

Submitted to **Tailored review of the Criminal Cases Review Commission: Call for evidence**
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About you

A What is your name?

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Questions

1 Have you had contact with CCRC?

Yes

Other

Please complete the text box:

I am an academic who has extensively researched and written about the limits and outright failings of the CCRC in assisting alleged factually innocent applicants. I have also have a wealth of experience of the CCRC in terms of submissions, applications and meetings with the various CCRC Commissioners, CRMs and other members of staff on behalf of alleged innocent victims of wrongful conviction and imprisonment under the auspices of the University of Bristol Innocence Project (Director, 2005-2015) and Innocence Network UK (INUK) (Director, 2004-2015). My answers are supported by the following publications in books, official reports and academic articles in peer-reviewed journals, which centre on the ability of the CCRC to assist alleged innocent victims of wrongful convictions: Huff, C. R., and Naughton, M. (2017) 'Wrongful conviction reforms in the U.S. and UK: Taking Stock' in Plywaczewski, E. and Guzik-Makaruk, E. (2017) (Editors) Current Problems of the Penal Law and Criminology. 7th Edition. Warsaw, Poland: Wolters Kluwer Publishing; Naughton, M. (2013) 'The Criminal Cases Review Commission' in Naughton, M. (2013) The Innocent and the Criminal Justice System. Palgrave Macmillan; Naughton, M. (Ed.) (2009) The Criminal Cases Review Commission: Hope for the Innocent. Palgrave Macmillan (The book is the first critical review of the operations of the CCRC from the perspective of alleged innocent applicants. It is comprised of 16 chapters by lawyers, journalists, academics and third-sector organisations. In addition to conceiving and editing the book I contributed Chapters 1, 2 and 16); Naughton, M. and Tan, G. (2010) Claims of Innocence: An introduction to wrongful convictions and how they might be challenged (University of Bristol); Naughton, M. (2012) 'The Criminal Cases Review Commission: Innocence versus Safety and the Integrity of the Criminal Justice System' Criminal Law Quarterly, Vol. 58: 207-244; Naughton, M. and Tan, G. (2012) 'INUK on the Reform of the Criminal Cases Review Commission – Report'. LexisNexis; Naughton, M and Tan, G. (2010) 'The Right to Access DNA Testing by Alleged Victims of Wrongful Convictions in the United Kingdom'. International Journal of Evidence & Proof, 14: 326-345; Naughton, M. (2006) 'Wrongful Convictions and Innocence Projects in the UK: Help, Hope and Education', Web Journal of Current Legal Issues. 3. These articles and many others which centre on issues relating to miscarriages of justice and wrongful conviction and imprisonment can be accessed on my website at: <http://michaeljnaughton.com> Copies can also be supplied on request.

2 Are any of the six functions of CCRC as outlined in the Criminal Appeal Act 1995 no longer required? If so, which one(s)?

Yes

Please complete the text box:

- 1. Review of conviction and/or sentence in cases dealt with on indictment

Yes to conviction but no to sentences.

As a body that was established in response to notorious miscarriages of justice cases involving the conviction and imprisonment of individuals believed to be factually innocent (e.g. the Birmingham Six, Guildford Four, Maguire Seven, and so on), I do not think that the CCRC should be using its scarce and (much publicised) diminishing resources on dealing with sentence miscalculations and/or minor variations in the applicant's/appellant's sentence.

Whilst I acknowledge and agree that sentence miscalculations should be rectified, I do not see this as something that should be part of the role of the CCRC.

At present, the Attorney General deals with sentences thought to be too lenient. In numbers, the Attorney General's office (AGO) received 713 requests for sentences to be reviewed under the 'Unduly Lenient Scheme' (ULS) scheme in 2015. Of those, 136 were referred by the AGO to the Court of Appeal as potentially unduly lenient, with the Court agreeing to increase the original sentence for 102 offenders.

A possible idea to remove sentences appeals from the remit of the CCRC would be to amalgamate all sentence appeals, whether on the basis that they are argued to be too lenient or too harsh, within the overall portfolio of the Attorney General's authorities.

