<sup>25</sup> which includes “family association” and “special circumstances”

<sup>26</sup> Set out in Section 3 of the Code of Guidance

- the victim could choose an area near to any specialist support needed; and if in social housing, there are already likely to be teams of housing and social workers in place to deal with problems experienced by social housing tenants

**Drawbacks**

- The process of bidding may be difficult and stressful for the victim, and support may be required
- Although more choice is offered, an outcome is not certain. Local authorities still have the final say in allocations, including concerning the size of property – and many may not be willing to allocate a larger than “needed” property.
- it is not suitable for the immediate accommodation stage, as the bidding process takes too long

**Mitigation and overall assessment**

As with the LA priority needs route, the suitability of this option for intermediate and longer term housing depends on the needs of the client, the local authority policies in place, and the overall level of need and availability in the selected area. The problem of the victim having difficulty bidding could be mitigated by active support from a local support agency.

**Summary table**

**Figure 6: Analysis of Local Authority choice based lettings route**

<b>LA via Choice Based Letting</b>			
<b>Need</b>	<b>Immediate</b>	<b>Intermediate</b>	<b>Long term</b>
<i>Extent of control, choice, and flexibility for victim</i>			
<i>Good quality, adequate, non institutional, safe accommodation</i>			
<i>Cost</i>			
<i>Access to family and external support and healthcare</i>			

Good
Neutral or varied
Poor/not available

**Housing directly by Registered Social Landlords**

Although much RSL housing is let through arrangements with local authorities, to support their housing and homelessness strategies, flexibility remains to house additional households using other schemes. Many RSLs have special lettings schemes and programmes addressing specific local needs. One recommendation is for Commonweal to work with partners to identify specific RSLs who would be interested in working as part of a national framework to provide both temporary and permanent housing for victims, and set in place a set of protocols and

understandings which can be invoked whenever a victim requires housing. This would be a framework with national coverage over the UK.

### **Opportunities, drawbacks, and mitigation: housing directly by RSLs**

#### **Opportunities**

- Support: a network of support and accommodation knowledge can be built in advance to be invoked when needed, building on the prior experience and social commitment of engaged RSLs. These RSLs will also have good knowledge of the opportunities for local authority housing in the local area. RSLs will also have experienced housing and social welfare type officers able to deal sympathetically with all aspects of the victims housing.
- Flexibility, quality and size: RSLs, particularly those with national coverage, have a range of differently sized properties which they can make available. They are less restricted in providing, for example, an additional bedroom to allow for family reconciliation, or a family in a safe neighbourhood or particular town.
- Control: the victim can have an in depth discussion with the RSL about their needs and preferences for housing, without having to jump through difficult statutory hoops in relation to the homelessness process, or stressful bidding via choice based letting
- The three stages of housing can be provided by RSLs, and in particular they can offer options for shared ownership and other long terms additional options

#### **Drawbacks**

- Costs: housing flexibility (e.g. on size) may lead to rent charges unfunded by benefits. Commonweal could consider stepping in to address this (though as set out above this may have to be in the form of an occasional capital grant of under £3,000 to avoid being treated as income for benefit purposes)
- Availability: much RSL property is in high demand, particularly in some SE and inner city areas.

#### **Mitigation and overall assessment**

Overall this option allows the victim to be dealt with by a housing agency who has much more autonomy than a local authority, has the benefit of national reach and hence can be ready to provide housing and support in any geographical area of operation without having to start from scratch, and is likely to be already engaged with supporting vulnerable clients of different types

## Summary table

Figure 7: Analysis of RSL option

RLS housing			
Need	Immediate	Intermediate	Long term
<i>Extent of control, choice, and flexibility for victim</i>			
<i>Good quality, adequate, non institutional, safe accommodation</i>			
<b>Cost</b>			
<i>Access to family and external support and healthcare</i>			

Good
Neutral or varied
Poor/not available

## Housing via private renting providers

There is now more private rented housing (19%) than social housing (18%) in England, with increasing amounts coming from buy to rent arrangements. Although the private rented sector can have a poor reputation for high cost, low quality, insecurity, and poor (and rapacious) management, this is by no means always the case. Many private landlords are socially responsible and some are prepared to assist in the housing of vulnerable clients, although normally only with some safeguards which are provided by third party guarantees. The sector is large enough, and the number of miscarriage victims small enough, to justify its inclusion as a possible source of housing.

