



Criminal • Cases • Review • Commission

## DECISION-MAKING PROCESS

### CASEWORK POLICY

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## Introduction

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.
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.

### CCRC case nomenclature

3. 'Ineligible' = any case which does not fall within the CCRC's jurisdiction or which is still within the statutory time period for appeal.
4. 'Review case' = all post-appeal, first applications to the CCRC and re-applications and No Appeal cases that require a substantive review. All such cases are categorised from Type 1 to Type 4, depending upon the CCRC's assessment of the case complexity and estimated amount of work for the CCRC to resolve it.
5. 'Re-application' = an application in respect of a conviction, verdict, finding or sentence, which the CCRC has considered on at least one occasion before.
6. 'No Appeal case' = an application in respect of a conviction, verdict, finding or sentence, where the individual has not had an appeal determined, or leave to appeal refused, in respect of that conviction, verdict, finding or sentence.

# STAGE 1

## Screening, and assessing Eligibility, Re-applications and No Appeal cases

### Eligibility

7. On receipt of an application, the Casework Administrator will check that the case is eligible for review. If the application is deemed ineligible for any reason, the applicant will be informed in writing.

### Screening

8. Screening is the process whereby eligible applications are considered initially, key documents obtained and the need for investigation examined.
9. Group Leaders screen all post-appeal, first applications to the CCRC and also re-applications and No Appeal cases that require a substantive review (see below).
10. Within 4 months of receiving an application, the Commission will update the applicant as to whether their case has been assessed as:
  - Raising nothing new (and no exceptional circumstances in the absence of something new)
  - Requiring further work
  - In re-applications, as raising no fresh issues
  - In No Appeal cases, as raising no potential exceptional circumstances

### Post-appeal, first applications

11. In screening a case, the Group Leader will consider the submissions made by (or on behalf of) the applicant in light of such core documents as are available and relevant (see Appendix 1) and any other materials submitted with the application. The Group Leader will also consider whether any other potential lines of enquiry arise, which could give rise to a real possibility that the appeal court would not uphold the conviction (or sentence), as appropriate.
12. In the case of applications from people convicted where a single witness provided the sole or decisive evidence, additional considerations apply (see policy on [Witness Credibility](#)).

### Re-applications

13. All re-applications are assessed by a Case Review Manager to determine whether they raise new issues not considered at appeal or during the CCRC's previous review(s).
14. If the re-application contains nothing new which might give rise to a real possibility, the applicant will be informed in writing, the decision having been made by a Commissioner, aided by the Case Review Manager's assessment.
15. Otherwise, the case will proceed to review and will be screened by a Group Leader.

### No Appeal cases

16. The procedure for cases where the applicant has not already had an appeal determined, or leave to appeal refused, is set out in the CCRC's policy on [Exceptional Circumstances](#).

## STAGE 2

### Review Cases

17. In review cases, the CCRC will make a decision to (i) refer or (ii) not to refer the matter back to the appropriate appeal court.
18. The review is managed, and largely undertaken by, one or more Case Review Manager. Once the Case Review Manager is satisfied that all relevant work has been completed, and (normally) a decision document has been drafted, the case leaves the “review phase” and enters the “decision-making phase”.
19. The Case Review Manager can (drawing attention, if appropriate, to any particular issues of interest or concern):
  - (i) make a recommendation not to refer, or
  - (ii) make a recommendation to refer, or
  - (iii) make no recommendation (reflecting arguments each way).
20. If the recommendation is not to refer, as a general rule the case will be considered by a Single Commissioner (SC)<sup>1</sup>. The SC can either make the decision not to refer, or, if s/he considers it appropriate, direct that the case be referred to a decision-making committee.
21. Where the Case Review Manager recommends that the case should be referred, or considers that for other reasons the decision should be made by a committee, the Case Review Manager will discuss that recommendation with his/her GL<sup>2</sup>. Any disagreement will be resolved in favour of holding a decision-making committee.

