In my role as director of the Innocence Network UK (INUK) I am regularly contacted by lawyers, both criminal and non-criminal, who offer their services freely to a member of the innocence project working on the cases of people who say that they are innocent of the serious criminal offences that they were convicted of, mainly murder and rape. They say that they want to work with an innocence project because they want to give something back, that they care about justice and they want to help innocent people who may have been wrongly convicted to achieve it.

In the five years since the establishment of INUK, this has led to dozens of pro bono lawyers assisting approximately 500 student caseworkers in the 25 member innocence projects in universities all around the country that are currently collectively investigating 78 cases of mainly long-term prisoners maintaining innocence. Such lawyers are welcomed for the vital legal work that they can provide to innocence project investigations. This includes facilitating prison visits, ensuring that correspondence to prisoners is confidential and not opened before it reaches them, obtaining affidavits from witnesses who want to provide alibi or retract their incriminating statements and appointing a barrister when the case is referred back to the Court of Appeal (Criminal Division) (CACD).

However, reflecting not on what lawyers working with member innocence projects say in response to claims of innocence by alleged victims of wrongful conviction but, rather, on what they do, it is not difficult to see why it is so rare for wrongful convictions to be overturned. My experience shows that the reality, unfortunately, is that lawyers working with the innocence projects tend to put law before people. They are overwhelmingly deferential to the dictates of the legal system and appear unwilling to fundamentally challenge the potential injustice of the rules of criminal appeal.

This is ironic because INUK was established precisely because the existing appeal and post-appeal provisions are failing potentially innocent victims of wrongful conviction and are in urgent need of reform. To start with, the principal way that alleged wrongful convictions for serious offences are overturned in law is by fresh evidence or argument that was not available at the time of the original trial as required by s. 23 of the Criminal Appeal Act 1968. As such, evidence of innocence will not generally even constitute grounds for appeal, let alone overturn a wrongful conviction unless there are exceptional reasons for why it was not adduced at trial.

This requirement for fresh evidence is reinforced by the Criminal Cases Review Commission (CCRC). The CCRC was set up in the wake of notorious cases such as the Guildford Four and the Birmingham Six and is the official (so-called) independent public body that reviews alleged miscarriages of justice at post-appeal stage. The CCRC is widely believed to have been established to fully investigate claims of innocence and assist in overturning wrongful convictions if evidence of innocence was found. However, the CCRC is, in fact, bound to the appeal courts by statute, ostensibly s.13 of the Criminal Appeal Act 1995, to only refer cases back to the appeal courts if it is felt that there is a ‘real possibility that the conviction will not be upheld’. In consequence, innocent people can remain languishing in prison even if the CCRC is presented with evidence of innocence if that evidence was or could have been made available at the time of the original trial.

In short, the criminal appeal system is not...
University of Bristol Innocence Project (INUK) seeks to challenge. Instead, they often opt to pursue legal reviews for grounds of trial process that could constitute grounds of innocence or any possible breaches of procedures in the trial that calls the verdict into question.

INUK's innocence projects are not restricted to INUK's innocence projects typically tell student caseworkers not to look at unused evidence from criminal trials as, by definition, there is unlikely to be anything fresh to be found there that will satisfy the CACD or the CCRC. Instead, they are encouraged to dutifully learn and apply the law in the area that they practise. They are not inclined to see any value in critiques or challenges of existing law for the clients that they represent.

As such, lawyers working with INUK's innocence projects typically tell student caseworkers to suspend the pursuit of legal grounds and focus their investigations on finding out if the alleged innocent victim of wrongful conviction is telling the truth. This approach has yielded dividends in the case of Simon Hall. A meticulous search of the unused evidence unearthed the evidence that may prove that Hall is factually innocent of the murder of 79-year-old Joan Albert, stabbed 12 times in a claimed interrupted burglary. Student caseworkers found a statement that indicates that the murder weapon originated from another burglary that occurred ten minutes away from Joan Albert's house around the same time that she was murdered, which Simon Hall could not have committed. They also found in the 'schedule of unused actions' a reference to DNA on the handle of the murder weapon, the profiles of which were not disclosed to the trial solicitor on the basis that it would be of 'no practical use'. Perhaps, it may have been considered to be of some practical usefulness if it incriminated Simon Hall? It is most unlikely that Hall's criminal appeal lawyer would have uncovered this evidence, operating under the conventional appeals paradigm. It thus demonstrates the importance of thinking 'outside the box' when it comes to evaluating claims to innocence.