- 2. Review of conviction and/or sentence in cases dealt with summarily

Yes to conviction but no to sentence for the reasons given in the previous answer, i.e. should be dealt with by the Attorney General's Office.

- 3. Investigation and reporting on matters on direction of the Court of Appeal and Court Martial Appeal Court

No. Military offences should be dealt with by a separate body.

As already indicated, it is well documented and often repeated by the Chair of the CCRC and its Commissioners in the press and in public forums that it has very limited and diminishing resources, which, its says, accounts for delays in its reviews and decisions, and which can mean that individuals in meritorious cases can spend longer in prison than they might otherwise if their cases were the main priority.

In this context, and in the overall interests of justice, the CCRC should be entirely focused on the kind of cases that the public thought that it was set up to deal with.

More specifically, it should be focused on settling the claims of factual innocence made by alleged innocent victims of wrongful conviction and imprisonment who may be innocent (discussed further below), and only take on other remits if it has the capacity to do so when its primary work is completed.

- 4. Review of conviction and/or sentence in cases dealt with by the Court Martial and the Service Civilian Court

No for the reasons given in the previous answer.

- 5. Potential to require the appointment of an investigating officer to carry out inquiries on behalf of the CCRC

Yes. This function is particularly important in serious alleged miscarriages of justice involving allegations of police misconduct.

- 6. Assist SoS on exercise of Her Majesty's prerogative of mercy

Yes. Under s.16 of the Criminal Appeal Act 1995, the CCRC also has the important power to refer a conviction to the Secretary of State to consider exercising the Royal Prerogative of Mercy if it believes that an applicant is innocent.

It has this power because the Royal Commission on Criminal Justice (1993) (RCCJ), recognised that in exceptional circumstances innocent applicants to the CCRC might be procedurally barred from having their convictions overturned by the CACD on the basis that the evidence that undermines/disproves the reliability of the evidence that led to the conviction is deemed inadmissible. This was outlined by the RCCJ in the following terms:

'...if the Court of Appeal were to regard as inadmissible evidence which seemed to the [CCRC] to show that a [wrongful conviction of an innocent] might have occurred...We therefore recommend that the possible use of the Royal Prerogative be kept open for the exceptional case' (Royal Commission on Criminal Justice, 1993: 184).

In line with this, I would recommend that the CCRC should consider utilising this power more often than it presently does, especially in cases where the CCRC do not think it appropriate to refer a conviction under the terms of s.13 (the 'real possibility test') or when the CACD refuses to overturn a referred conviction on procedural as opposed to evidential reasons, i.e. where there is no reliable evidence that the appellant is guilty of the crime that they were convicted of and so must be considered to be innocent.

A possible barrier to this as things stand, however, is that in its current role as a filter for the CACD the CCRC does not actively seek out evidence of factual innocence, but rather, new or fresh evidence as required by s.23 of the Criminal Appeal Act 1968 that questions the safety of the conviction in law.

As such, CCRC reviews of alleged wrongful convictions are not likely to uncover evidence of innocence that would provide the confidence necessary to seek to ask for a Free Pardon on behalf of an applicant.

I am also keenly aware that victims of wrongful convictions generally prefer that their convictions be overturned by a court of law rather than be given 'mercy' for something that they (claim they) did not do.

However, if such applicants to the CCRC are procedurally barred from having their convictions overturned in the CACD, as is currently the case in inadmissible evidence cases or when the CCRC deem that they do not fulfil the 'real possibility test' under s.13 of the Criminal Appeal Act 1995, then the interests of justice demand that they are overturned via any other route possible. And, if the Royal Prerogative of Mercy is the only alternative avenue available then it should be utilised.

Finally, if the CCRC did use this power and victims of wrongful convictions were given free pardons on the basis that the convicted individual was deemed to be innocent then the limitations and failings of the CACD to overturn convictions where the evidence of guilt has been shown to be unreliable in cases where that evidence is not considered to be admissible would be clear for all to see.

