

## Exceptional Circumstances

### CASEWORK POLICY

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## Section 13 Criminal Appeal Act 1995

1. The CCRC's powers and responsibilities as regards decision-making derive from the [Criminal Appeal Act 1995](#) ("the Act"). The CCRC may refer to an appropriate appeal court any case in which it considers that there is a real possibility that a conviction, verdict, finding or sentence arising in England, Wales or Northern Ireland would not be upheld. Section 13 of the Act sets out the test the CCRC must apply.
  
2. Conditions apply:
  - In the case of a conviction (or verdict or finding), there must be an argument or evidence that was not raised in earlier proceedings ('something new'), unless there are exceptional circumstances.
  - In the case of a sentence, there must be an argument on a point of law or information that was not raised in earlier proceedings ('something new').
  - In any case, an appeal must already have been determined, or leave to appeal refused, unless there are exceptional circumstances.
  
3. In other words:
  - (i) Exceptional circumstances can by-pass the need for a previous appeal in relation to a conviction, verdict, finding and sentence.
  - (ii) Exceptional circumstances can also by-pass the need for fresh evidence or argument, but only in relation to a conviction, verdict or finding. Examples of this type of reference will be particularly rare.
  - (iii) There must always be a new argument on a point of law or new information before a sentence can be referred.
  - (iv) There must always be a real possibility of a successful appeal before a conviction or sentence can be referred.
  
4. This policy sets out the CCRC's approach to applications where no appeal has already been determined, or leave to appeal refused, applications which the CCRC calls 'No Appeal' cases.

## **“Previous appeal/application for leave”**

5. The requirement of the Act will be satisfied if:
  - (i) An appeal has been determined
  - (ii) An application for leave is refused by a Single Judge of the Court of Appeal
  - (iii) A renewed application for leave is refused by the full Court of Appeal
  - (iv) An application for leave to appeal out of time is refused by the Registrar or by a Single Judge of the Court of Appeal
  - (v) An application for leave to appeal out of time is refused by a Crown Court Judge
  - (vi) An applicant has formally abandoned his appeal or application for leave to appeal to the Crown Court or the Court of Appeal.

## **No Appeal cases - core principles applied by the CCRC**

6. It is vital that the CCRC does not, other than for compelling reasons, usurp the conventional appeals process. The CCRC also has regard to the impact of reviewing “no appeal” cases on those applicants who have already satisfied the previous appeal criterion. A decision by the CCRC to review or to refer any “no appeal” case will therefore be relatively unusual.
7. Circumstances will not generally be so exceptional as to justify a reference unless a decision not to refer in the absence of an appeal would be contrary to the public interest.
8. The existence of a ‘real possibility’ that a reference would result in the conviction being held to be unsafe, or sentence being altered, will not, of itself, amount to an exceptional circumstance justifying referral.
9. The fact that the use of the CCRC’s powers under section 17 or 18A has produced (or might produce) fresh evidence amounting to a real possibility is not necessarily an exceptional circumstance. Context will be an important consideration. Each case will be assessed on its own facts. Relevant factors will be the source and sensitivity of the fresh evidence, and the extent to which it can be disclosed subsequently.<sup>1</sup>
10. Where the basis of any appeal is likely to be based upon new expert evidence, exceptional circumstances will not arise on the basis of an assumption or an assertion that the applicant (or their representative) will not be able to, or cannot, secure access to relevant exhibits (or other material) required for testing. Documentary evidence must be supplied by, or on behalf of, the applicant which causes the CCRC to

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<sup>1</sup> For further information, see the policy on [Disclosure by the Commission](#).  
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conclude that *all* reasonable steps have been taken by, or on behalf of, the applicant to secure access and have failed. This includes exploration of the possibility of an appropriate expert having direct access to the exhibits/other material without them passing into the hands of the applicant first.

11. Where a real possibility is raised by an argument that since conviction there has been change in the common law, an applicant will generally be advised to make application for leave to appeal direct to the Court of Appeal.<sup>2</sup>
12. In some cases, an application is made to the CCRC in respect of both conviction and sentence, but the applicant has only made a previous appeal/application for leave to appeal against sentence. In those cases, the CCRC will at the outset consider the conviction aspect of the application under this policy.

### **No Appeal cases - what might amount to exceptional circumstances?**

13. It would be impossible to issue a prescriptive list of circumstances that might be considered exceptional and each case will be assessed on its own merits. The following examples are provided only as an illustration:
  - (i) The real possibility is based on sensitive information that cannot be disclosed by the CCRC to the applicant (or representatives).
  - (ii) Evidence of a compelling or compassionate need for the case to be considered quickly by an appellate court, e.g. that the applicant or a key witness has a terminal illness, and the situation is such that the CCRC could instigate appeal proceedings more speedily than the applicant would be able to.
  - (iii) The applicant has a mental illness or disability placing him at a serious disadvantage in securing legal representation and/or pursuing an application for leave to appeal. The CCRC will remain mindful that a significant proportion of the prison population has mental health issues. The applicant may well have been able (possibly with assistance) to make an application to the CCRC, and the presumption must be that they would also be able to ask a court to look again at their case. The fact of mental health difficulties will not necessarily mean that the individual applicant's circumstances are 'exceptional'. It is only where mental illness gives rise to genuinely unusual circumstances that the CCRC will decide to review the case in the absence of a prior appeal.
  - (iv) The case is a summary matter where the applicant pleaded guilty and, having regard to the principles set out in *R v Isleworth Crown Court ex parte Khalif* [2015] EWHC 917 Admin, there is no real

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<sup>2</sup> See the policy on Development of Law

possibility that the Crown Court will grant an application to treat the plea as equivocal and remit the case back to the magistrates' court. The statutory bar to appeal in such cases gives rise to exceptional circumstances.

