

# CCRC: still in the interests of justice?

The Westminster Commission on Miscarriages of Justice, set up to revisit the work of the CCRC after 25 years of operation, identified serious issues that risk miscarriages of justice remaining unidentified or unremedied

**Authors**

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The Westminster Commission was set up in 2019 to review the work of the Criminal Cases Review Commission (CCRC). The CCRC is the public body with statutory responsibility for investigating alleged miscarriages of justice in England, Wales and Northern Ireland. It was established by s 8 of the Criminal Appeal Act 1995 and started work investigating possible miscarriages of justice on 31 March 1997. The CCRC has the power to send, or refer, a case back to an appeal court if it considers that there is a real possibility the court will quash the conviction or reduce the sentence in that case.

Before the creation of the CCRC the only resort for a case which had already been to the Court of Appeal (or Northern Ireland Court of Appeal) was directly to the Home Secretary (or the Secretary of State for Northern Ireland), who alone had the power to order the court to hear a case again. This power was limited to cases tried on indictment. On average, only four or five cases were referred each year out of around 700 applications. The ministers only considered the issues raised by the applicant or their representatives. They could not investigate or seek new grounds for appeal.

The CCRC was established because this system was inadequate and had been unable to remedy some serious miscarriages of justice. Our

Commission was set up to revisit the work of the CCRC, after 25 years of operation. The report contains our conclusions and recommendations, based on the evidence, written and oral, we received. We heard from practitioners, academics and those who have experienced the criminal justice system as lawyers, witnesses and defendants, including those who felt they had been denied justice.

In our report we emphasise the continuing importance of the CCRC and its work, especially as the criminal justice system is increasingly under pressure. It examines the CCRC's structure, resources, statutory framework and approach, as well as the wider criminal justice context.

**Structure and resources: out of line with legislation**

Our report examines the current structure of the CCRC, in the light of its founding legislation, and the resources that are needed for it to be effective. It considers that the diminished role of Commissioners in recent years is not in line with either the spirit or the intention of the legislation. We recommend that the role of the Chair and Commissioners should be strengthened, and the processes for their appointment should be reviewed, given the constitutional significance of the CCRC. The report also finds that the CCRC is significantly under-

funded, a problem exacerbated by the financial restrictions on the public provision of advice and representation for applicants, and recommends that this should be remedied. The report does not, however, suggest saving money by limiting the CCRC's workload through removing certain cases from its remit, not least because all wrongful convictions or sentences have a lasting impact.

### Bolder application of powers and a new test

We also considered the current test for referring cases to the Court of Appeal, and the way that it is applied by the CCRC. Under the 1995 Act, the CCRC is empowered to refer cases directly to the Criminal Division of the Court of Appeal if it considers that there is 'a real possibility' of success at appeal. The report considers that the predictive nature of this test has encouraged the CCRC to be too deferential to the Court of Appeal. The report therefore considers that the test acts as a brake on the CCRC's freedom of decision. It recommends that there should be a more objective test: that the CCRC is to refer a case if it considers the conviction may be unsafe, the sentence may be manifestly excessive or wrong in law, or that it is in the interests of justice to make a referral. This would encourage a different and more independent mindset. Meanwhile, until the test is amended, the report urges the CCRC to be bolder in applying the current test and to adopt a broader interpretation of its power to refer cases in exceptional circumstances where there has not been an appeal. The report additionally recommends that the Law Commission should review the test applied by the Court of Appeal under the Criminal Appeal Act 1968, to allow it to quash a conviction where it has serious doubt about the verdict, even without fresh evidence or new legal argument. The review should also address concerns about the retention and disclosure of evidence.

### Compromised investigative ability

The report looks at the quality and scope of the CCRC's investigations. It recognises some excellent investigative work, but it also finds that financial constraints and an increased caseload have compromised the CCRC's ability to carry out its role effectively in all cases. It points to the risk that a target-driven culture prioritises speed over thoroughness and that this can compromise effective investigation. Without increased resources the CCRC cannot examine all relevant documents, carry out enough face-to-face enquiries and take advice from external forensic experts. The report also expresses serious concerns about the non-disclosure or destruction of exculpatory material. It recommends changes to the retention of documents and that the CCRC should have additional powers to obtain information and material from public bodies in a timely manner.

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### Insufficient transparency is undermining trust

We examined the relationship between the CCRC and those who apply to have their convictions reviewed. Our report found insufficient communication in relation to both the progress of and approach to cases, which undermines trust in the CCRC. Judicial review of the CCRC after the event is not an effective substitute for a thorough examination of, and a real dialogue about, an applicant's case. The report recommends that the CCRC should be more open with applicants and their representatives, disclosing actions taken, providing meaningful regular updates and fuller statements of reasons for its decisions. It also recommends that the Criminal Appeal Act 1995 should be amended to allow wider disclosure of material to applicants and to permit the CCRC, with the authority of the applicant or in anonymised form, to publish statements of reasons where this is in the public interest.

### Other matters: youth justice and joint enterprise

The report considers the specific issues for juveniles, as well as cases of alleged wrongful convictions arising from joint enterprise. It commends the CCRC's efforts to reach out to juveniles. This would be enhanced if there were a specialist unit established within the CCRC specifically to deal with youth justice cases. In addition, the report recommends that the role of advocacy services in under-18 custodial establishments should be extended to include advice on and during applications to the CCRC. It also recommends that the 'substantial injustice' test in joint enterprise cases should be reviewed as a matter of urgency by the Law Commission because it poses a real risk that miscarriages of justice remain unidentified or unremedied. ●

### Further information

Lord Garnier QC is co-Chair, and Michelle Nelson QC a Commissioner, of the Westminster Commission on Miscarriages of Justice. The Commission also included co-Chair Baroness Stern CBE, Erwin James, Dr Philip Joseph and Dame Anne Owers DBE.

The full report, *Westminster Commission on Miscarriages of Justice: In the Interests of Justice – An inquiry into the Criminal Cases Review Commission*, can be viewed here: [bit.ly/2O3UYFT](https://bit.ly/2O3UYFT)

See also the *CCRC Response to Report of Westminster Commission on Miscarriages of Justice* at: [bit.ly/3rym59B](https://bit.ly/3rym59B)



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Lord Garnier QC, co-Chair of the Westminster Commission, is at 4 Pump Court. He was Solicitor General 2010-12. His principal practice areas are defamation & media law, financial & corporate crime, international human rights and public law.



**About the author**  
Michelle Nelson QC is at Red Lion Chambers and a Commissioner of the Westminster Commission on Miscarriages of Justice. She defends, prosecutes and advises across the full spectrum of criminal offences and maintains a serious crime practice.