3a Should the statutory functions of CCRC as outlined in the Criminal Appeal Act 1995 be carried out by a public body?

Yes

Please complete the text box:

A major reason for the RCCJ recommending the setting up of the CCRC to correct an apparent constitutional problem that saw successive Home Secretaries failing to refer potential miscarriages of justice back to the CACD for political, as opposed to legal, reasons.

As such, it is proper that the CCRC is an independent public body at arm's length from the executive and the judiciary; the government and the courts.

The problem is, however, that the CCRC as it currently functions is not independent of the courts in the way that was envisaged by the RCCJ and the way that it claims to be due the restrictive nature of s.13 of the Criminal Appeal Act 1995, which determines the nature and depth of its reviews.

More specifically, s. 13(1)(a) of the Criminal Appeal Act 1995 mandates that it can only refer a case back to the CACD if there is a 'real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made'.

This 'real possibility test' that is required by its governing statute fatally compromises the CCRC's claim of 'independence' and with its ability to assist factually innocent victims of wrongful conviction. It shackles the CCRC to the criteria of the CACD for quashing convictions. It means that the CCRC is always in the business of second-guessing how the CACD might decide any applications that it refers. It means that the CCRC does not attempt to determine the truth of alleged wrongful convictions but, rather, seeks to determine whether convictions might be considered 'unsafe' by the CACD.

The knock-on effect of these limitations is that the CCRC's reviews are mere safety checks on the lawfulness or otherwise of criminal convictions, as opposed to in-depth inquisitorial investigations that seek the truth of claims of innocence by alleged innocent victims of wrongful convictions.

This disconnects the CCRC, entirely, from what the RCCJ and the public envisaged. This is perhaps most apparent at the extremes of the CCRC's operations when it means assisting the factually guilty to have convictions overturned on points of law and breaches of due process and failing to refer the cases of potentially factually innocent victims of wrongful conviction and imprisonment who are unable to fulfil the 'real possibility test' to the satisfaction of the CCRC, for instance in cases where the CCRC decide that the evidence that undermines the evidence that led to the conviction is not 'fresh' evidence and so not admissible in the CACD.

As a result, cases may not be referred by the CCRC, even if it turns up evidence that indicates an applicant's claim of innocence is valid, if it does not satisfy the 'real possibility' test in the eyes of the CCRC, for example, if the evidence was available or could have been made available at the original trial.

Yet, there are various reasons why evidence of innocence may not have been presented at trial. For instance, the lawyers may have failed to trawl through the disclosed unused evidence and missed it completely. Similarly, the lawyers may have (in hindsight) made a bad tactical decision in not presenting the evidence of innocence in court. In such scenarios, pertinent questions are: Why should the client/alleged innocent victim of a wrongful conviction be denied justice because of the failures of his/her lawyers? And, why is not all evidence that was not put before a jury regarded as new/"fresh" evidence and accepted as admissible by the CACD?

3b If the answer to question 3a is no, which delivery model do you think might be better placed to carry out these functions?

Please complete the text box:

N/A

4a How effectively does CCRC perform its statutory functions? (on a scale of 1 to 5, where 1=very poorly and 5=very well)

Not Answered

Please complete the text box:

It should be apparent from my answers to questions 2(6) and 3a that I do not think it appropriate to score the effectiveness of the CCRC's performance of its existing statutory duties as I see those statutory duties are out of sync with what the RCCJ recommended, with what the public believed the CCRC was set up to deal with and not in the interests of justice for victims of wrongful convictions and imprisonment.

Put simply, I do not see the current statutory functions as having a legitimate public mandate as it is not concerned with whether applicants are innocent or guilty, which further highlights that it is not independent from the courts but part and parcel of the criminal appeals system from which it was supposed to be detached.

Indeed, as it states clearly on the CCRC website:

'We do not consider innocence or guilt, but whether there is new evidence or argument that may cast doubt on the safety of an original decision'

Therein lies the most crucial problem with the CCRC. Contrary to popular belief, the CCRC was not designed to rectify the errors of the criminal justice system and cannot ensure that innocent victims of wrongful conviction will obtain a referral back to the appeal courts, let alone overturn their wrongful convictions.