- (v) The conviction is referred to the CCRC by a prosecuting authority with concerns about some aspect of the evidence on which the Crown has previously relied, in circumstances where relevant evidence/information cannot be disclosed due to its sensitivity and/or where the CCRC's involvement is in the public interest.
  - (vi) The CCRC's powers under sections 17 or 18A Criminal Appeal Act 1995 might secure relevant information which the applicant would be unable to obtain<sup>3</sup>.
  - (vii) There is new scientific, medical or expert evidence that an applicant could not reasonably be expected to discover or present<sup>4</sup>.
  - (viii) An applicant is linked with co-defendants whose cases have been or are to be referred by the CCRC and, in all the circumstances, it would not be in the public interest to require the co-defendant to appeal directly.
  - (ix) An applicant's case is linked to other cases by a common nexus, such as a material witness, a criticised expert or a point of law and the CCRC's involvement is in the public interest.
14. Even if a case appears to fall into one of these illustrative categories, all the facts of each case will need to be individually assessed by the CCRC before a decision is reached as to whether the circumstances are so exceptional as to justify a review and a reference.

### **No Appeal cases - initial consideration**

- 15. When an application is received at the CCRC, it is considered initially by administrative staff.
- 16. If the time limit for pursuing an appeal has not expired, the application will be rejected and the applicant will be advised to pursue an appeal in the usual way.
- 17. In all other instances where the applicant has not appealed a Case Review Manager will consider whether there are potential exceptional circumstances in the case.

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<sup>3</sup> Subject to its discloseability

<sup>4</sup> Subject to paragraph 10

*Where potential exceptional circumstances are apparent*

18. If there are potential exceptional circumstances, the case will be reviewed by a Case Review Manager. That review will be limited to issues directly associated with the potential exceptional circumstances. Once that review is complete, the case will proceed through the normal decision making process. The issue of exceptional circumstances will be kept under consideration throughout the CCRC's review of the case and at the decision making stage.

*Where no potential exceptional circumstances are apparent*

19. Where the Case Review Manager has not identified any potential exceptional circumstances a Commissioner will make a decision. If the Commissioner agrees that there are no potential exceptional circumstances (s)he will write to the applicant, setting out the CCRC's decision not to refer the conviction/sentence to the appeal court. If the Commissioner decides that there are potential exceptional circumstances, then the case will be processed as at paragraph 18 above.
20. As set out above, one source of potential exceptional circumstances is where the case requires the CCRC's statutory powers of investigation in order to access material which is of relevance to the case. The Case Review Manager and Commissioner considering a 'No Appeal' case will assess the need for the CCRC to utilise its statutory powers in the circumstances of that particular case. If, on the facts of the case, the CCRC's powers ultimately could not assist the applicant, then the Commissioner will decide that the case does not feature potential exceptional circumstances.

*Where there are no potential exceptional circumstances but a real possibility is apparent*

21. A real possibility may be apparent on the face of the application without there being any identifiable exceptional circumstances. In these circumstances, the applicant will be advised in writing to apply for leave to appeal, even if the usual time limit for such application has expired. Where appropriate, the applicant will be advised to seek legal advice.

**No appeal cases – review and decision making**

22. When it has been decided that a "no appeal" case should be reviewed it will be allocated to a Case Review Manager.
23. If the CCRC cannot identify any actual or potential new evidence or argument capable of amounting to a real possibility, in circumstances where exceptional circumstances might also arise, a Statement of

Reasons not to refer will be issued. Where appropriate, the applicant will be given a period of time in which to make further representations in response.<sup>5</sup>

24. It may become apparent at any stage during the review that there are no exceptional circumstances in the case. If so, a Statement of Reasons not to refer will be issued; explaining why the CCRC does not propose to take the review any further; and (if relevant) advising the applicant to seek legal advice or to make his own application for leave to appeal out of time.
25. If, during the review of a No Appeal case, the CCRC identifies new evidence or argument capable of amounting to a real possibility, the CCRC must still take a decision in respect of exceptional circumstances. The Case Review Manager will provide a reasoned summary of any potential exceptional circumstances for consideration by a Single Commissioner or decision-making committee.
26. If a decision-making committee decides that there is a real possibility and there are exceptional circumstances, a reference will generally be made.<sup>6</sup>
27. If there is a real possibility but the decision-making committee finds there are no exceptional circumstances, the applicant will be issued with a Statement of Reasons not to refer. This will provide a full explanation of why the CCRC concludes that there is a real possibility, and the reasons why the CCRC does not consider that there are any exceptional circumstances to justify making a reference. Where appropriate, the applicant will be advised to seek legal advice or to make his/her own application for leave to appeal out of time.

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<sup>5</sup> Usually 20 working days: See [Extensions for Further Representations](#).

<sup>6</sup> Unless there is some reason why the CCRC should exercise its discretion not to refer: see: [Discretion in Referrals](#).