In the case of Neil Hurley, also investigated by the University of Bristol Innocence Project, two criminal appeal lawyers, a solicitor and a barrister, told us on separate occasions to drop the case. They said that legal grounds were unlikely to be found because there have already been three failed applications to the CCRC. A trawl of the unused evidence, however, unearthed over 120 exhibits from the crime scene which have never been tested for DNA, despite the fact that they may prove one way or the other if Hurley is innocent of the murder of his former partner, Sharon Pritchard. Hurley's previous appeal solicitors failed to identify the obvious potential of DNA testing in his three failed applications to the CCRC. They uniformly restricted their submissions to questioning the reliability of the evidence that lead to his conviction in attempts to cast doubts on the safety of his conviction in law rather than thinking 'outside the box' and looking for ways to determine whether he was innocent or not.

These practical examples remind us of the importance of placing investigating claims of innocence at the heart of criminal justice to ensure that convictions are reliable. If innocent people are in prison for crimes that they did not commit, guilty offenders remain at liberty with the potential to commit further crimes. If an innocence project finds that an alleged victim of a wrongful conviction is in fact factually guilty then justice can be said to have been done because a claim of innocence is settled and any doubts that the criminal justice system has got it wrong can be laid to rest.

At the same time, the cases of Simon Hall and Neil Hurley show how lawyers, who see the cases as being 'outside the box' of the wrongful conviction of innocent people, are, in reality, part of the problem. By complying with the rules of the system which prevent the exoneration of the innocent they are implicated, whether they like it or not, in the sacrifice of potentially innocent people. Simon Hall, imprisoned aged 24 for a murder he is unlikely to have committed, has maintained innocence for almost eight years whilst his life ticks away. Meanwhile, if Hall is, indeed, innocent a violent murderer remains at large. Neil Hurley has so far served 17 years and is three years beyond his tariff date (the date he could have been released on parole). He claims that he is prepared to die in prison until his innocence is established so his daughters know he did not kill their mother.

It is of vital importance that we have lawyers working with INUK's innocence projects because they are qualified to provide much-needed legal assistance. Such lawyers are well-intentioned and say that they are passionate about assisting alleged victims of wrongful conviction who may be innocent and this is totally welcomed and appreciated. It would be tragic for all concerned – the lawyers working pro bono, the student caseworkers and most of all the victims of the wrongful convictions themselves – if in fact the lawyers, so far from advancing the aims of INUK, actually ended up jeopardising the whole venture.

Yet, many lawyers working with INUK fail to understand our aims and are subverting the central issue of investigating claims of innocence to get to the truth in favour of technical questions about the ‘safety’ of convictions in law. Ultimately, the work of hundreds of student caseworkers is diverted as they find it difficult to resist the advice proffered by lawyers, not least because they are, for the most part, law students who want to be lawyers. Students who signed up to innocence projects because of a passion for truth and justice risk having it thwarted by lawyers who say that there is no hope in the cases that they are working on despite the possibility that the alleged victims may be innocent.

If it is the case that lawyers working with INUK's innocence projects are, indeed, passionate about people, truth, innocence and justice then the time has come for participating lawyers to follow through on these convictions and to help to truly challenge the criminal appeal system to bring about the reforms necessary to produce the results that we are together supposed to be working towards.

Dr Michael Naughton is the Founder and Director of the Innocence Network UK (INU), the umbrella organisation for members of innocence projects in UK universities, and Director of the University of Bristol Innocence Project (UoBIP), the first dedicated innocence project in the UK, through which he coordinates student investigations of cases of alleged wrongful imprisonment.