It operates entirely within the parameters of the criminal appeals process in the role of a 'legal watchdog' to ensure that its decisions meet with its rules and procedures in the global interests of upholding its integrity; it seeks to determine whether convictions are lawful.

This means that the CCRC does not work on miscarriages of justice as understood in terms of the wrongful conviction of the innocent, which is how the RCCJ understood the term 'miscarriages of justice'. It operates, instead, within a legal notion of a miscarriage of justice based on the correctness of criminal convictions in law. It only refers cases back to the appeal courts in which there is new evidence that may undermine the legal safety of criminal convictions.

4b How could the delivery of any of the functions performed by CCRC be improved?

Please complete the text box:

By stripping away all of the functions additional to an investigation to determine the truthfulness or otherwise of claims of innocence by alleged victims of wrongful

conviction and imprisonment. That is, its functions should be limited to the sort of cases that caused the public crisis of confidence in the workings of the entire criminal justice system that prompted the setting up of the RCCJ and which, in turn, recommended the establishment of the CCRC as a publicly funded independent body to investigate alleged miscarriages of justice, understood as the wrongful conviction of the innocent. The CCRC should not be a dumping ground for all manner of other functions that detract from its ability to do what it was supposed to be set up to do. Rather, it should be a specific body with a specific task and be open and transparent so that it can be appropriately evaluated to determine whether it is meeting that task.

4c Do you think the CCRC delivers its functions in line with value for money?

No

Please complete the text box:

Again, the answer to this question depends on what the proper or appropriate functions of the CCRC are deemed to be in the overall context of the interests of justice. It also relates to the outcomes of the filtering systems, the number of cases that it refers and the outcomes of those referrals. Taking these issues in turn:

1. I do not see it as value for money nor in the interests of justice when the CCRC prioritises sentence adjustment cases and/or summary cases (parking tickets, dangerous dog cases, and so on) over investigating alleged wrongful convictions for serious offences given in the Crown Court (murder, rape, and so on) of applicants who are serving long custodial sentences.
2. As will be discussed further below, I think it is correct to distinguish custody and liberty cases at the initial stages of CCRC reviews, as is currently the case, but this must also determine the priority of which cases are worked on so that custody cases are worked on until they are exhausted (until it is known whether the claim of innocence is valid or not) and only then should liberty cases be investigated.
3. A current referral rate of 12 cases in 2016 from over 1,563 applicants (0,77%) signals a serious concern. Is the CCRC seriously saying that the remaining 1,551 applications (over 99% of applications) in 2016 are not miscarriages of justice, even on its current very wide terms? Further questions that arise include: is the CCRC closing cases too quickly in the interests of meeting its case targets in its performance indicators?; and, how many applications are re-applications that were refused previously, which also signal a possible waste of resources?
4. It is also relevant that of the 12 cases referred in 2016 two of the cases were sentence referrals, two were cannabis cultivation cases and one was a case of failure to provide information to the police as to the identity of a driver. Without wishing to trivialise the injustice of such cases or the harm caused to the individuals involved when justice goes wrong, they were referred at the expense of investigating the cases of alleged innocent individuals who are languishing in prison. Adding a further dimension to the urgency of prioritising of custody over liberty cases is the fact that many applicants to the CCRC are many years in prison past tariff and unable to progress through the prison and parole systems and achieve release preciously because they are maintaining innocence.

5 Based on your experience, is there proportionate allocation of resources to cases?

No

Type your answer in the text box:

No because:

1. priority should always be given to the most serious cases where applicants are in custody rather than less time consuming cases which also cost less but which attempt to bolster the CCRC's performance indicators; its "success" rate; and,
2. in cases that I have been involved with it is very evident that the CCRC spend more time in trying to justify not investigating the case, interviewing witnesses that are alleged to have lied, undertaking new forensic tests such as DNA testing that might exclude an applicant from a key piece of evidence that the prosecution said links them with the crime, for instance, than in actually interviewing a witness or doing the testing. This links with the requirements of s.13 (the 'real possibility test') which means that the CCRC is not looking for evidence or innocence; it is not concerned with whether the applicant did or did not do the alleged crime that they were convicted of but, rather, with whether the case will be accepted by the CACD. This is contrary to the interests of justice and to why the CCRC was set up in the first place.

