

APPLICATIONS IN RESPECT OF DECEASED PERSONS

CASEWORK POLICY

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‘Approved’ persons

1. The mere fact that the convicted individual is dead is not a reason in itself for the CCRC to refuse to review or refer a case. In order for such a case to come before the Court of Appeal, however, there must be someone who will be ‘approved’ by the Court for the purpose as falling within one of the following categories:
 - (a) the widow or widower;
 - (b) the ‘personal representative’ (within the meaning of the Administration of Estates Act 1925, s. 55(1)(xi)); or
 - (c) any other person appearing to the Court to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of the appeal.
2. Unless such a person can be identified, therefore, there is no point in the CCRC carrying out a review. Without an approved person, there can be no appeal and therefore any reference by the CCRC would be nugatory. This is an issue the CCRC must address in any application where the convicted individual is dead; it is quite separate from any exercise of discretion.

Do any time limits apply?

3. An application to the Court for such approval must normally be brought within one year of the individual's death, but this time limit does not apply in respect of CCRC referrals (Criminal Appeal Act 1968, s 44A).

Interpretation

4. Little difficulty is likely to arise in relation to categories (a) and (b) in paragraph 1, although the Court has a discretion and there may well be instances, particularly in relation to (b), where the CCRC would not regard the individual's grounds for making the application as justifiable. Category (c) is more problematic.
5. It is important for the CCRC to determine whether a person can properly and reasonably claim 'a substantial financial or other interest', judged on the 'real possibility' test, and to treat this as entirely separate from any exercise of the discretion not to refer.
6. In the absence of any judicial precedent on the issues, it is not entirely clear whether the adjective 'substantial' in section 44(3)(c) governs the words 'other interest' as well as the word 'financial', or whether 'emotional' interest in the determination of an appeal is a proper category of 'other interest'. The CCRC inclines to the conclusion that the word 'substantial' governs 'other interest' and that emotional interest is an appropriate category of 'other interest'.
7. The CCRC will have regard to any delay in making an application, as that may bear upon the question whether the person making the application has a substantial interest. For example, if the applicant has not tirelessly pursued the issue but has only recently taken it up many years after the conviction or death of the convicted person, it would tend to indicate a less than substantial interest. This will be most relevant in cases where the basis for a review is not in any way contingent upon developments (for example in science or medicine) that had not occurred earlier.

Death of applicant after submitting application

8. Occasionally an applicant dies after submitting an application to the CCRC, but before a decision has been made. Whether the case is awaiting allocation or under review, efforts will be made to ascertain the existence of any close relative and his/her interest in pursuing the application, unless there is a good reason not to do so.

9. A close relative will generally be a parent, sibling, spouse, partner or child. A Commissioner will consider whether it is appropriate to attempt contact and, if so, whether it is likely that the Court of Appeal would approve such a relative in the event of a reference. The CCRC will proceed with the review if contact is made with someone who is likely to be approved and they have an interest in pursuing the application.
10. If there is no close relative who wishes to pursue the application, or none can be contacted, or a Commissioner decides that it is inappropriate to attempt contact, then the case will be closed as a decision not to refer, without the need for a provisional decision.

Who makes the decision about an 'approved person'?

11. The question of whether there is a real possibility of there being an 'approved person' is generally a matter for determination by a Single Commissioner.
12. If, however, the issue is particularly difficult or contentious it will be considered by a committee.

Discretion

13. The CCRC has a discretion not to refer when there is a real possibility that the conviction, verdict, finding or sentence would not be upheld by the appellate court.
14. Whenever the case of
 - (i) a person who was deceased at the time of the application; or
 - (ii) a person who died after an application was submittedis being considered by the CCRC, the general principles described in the policy on [Discretion in Referrals](#) will also apply.