There are indeed some agencies who work directly with private landlords for social housing ends (such as Hope Worldwide<sup>27</sup>, and Vision Housing<sup>28</sup>), as well as Broadway Real Lettings with whom Commonweal have already worked for the Libra project; and the campaigning housing charity Crisis has developed a detailed toolkit for working with private landlords<sup>29</sup>, and has information of a range of these Private Rented Access Schemes across the country. Some of these schemes are focused more on homelessness than is appropriate here, but they have built up good relations with private landlords which can be built on for the miscarriages of justice programme. We recommend that Commonweal engage with some of these agencies, in order to build a further network and framework which can be called on as individual cases present in need of support.

<sup>27</sup> see <http://www.hopeworldwide.org.uk/>

<sup>28</sup> see <http://visionhousing.org.uk/our-housing-offers/>

<sup>29</sup> see [http://www.crisis.org.uk/data/files/Private\\_Rented\\_Sector/Toolkit/PRS\\_Toolkit.pdf](http://www.crisis.org.uk/data/files/Private_Rented_Sector/Toolkit/PRS_Toolkit.pdf)

**Opportunities, drawbacks, and mitigation: Housing via private renting providers**  
**Opportunities**

- Flexible stock with no restrictions on allocations, size, location, and able to be inspected for quality; normally good availability due to high turnover
- Support: access and continuing support can be done through the newly emerging private renting access agencies who can vet landlords and deal with the necessary guarantees on both sides

**Drawbacks**

- Cost: the private rented sector is normally more expensive; Commonwealth might have to step in with rent deposits and rent subsidies (as set out above)
- Insecurity: private rented contracts are normally short term (6 or 12 months). This makes them less attractive for permanent accommodation
- Support: private landlords are unlikely to have additional support teams of housing officers or any similar structure in place
- Stigma: some existing private rented access programmes are based on supporting more chaotic and entrenched homeless problems than miscarriages of justice cases, so care would need to be taken to avoid victims feeling stigmatised by inclusion in such programmes
- Overall risk: the private rented sector is fundamentally a for-profit sector and landlords do not share the charitable status or social objectives of social housing providers.

**Mitigation and overall assessment**

This option is increasingly being used as a means to housing homeless people; and the emergence of private renting access agencies who are dedicated to enabling the sector to work for vulnerable people is welcome. Commonwealth would need to engage with these agencies with some form of loose framework agreement and exchanges of understandings and information to make this work, but it is a flexible, immediate, and nationally spread option

**Figure 8: Analysis of Private Renting option**

<b>Private rented housing</b>			
<b>Need</b>	<b>Immediate</b>	<b>Intermediate</b>	<b>Long term</b>
<i>Extent of control, choice, and flexibility for victim</i>			
<i>Good quality, adequate, non-institutional, safe accommodation</i>			
<i>Cost</i>			
<i>Access to family and external support and healthcare</i>			

<b>Good</b>
<b>Neutral or varied</b>
<b>Poor/not available</b>

## **Housing via the Libra scheme**

The Libra project was set up jointly by Commonweal and RCJAB. Brief details from an internal report sets out more detail and an assessment of the project's history and progress in Annex B. Here we review how it fits with the other options set out above, on the basis that it still remains a viable option amongst the range of possible support provided. Note also that RCJAB have commented that

*“Clients returning to owner- occupied properties were less likely to experience issues in relation to housing”*

Owner occupation must remain one of the options for long term housing. In essence the Libra scheme involved:

- A flat on permanent standby in London for immediate housing
- Immediate advice and support on a range of benefits, employment, and other matters was provided by RCJAB, and housing related support by Commonweal (and Broadway Real Lettings, using a flat provided by Commonweal)
- Assistance with making a compensation claim, which would then be used to purchase a permanent owner occupied home

## **Opportunities, drawbacks, and mitigation: the Libra scheme**

### **Opportunities**

- Immediate availability of temporary accommodation
- Co-ordinated support on release
- Long term planning for owner occupation
- Cost- subsidised rent provided

### **Drawbacks**

- Inflexible- immediate housing only in one London flat; no national presence or options for support and housing in different countries or cities
- Lack of an “intermediate” housing stage, although the long term post compensation purchase route was likely to take years
- Support package involved three agencies who experienced difficulties co-ordinating their different roles and activity
- Failure to draw in other agencies and organisations who could bring a more flexible range of housing and support options

### **Mitigation and overall assessment**

Elements of the Libra model remain important to maintain and develop, particularly the question of developing routes into owner occupation. These can best be used in conjunction with some of the other options above.