6 Does CCRC have a well-defined and appropriate range of performance measures?

No

Please complete the text box:

KPI 1 "Time from receipt to allocation" distinguishes between custody cases and liberty cases but the other relevant KPIs do not.

It is crucial that custody and liberty cases are distinguished for ALL KPIs so that it is transparent where the resources are being directed and which cases are being prioritised and why.

7a Do you consider that CCRC provides a good service to applicants?

No

Please complete the text box:

It depends on how "service" is defined and which applicants are considered. From my analyses and in my experiences in dealing with the CCRC on behalf of alleged innocent victims of wrongful convictions, I see it as somewhat obsessed and, simultaneously, hamstrung with its current Key Performance Indicators and a need to show some "success" (i.e. referred convictions that are quashed or sentences that are altered) at the expense of justice for innocent victims of wrongful conviction and imprisonment, which was supposed to be the reason why it was established.

This pressures the CCRC to review what might be termed "low hanging fruit" cases, such as parking tickets, immigration cases where it already knows of ways to have decisions reversed, sentence miscalculations, and the like.

This is at the expense of more costly and time consuming, therefore more 'risky', fully blown investigations into alleged wrongful convictions in murder cases that

can take many years to investigate properly.

7b Do you consider that CCRC provides a timely service to applicants?

No

Please complete the text box:

Again, the question needs to be contextualised in terms of the different kind of applicants to the CCRC and not in my experience.

Example 1

An example is a case that I worked on with the University of Bristol Innocence Project for almost 10 years.

When we took on the case the applicant had made two previous failed applications to the CCRC. We submitted a third application in 2013 and waited two years for the CCRC to tell us that it was not going to refer his conviction to the CACD without conducting any investigations at all.

This was despite the application being supported by a letter from a fellow prisoner who claimed that he was present when our 'client' was alleged to have admitted to the murder to a prison informant who gave evidence against him and he did not hear such an admission being made. We requested that that prisoner be interviewed.

The application was also supported by reports from three leading and respected independent forensic scientists (fingerprints, mycology and DNA), which requested that further investigations be conducted to determine whether the applicant was indeed innocent as he claimed. Yet no inquiries or investigations were carried out by the CCRC CRM at all.

Instead, the Statement of Reasons for why the conviction was not going to be referred was restricted to an attempt to justify why no further investigations should be undertaken as the CRM did not believe that if inquiries were made or forensic tests conducted that they would satisfy the 'real possibility test'. For the CRM, what we were asking to be done could have or should have been done at the time of the original trial. On that basis, he was not prepared to do anything at all.

The applicant who was convicted of murder in 1998 is still in prison in 2018 and is currently almost 8 years past tariff.

Example 2

In another case that I worked on with the University of Bristol Innocence Project, a request for DNA testing to be conducted on a murder weapon that was claimed to have been used by our 'client' was also refused on the basis that the CRM did not see how it could be relevant to the 'real possibility test' as the testing could have been done at the time of the original trial. We pointed out that if our 'client' was innocent then the conviction must surely be unsafe but even that did not persuade the CRM to carry out the test.

8 Given your experience, do you think the current governance structure and arrangements of CCRC are effective?

No

Please complete the text box:

If a Case Review Manager (CRM) believes that a case should not be referred it has to be confirmed by a single Commissioner. Alternatively, if a CRM believes that a case should be referred, it has to be confirmed by a panel of three Commissioners. To my mind, this betrays a structural bias against the referral of cases as the hurdle is higher, which serves to undermine the role of a body set up to assist alleged victims of miscarriages of justice.