### Single Commissioner Decisions

22. The Case Review Manager will make the draft decision document and all relevant information, available to an SC. S/he will also make recommendations in respect of proposed disclosure and victim notification, as appropriate.
23. If the SC is satisfied that:
  - (i) all relevant enquiries have been made; and
  - (ii) on the material currently available there is no real possibility that the conviction, verdict, finding or sentence would not be upheld;

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<sup>1</sup> In cases where a Commissioner has been appointed as Nominated Decision Maker (NDM), to make key decisions during the course of the review, the NDM will be responsible for making any fundamental case decision(s) during the course of the review and will usually either decide the case as SC.

<sup>2</sup> And NDM where relevant

subject to any amendments considered necessary by the SC the Case Review Manager will arrange for the decision document to be issued to the applicant (and/or his/her representative, see the policy on [Communicating with Applicants](#).) Any relevant material will be disclosed to the applicant at this stage: for further information see the policy on [Disclosure by the Commission](#).

24. If the SC directs that further work is required before a view can be reached, the reasons will be clearly recorded and that work will be undertaken by the Case Review Manager. The case will be returned to the SC when the further work has been completed.
25. The SC will endeavour to reach a view or decide that further work is required, and return the case to the Case Review Manager, within 10 working days of taking the case for decision.
26. Where appropriate, the applicant will be given time to respond to the decision document. Where such further submissions are invited, as a general rule 20 working days are allowed. In complex cases 40 days might be allowed. For further information see [Extensions for Further Representations](#).
27. If further submissions are made, they will be addressed by the Case Review Manager and a further recommendation will be made to the SC. If the SC decides that the further submissions do not raise a real possibility, a final (or second provisional<sup>3</sup>) decision document will be issued to the applicant.
28. Whenever necessary and appropriate, the case may be referred to a decision-making committee. The SC will usually take the role of Lead Commissioner at that committee, unless for any reason that would be inappropriate.

### **Decision-Making Committees**

29. There are four situations in which, by virtue of the Act, the decision must be made by a committee of no fewer than three Commissioners (a decision-making committee):
  - (i) Making a reference to an appeal court (ss 9-12)
  - (ii) Reporting to the Court of Appeal (s 15(4)): See [section 15 Directions from the Court of Appeal](#).
  - (iii) Providing the Secretary of State with a statement in connection with the exercise of the Royal Prerogative of Mercy (s 16(1)(b))
  - (iv) Requiring the appointment of an investigating officer (s 19): see [Section 19 Requirement to Appoint an Investigating Officer](#).

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<sup>3</sup> See the procedures outlined in [Disclosure by the Commission](#).

30. Decision-making committees generally comprise three Commissioners including (where practicable) one Commissioner who meets the legal qualification requirements set out in s 8(5) of the Act.
31. One of the Commissioners will take the role of Lead Commissioner (LC)<sup>4</sup>.
32. The rest of the committee will generally be selected on the usual 'cab rank' basis, taking into account Commissioner availability and capacity.
33. The Case Review Manager will agree with the LC what papers are relevant for the committee and the papers will be circulated to the decision-making Commissioners in sufficient time prior to the decision-making committee.
34. The Case Review Manager and the LC will agree an agenda for the decision-making committee which will be circulated in advance.
35. The committee meeting will be attended, at the very least, by the case committee members and the Case Review Manager. Others may attend to advise the committee (e.g. the Head of Legal or Head of Investigations) or to observe.
36. The LC will chair the meeting, ensure that all agenda items are addressed appropriately and that the main points of the committee's discussion have been adequately summarised for recording.

### **Record of Decision**

37. Unless other arrangements are made, the Case Review Manager will be responsible for recording the main points of the committee's discussion, and the reasons for the decision.
38. The record of decision will subsequently be approved by the decision-making Commissioners, as soon as reasonably possible after the meeting and in any event within a maximum 14 calendar days from the date of the meeting.

