

Exceptional Circumstances in “No Appeal” cases

CASEWORK POLICY

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Purpose of this policy

1. This policy sets out the CCRC's approach to cases where there has been no previous appeal or application for leave to appeal. The CCRC calls these "No Appeal" cases.

Section 13 Criminal Appeal Act 1995

2. The CCRC's powers and responsibilities as regards decision-making derive from the [Criminal Appeal Act 1995](#) ("the Act"). The CCRC may refer any case to an appropriate appeal court where 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.
3. One of the conditions in section 13 is that, in any case, an appeal **must** already have been determined, or leave to appeal refused, unless there are exceptional circumstances. In other words: exceptional circumstances can by-pass the need for a previous appeal in relation to a conviction, verdict, finding and sentence.

Meaning of appeal, or application for leave to appeal

4. The requirement of the Act will be satisfied if:
 - (i) An appeal has been determined (in other words: the appeal has been heard and decided)
 - (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; or by a Crown Court Judge
 - (v) An applicant has formally abandoned his or her 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

5. It is vital that the CCRC does not usurp the conventional appeals process by reviewing No Appeal cases where there are no potential exceptional circumstances. To review such cases¹ would also cause a delay in the CCRC's ability to review the cases of those applicants who have already satisfied the previous appeal criterion. CCRC investigations of No Appeal cases will, therefore, be limited to those

¹ i.e. No Appeal cases where there are no potential exceptional circumstances
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cases where the CCRC considers that there are potential exceptional circumstances.

6. The existence of a 'real possibility' that a referral 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.
7. 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.²
8. Where an applicant wishes to rely upon new expert evidence, exceptional circumstances will not arise on the basis of an assumption that the applicant (or their representative) will not be able to secure access to relevant exhibits (or other material) required for testing. The applicant must satisfy the CCRC that *all* reasonable steps have been taken by, or on behalf of, the applicant to secure access and have failed, having regard to the obligations of the Crown set out in *R v Nunn* [2014] UKSC 37. 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.
9. In some cases, an application is made to the CCRC in respect of both conviction and sentence, but the applicant has only appealed (or applied 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 - initial consideration

10. When an application is received at the CCRC, it is considered initially by administrative staff.
11. 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.
12. 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.
 - (i) *Where potential exceptional circumstances are apparent*
13. If there are potential exceptional circumstances, the case will be investigated by a Case Review Manager. That investigation 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.³ The issue of exceptional

² See the policy on Development of Law

³ See the policy on the Decision Making Process

circumstances will be kept under consideration throughout the CCRC's review of the case and at the decision making stage.

- (ii) *Where no potential exceptional circumstances are apparent*
14. Where the Case Review Manager has not identified any potential exceptional circumstances, the case proceeds to a decision-maker for a decision. If the decision-maker 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 decision-maker decides that there are potential exceptional circumstances, then the case will be processed as at paragraph 13 above.
- (iii) *Where there are no potential exceptional circumstances but a real possibility is apparent*
15. A real possibility may be apparent on the face of the application without there being any potential 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

16. When it has been decided that a No Appeal case should be investigated it will be allocated to a Case Review Manager.
17. 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.⁴
18. 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.
19. 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.

⁴ Usually 20 working days: See [Extensions for Further Representations](#).
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20. If a decision-making committee decides that there is a real possibility and there are exceptional circumstances, a reference will generally be made.⁵
21. If there is a real possibility but the decision-making committee finds there are no exceptional circumstances, a Statement of Reasons not to refer will be issued. 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.

⁵ Unless there is some reason why the CCRC should exercise its discretion not to refer: see: [Discretion in Referrals.](#)