9 Is the purpose of CCRC clear to you and correct for the future?

No

Please complete the text box:

Clear to me?

I fully understand the purpose of the CCRC as remitted by the 1995 Criminal Appeal Act.

For the reasons outlined above and below, however, I believe that its purpose should be reformed so that it might more appropriately be a body for assisting alleged innocent victims of wrongful conviction and imprisonment to overturn their convictions that the RCCJ envisaged and what the public thought that it was being set up to do.

Without wishing to be flippant, the CCRC was not established in response to a public crisis of confidence in the workings of the entire criminal justice system because of wrongful or erroneous decisions in immigration cases, dangerous dogs cases or parking ticket cases.

On the contrary, it was a formal acknowledgement that innocent victims of wrongful conviction and imprisonment could be and were being failed by the existing criminal appeals system (Birmingham Six, Guildford Four, and so on) and something additional to look into such cases deemed inadmissible by the CACD was needed.

The widespread belief that this is what the CCRC was being set up to do was the reason why the organisations JUSTICE and Liberty ceased its casework on alleged miscarriages of justice cases, understood in the same way that the RCCJ understood miscarriages of justice – the wrongful conviction and imprisonment of an innocent individual.

It is simply dishonest and, arguably, immoral to defend the CCRC on the basis that it is working to the terms of its statute when the statute (particularly s.13 of the Criminal Appeal Act 1995) means that the CCRC can refuse to refer the convictions of individuals who may be innocent who are procedurally barred under the terms of the 'real possibility test'.

Correct for the future?

The inadequacies of the CCRC have become increasingly apparent with a growing pipeline of convictions that have been refused referrals by the CCRC despite doubts about the reliability of evidence that led to their convictions.

They highlight deep-seated failings with the CCRC, both in terms of how it makes decisions on whether to refer cases back to the appeal courts and the way in which it reviews applications from alleged victims of miscarriages of justice.

As indicated, the main problem with the CCRC is its lack of independence from the courts. In its recommendations, the RCCJ called for the 'creation of a new body independent of both the Government and the courts for dealing with allegations that a miscarriage of justice has occurred'. Whilst the CCRC is independent from Government, the RCCJ's recommendation that it should also be independent from the courts did not materialise.

As mentioned above, pursuant to s.13(1)(a) of the Criminal Appeal Act 1995 the 'real possibility test' subordinates the CCRC entirely to the appeal courts and restricts its review and decision-making processes to the appeal courts' criteria for quashing convictions, despite the fact that, generally speaking, applicants to the CCRC must have already failed in an appeal at the Court of Appeal. As such, it is, perhaps, not surprising that the CCRC refers so few cases.

One of these restrictions placed on CCRC applicants is the requirement for fresh evidence or argument not available at the time of the trial. This requirement follows the Court of Appeal's provisions on the admissibility of evidence under s.23 of the Criminal Appeal Act 1968.

This requirement restricts the CCRC's ability to assist the innocent if the evidence of their innocence was available at the time of the original trial or previous appeal. If evidence supporting the applicants' claim of innocence was available but was not produced at trial either by reason of omission, or, tactical decision by trial counsel, such evidence will not, generally, constitute the kind of fresh evidence or argument required by the CCRC.

Overall, the current operations of the CCRC presupposes that jury decisions are always correct which prevents the CCRC from rectifying errors that were known at trial or first appeal.

Further, it means that the CCRC often cannot rectify errors of judgment or omissions made by defence counsels/solicitors, notwithstanding the reality that defendants often have little knowledge of the criminal trial process and rely entirely on the judgment and expertise of their legal representatives.

The 'real possibility test' and the requirement for fresh evidence not only impact on the CCRC's consideration on whether or not to refer a case back to the appeal courts, but also its case review process.

As a review (as opposed to investigatory) body, the CCRC generally does not undertake re-investigation of cases. Its case review methodology can be characterised as a 'desktop review', often limited to an appraisal of the arguments or evidence presented to it by applicants – first, to assess whether the evidence is 'fresh' and second, to consider if the application meets the 'real possibility test'.