### **Committee Decisions**

39. A decision-making committee may determine that:
  - (i) The case should be referred to the appropriate appeal court. The LC will agree the wording of the referral Statement of Reasons, consulting with other committee members as appropriate.
  - (ii) The case should not be referred. The LC will agree the wording of the provisional Statement of Reasons, consulting with other committee members as appropriate. The applicant will be invited to make further representations. If further representations are received, the LC will

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<sup>4</sup> Where an NDM has been appointed to the case, s/he will take this role unless any reason why this would not be appropriate is identified.

decide whether or not it is necessary for the committee to re-convene to consider the case further or whether any subsequent decisions will be made by the LC acting solely as SC.

- (iii) Further information is required before the committee can make a properly informed decision. The committee will specify what information is required and the reason(s) why a decision cannot be made without it. The Case Review Manager will carry out such work as is appropriate.
- (iv) Directions from the Court of Appeal have been satisfied. The LC will agree the wording of the report to the Court of Appeal, consulting with other committee members as appropriate.
- (v) A statement will be made to the Secretary of State in connection with the exercise of the Royal Prerogative of Mercy. The LC will agree the wording of the statement, consulting with other committee members as appropriate.
- (vi) The appointment of an investigating officer is required. The LC will agree the wording of the directions, consulting with other committee members as appropriate.

### **Other decision-making committees**

- 40. The following are examples of other situations in which a decision-making committee might be convened (the list is not exhaustive):
  - (i) Cases that raise complex and/or serious issues, or complex ancillary issues such as disclosure.
  - (ii) Cases that involve the interpretation of legal or factual issues that are likely to affect future Commission decisions.
  - (iii) Cases where public confidence in the administration of criminal justice would be enhanced if a case is decided by a decision-making committee.
- 41. Wherever possible, the committee's decision (whether final or provisional) will be issued within two months of the committee meeting. It is the responsibility of the LC to manage the timetable from decision to issue of the decision document.



## Miscellaneous

### Retiring Commissioners

42. Schedule 1 to the Criminal Appeal Act 1995 provides that no person may hold office as a member of the CCRC for a continuous period which is longer than 10 years.
43. In the event of an SC being unable to finalise a case commenced before his/her retirement, the case will be passed to another Commissioner.
44. In the event of a Commissioner sitting as a member of a committee who is due to retire:
  - i. before that committee has reached a decision whether or not to refer, his/her place will be taken by another Commissioner; or
  - ii. after that committee has reached a decision not to refer but before the decision document is issued, one (normally the LC) of the remaining two committee members will sign the SOR; or
  - iii. after that committee has reached a decision to refer but before the Statement of Reasons is issued, his/her place will be taken by another Commissioner.

### Oral representations at decision stage

45. The CCRC has a robust and proactive process for consultation with applicants (and their representatives) during the course of the review, which is designed to ensure that all relevant information is received and taken into account. See policy on [Communicating with Applicants](#).
46. In the vast majority of cases, the CCRC will be able to decide whether or not to make a reference by evaluation of the representations communicated by, or on behalf of, the applicant during the review.
47. If the CCRC reaches an initial decision not to refer, in appropriate cases the applicant is invited to make further representations before any final decision is made. A second decision document can be issued in an appropriate case. See policy on [Disclosure by the Commission](#).
48. Requests made by, or on behalf of, applicants to make oral representations to the SC or decision-making committee will be considered and decided by the SC or LC in each individual case. The applicant will be provided with written reasons for the Commission's decision.

## Appendix 1 - Core Documents<sup>5</sup>

### Conviction applications

#### *On indictment:*

- Indictment
- Summing-up
- Advice and grounds of appeal
- Criminal Appeal Office summary
- Single Judge's ruling
- Full Court judgment

#### *Summary:*

- Magistrates' court file
- Crown Court Appeal file

### Sentence applications

#### *On indictment:*

- Prosecution opening (if appropriate)
- Plea in mitigation
- The Judge's sentencing remarks
- Advice and grounds of appeal
- Criminal Appeal Office summary
- Single Judge's ruling
- Full Court judgment