Summary table

Figure 9: Analysis of Libra option

<b>Libra</b>			
<b>Need</b>	<b>Immediate</b>	<b>Intermediate</b>	<b>Long term</b>
<i>Extent of control, choice, and flexibility for victim</i>	Yellow	Red	Green
<i>Good quality, adequate, non institutional, safe accommodation</i>	Green	Red	Green
<b>Cost</b>	Green	Red	Yellow
<i>Access to family and external support and healthcare</i>	Red	Red	Green

Good
Neutral or varied
Poor/not available

## Section 4: Conclusions

### Conclusions

Our general conclusions emerging from the above are:

1. **Pre-release:** There is a need to prepare options once the victim gets near the final appeal, if they are able and willing at that stage to engage in contingency planning
2. **Case types:** There are a small number of very different types of case. This needs a portfolio of options which can be individually tailored, geographically based, and flexible enough to take advantage of the actual state of housing need and supply in the local area the victim wants to live in, medium or long term.
3. There are clear common elements to miscarriage of justice cases that include: trauma, a need for time to take stock and try to rebuild their lives, and to decide what to do. This requires considerable support which needs to be provided by local agencies in the area the victim wants to live in.
4. **Agencies:** Local agencies need to supply support; and to do this Commonweal (and RCJAB) can provide both initial clear guidance (perhaps briefing notes and checklists on something like advisor.net) as well as a dedicated expert who can talk a local agency through the issues to be addressed, and how best to move forward. This may also involve personal visits by this expert to the local area to work with the local agency for a few days
5. These local agencies know the services and opportunities in their own town, and are best placed to identify potential long term and specialist services for the victim, as well as the best housing option
6. **Housing options:** There is no one housing option which is best. We have set out a range of options any of which might be best for an individual, a place, or a stage in their journey back to integration. All of these should be available to victims
7. The best way to make them available is to build permanent relations with a series of RSLs, a network of CAB and advice agencies, and a range of Private Renting access agencies, so that these protocols can be invoked when needed.
8. **Financial support** may be needed, for all of the tenure options. This will particularly be the case for the private rented sector – particularly around cost and security of tenure. This is likely to involve providing financial guarantees, deposits, and in some cases temporary rent subsidies. There are already schemes in place working with private landlords sympathetic to a more socially responsible approach to letting
9. **Commonweal's Libra model** still has benefits for the long term, but is not suitable for the immediate or intermediate housing stages

## **Annex A: RCJAB Case Studies**

### RCJ Advice Miscarriages of Justice Support Service Housing Case studies

#### **CASE A**

**Illustrates the Service does meet the clients housing need on release, but this may change in the future due to circumstances beyond their control.**

The client had his conviction quashed in 2006 after having been in prison for nine years and the service assisted him to secure temporary accommodation pending permanent accommodation in Luton within three months of his release.

The client suffered a further miscarriage of justice six months after he was released. The client protested his innocence and was at first kept on remand and then bail, to another address and not allowed to return to his accommodation. Over two years the client had two mistrials and was found not guilty.

When the client was released he was homeless as he had lost the temporary accommodation we had secured for him. The client then made a homelessness application which was turned down, by Luton Council, who breached the rules of the code of guidance on homelessness.

We submitted an appeal on behalf of the client, which then went to a panel of Council members. It took a very long time for the clients appeal to take place due to the Council's procedure and even longer for them to make a decision (2 years).

We enlisted help of a solicitor to speed up matters. We worked closely with Adrian Grounds, a forensic psychiatrist, who agreed to do a letter in support as medical evidence for our client's housing application.

This medical evidence and submissions by ourselves and support from the solicitor led to the client's application for homelessness being accepted. Luton Council recognised the passage of time (2 years) that had passed since the client's original application, and offered him permanent accommodation immediately.