Furthermore, research indicates that Case Review Managers at the CCRC very rarely undertake prison visits to interview applicants. There is no systematic training for Case Review Managers on investigative methods, which often means that quality of reviews received by applicants can be inconsistent and very much a lottery.

This places a substantial burden on alleged miscarriage of justice victims seeking another chance of an appeal through the CCRC. Often with little or no resources, they have to undertake the substantial task of investigating their own cases and seek fresh evidence or arguments to present to the CCRC. Rather than being assisted by the CCRC in this arduous process, they are faced with the additional hurdle of trying to convince the CCRC of the significance of the evidence and how it could render their convictions unsafe.

The 'real possibility test' that governs the CCRC's case review approach may also jeopardise the chances of success in cases that it does refer to the Court of Appeal. In practice, once the CCRC is satisfied that the 'real possibility test' has been met; it will prematurely end its review and stop investigating other lines of inquiry presented to them. The Criminal Justice Act 2003 also placed an additional requirement that appeals heard on referral by the CCRCs may not be on any ground outside the CCRC's grounds of referral. Consequently, appeals following CCRC referrals are often heard on very narrow grounds (see case examples at the end of this document). On occasions, this may even result in the appeal courts dismissing appeals referred to them by the CCRC without having a full sight of all other evidence that could have supported the applicant's claim of innocence.

In light of the limitations of the CCRC outlined above, the following legislative and policy reforms are recommended, which are aimed at firstly, enhancing the CCRC's independence by unshackling it from the Court of Appeal; and, secondly, improving the thoroughness and quality of its case review process.

- 1) Immediate repeal of the 'real possibility test' under s.13 of the Criminal Appeal Act 1995.
- 2) The 'real possibility test' to be replaced with a test that allows the CCRC to refer a conviction back to the Court of Appeal if it thinks that the applicant is or might be innocent.
- 3) CCRC reviews cannot, therefore, be restricted to the mere pursuit of fresh evidence that was not available at the time of the original trial or the first appeal but must consider all the evidence.
- 4) Under s.16 of the Criminal Appeal Act 1995, the CCRC's role currently extends to considering and reporting to the Secretary of State on any conviction

referred to it by the Secretary of State for consideration of the exercise of Her Majesty's Prerogative of Mercy. To enhance the CCRC's independence from the Court of Appeal, an expansion of the use of the Royal Prerogative of Mercy is recommended through the introduction of the following:

a) new legislation that allows the CCRC, in instances where the Court of Appeal dismisses an appeal against conviction heard following a CCRC referral, to refer a conviction to the Secretary of State to consider exercising the Royal Prerogative of Mercy; and,

b) new legislation that places a duty on the CCRC to consider referring a conviction to the Secretary of State to consider exercising the Royal Prerogative of Mercy in such circumstances.

5) The CCRC's case review process is generally limited to desktop reviews. It is proposed that the focus of the CCRC's is changed to enable it to undertake more fieldwork investigations, including the interviewing of witnesses, crime-scene reconstructions and the interviewing of applicants.

10a Do you think CCRC is making the best use of continually changing technology?

No

Please complete the text box:

Based on my experiences, CRMs are not up-to-date on the latest forensic science developments and need to be educated on new and not-so-new techniques with relevant articles and reports being included as part of the application.

10b Do you consider that CCRC is making the best use of social media to promote their services?

Yes

Please complete the text box:

Judging from the number of applications that the CCRC receives (circa. 1,500 per year) I think it would be fair to say that it is getting the word out about its services.

The problem is that almost all of those applicants are being rejected, over 99%, which makes one question the 'function' of the CCRC and the 'servic' that it provides, to whom and to what end.

It seems difficult to disagree that the creation of the CCRC was a mere 'damage limitation exercise' as many claimed at the time it was announced (see, for instance, the edited book by McConville and Bridges (1994) Criminal Justice in Crisis).

10c Do you consider that the CCRC is making the best use of online tools to deliver its services?

Don't know

Please complete the text box:

N/A