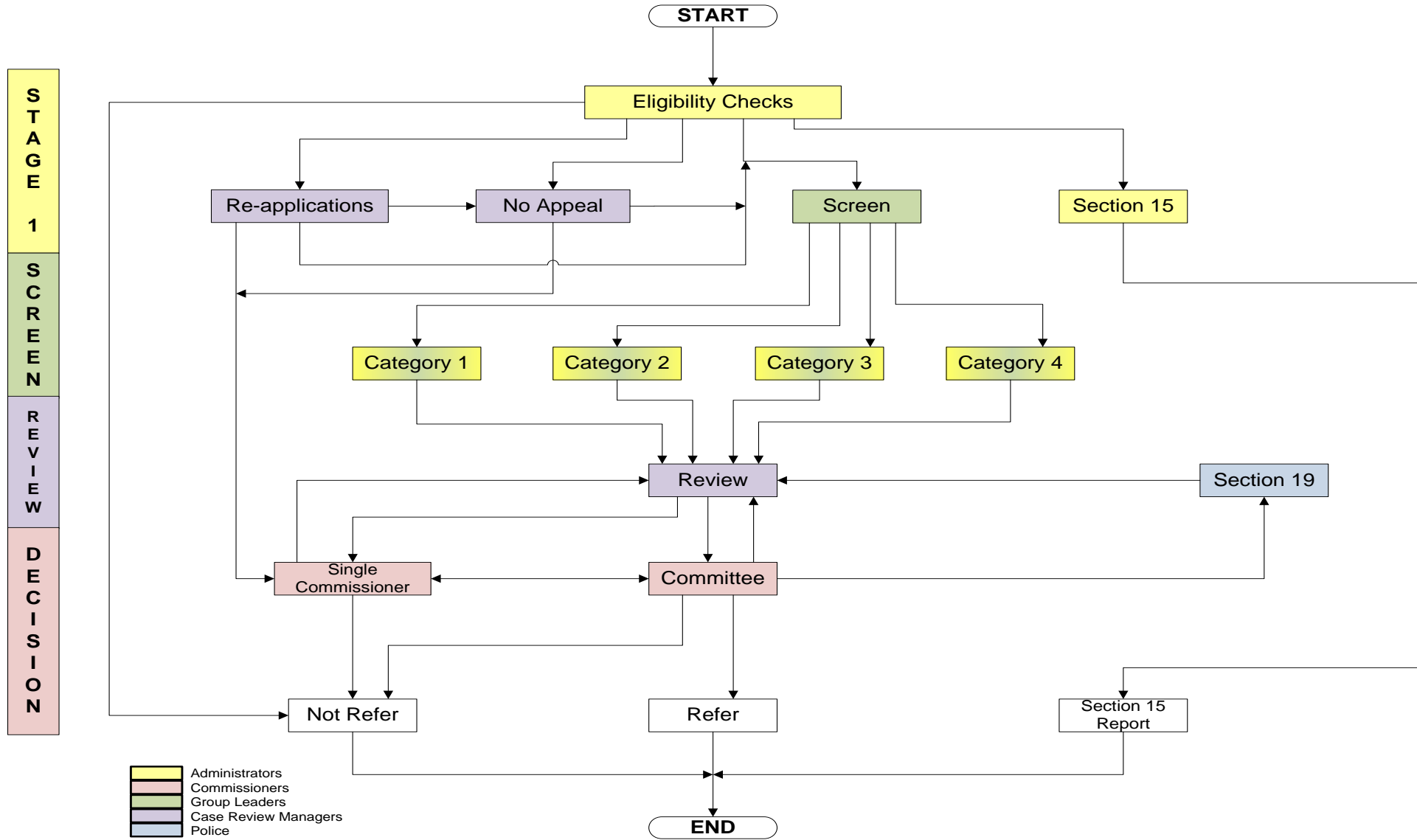
#### *Summary:*

- Magistrates' court file
- Crown Court Appeal file

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<sup>5</sup> Not all core documents will be available in all cases, nor may they all be necessary to the determination of an application. The absence of a core document need not delay the determination of an application if the information it contains is not relevant to the determination of the issues raised or, if relevant, the information is available from another source.

## Appendix 2 - Decision Making Pathway



Decision-Making Process.  
 This document will be reviewed and updated when necessary.  
 This current version was reviewed and updated on 24 June 2020