#### **CASE B**

**Illustrates Council's lack of understanding of post-traumatic stress disorder**

The client had his conviction quashed recently after being in prison for five years. We made a homelessness application on behalf of the client to his chosen Council. The application was also supported by a letter from a forensic psychiatrist who specialises on the impact of wrongful conviction.

The Council agreed to put the client in temporary accommodation, pending investigation into his application. The Council requested the client attend a mental health assessment, to establish client's vulnerability.

We attended the medical assessment with the client and the assessment was carried out by a social worker, with no specialist knowledge in post-traumatic stress disorder. The client found the hospital environment very intimidating and felt he was being put under a microscope.

Whilst being interviewed the client became very angry and expressed suicidal and homicidal thoughts.

Subsequently Redbridge Council decided that the client was not vulnerable and promptly evicted him from the temporary accommodation without giving any notice, contravening the rules of the homelessness guidance law, which states that it is necessary to give someone reasonable time to secure alternative accommodation.

We made representations to the Council and were in the process of securing compensation for the client due to the way he had been treated. However, the client went abroad indefinitely.

## **CASE C**

### **Illustrates the possibility of Media and Multi-agency Public Protection Arrangements (MAPPA involvement with clients).**

A high profile client had his conviction quashed after nine years. We secured a one bedroom flat as temporary accommodation.

The client came under MAPPA in an exceptional action on the grounds of his own protection, and therefore the Council was duty bound to disclose the client's whereabouts. This MAPPA status was disputed by our client.

The press found out where the client lived as a result of a leak from someone in the Council. They camped outside the accommodation and interviewed the other residents who lived in the building.

Consequently the Council was forced to move the client to a new accommodation where he was in turn victimized by the other residents.

This caused the client great distress and greatly hindered his assimilation.

## **CASE D**

### **Illustrates the difficulties that clients can experience when dealing with housing organisations that exploit their vulnerability.**

The client had their conviction quashed in 2010 after having been wrongfully detained for nine years.

They secured accommodation through a Housing Association (HA). The flat was in disrepair and could be described as uninhabitable. The client raised his concerns with the HA but these fell on deaf ears.

We made representations to the HA and secured an agreement that the client's flat would have the necessary remedial work carried out on it. Following the remedial work the flat was left covered in thick layer of dust from top to bottom and the client was unable to return to his flat due to the dust in the air. We went to see the clients flat and could not stay there as we were having difficulties breathing due to the dust (possibly asbestos dust) .We then intervened again following the repairs, to assure the flat was professionally cleaned.

Whilst the flat was being repaired the contractors did damage to our client's kitchen floor and units some of which was irreversible. The HA contractors had to repair that damage.

We liaised with the HA and successfully secured a compensation payment of £1000.00 for the distress caused to the client.

## **CASE E**

### **Illustrates clients may not have a housing need on release, however the housing need may come at a later stage of their assimilation process**

The client had his conviction quashed in 2000, by the House of Lords. Upon release in 2000 he went to stay at the family home of a cellmate he had met whilst he was in prison. Then he subsequently moved in with a member of his cellmate's family who lived in a house across the road. The client was extremely traumatised by his wrongful conviction and dependant on this family for both practical and emotional support.

In 2003 we became involved with the client and assisted him to get a backdated benefit payment and with other resettlement needs. The client received three sets of compensation and was content to live with cellmate's family (who were professional gamblers). The client informed us he no longer needed assistance.

On 23rd January 2007, we were contacted by a mental health worker who had been contacted by Council Officers, who had found the client squatting in a property, which they thought was vacant. The council officers were very worried about the client as they found him living in a cold accommodation void of furniture and all curtains closed. The client was in a dreadful state both physically and mentally.

Upon speaking to the client we learnt subsequently that the following things had occurred.

- The family that had supported him emotionally since release had abandoned him once his interim payments had finished. This rejection had caused the client to go into a deep depression. He could not leave the house as there was no one to accompany him outdoors anymore, as members of the family accompanied him everywhere. His mental state deteriorated and he stopped eating and drinking, and consequently became emaciated.
- A member of the family who was accommodating the client, left him in the property and surrendered his lease to the council by returning the property's keys. The mental state of the client meant he could not appreciate or understand anything about his housing status, he believed he had a right to stay in the property. He only became aware that he could no longer stay in the house when housing officers from the council attended the property.
- The client did not have any friends or a support network. He wanted accommodation in Bradford in order to be near friends and family who could provide him with emotional and practical support, this being vital to him being able to resettle back into society and pick up the pieces of his life.

We liaised with the council and came to an agreement that the client could stay in the property, until they could find him permanent accommodation. We also put forward a case to the council for the client to be accommodated in Bradford, and they agreed to do this, through there transfer procedure. We successfully secured an accommodation in Bradford.

## **CASE F**

**Illustrates the Service does meet clients housing need on release, however clients' actions could lead to them becoming homeless again.**

The client had his conviction quashed in 2009, and the Service had secured accommodation for the client upon release.

The client found it difficult to live in the UK, as it was a constant reminder of what he had been through. He gave up his tenancy and decided to start again in another country.

The client was encouraged by his cousin to go to America, where he would help him find a job and start a new life. However this plan did not materialise and the client had to return to the UK. The cousin and family also took most of the client's money so he had just had enough to purchase a ticket back to the UK.

Prior to going the client had given up his tenancy and signed off benefits, which meant upon his return to the UK he had to start all over again.

We accompanied the client to the Council Offices and advocated on his behalf. The client was deemed to be homeless and not vulnerable. We made written representation to the Housing Options Manager at the Council, which led to the client being accommodated.

The client's age meant that he had to be accommodated in shared accommodation. Unfortunately the behaviour of the other people who lived in the accommodation was an issue for our client. An incident occurred and the client was forced to leave the property.

The client secured housing through a housing association, who gave him a one bedroom flat. He found employment and settled down with a more positive outlook on his future.

## **Annex B: Overview of the Libra project**

### **Extract from Commonweal background document**

The Miscarriages of Justice Support Service, is delivered by the Royal Courts of Justice Advice Bureau (RCJAB) part of the National CAB network have been operational for a number of years and are the only state funded service for those who have suffered a miscarriage of justice. They provide a support and advocacy role but provide no support services themselves.

The RCJAB felt housing options has been a recurring theme for some of their clients and a lack of immediate support from LA housing support for those facing homelessness was a constant source of frustration

CH had identified a lack of support over all for these clients and as part of exploring this AH came across the RCJAB who had aligning interests

The Libra Project came about because of a lack of stable emergency, short term and long term housing for people being released from prison after a lengthy period and suffering a miscarriage of justice. These people have all the same issues as those that are guilty, upon being released from prison but without the help or support of probation.

Commonweal and RCJAB designed a project that addressed this. They believed the project would offer this accommodation and provide a stable base for these people to access all areas of the help they needed, effectively allowing them to reach their goals sooner

The project consisted of three stages

- Stage 1 – a client is identified by the RCJAB and is offered a 1 bedroom flat at the point of emergency/crisis. This could be on the day of release or sometime after if current housing (sofa surfing, or family home breakdown) was no longer available
- Stage 2 – the client would be offered the choice of Commonweal Housing buying a more permanent bespoke home with input from the client. This could be anywhere within the South East of England within a reasonable budget
- Stage 3 – the client would progress the compensation claim and buy the property from Commonweal Housing. The property then belongs to the client.

### *Project Design and Development*

It was discussed early on that RCJAB would not be providing a housing support or tenancy management role. RCJAB plays an advocacy role and is not a service provider.

It was always known the number of clients in the project would be low and therefore CH felt they could take on this role of housing provider. We brought on Broadway Real Lettings to provide the day to day front line housing and tenancy management service and leased the stage 1 property to them. Unlike their other schemes, the choice of tenant was left to CH/RCJAB.

Commonweal and Broadway already have a working relationship. In their capacity of tenancy/property management they also played a small role of monitoring the client's progress. This was part of their general duty and not explicitly part of the Libra project support.

Commonweal decided to start the project evaluation early in the process and went out to tender. The project went live on 20/03/13 and the acquisition of a 1 bed flat in East London was achieved. A client was identified and deemed appropriate for the project. He moved into the property in July 2013

Housing benefit changed to effect under 35's and the amount of rent they could claim. Because of this the proposed charges were put together with this in mind and CH charged Real Lettings a lower rent (if the client was under 35)