



Criminal Cases Review Commission

## CASEWORK POLICY

Policy Title: **Judicial Review**

Reference: **CW-POL-13**

Version: **2.0**

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### The CCRC’s Quality Statement

The CCRC is committed to achieving high-quality case reviews as quickly as possible. In order to achieve this, we operate under a Quality Management System; please see ‘Q-POL-01 CCRC Quality Policy’ for further information. Our policy documents are available on our website: [www.ccrcc.gov.uk](http://www.ccrcc.gov.uk).

If you or someone you represent has difficulty accessing the internet then please contact us via 0300 456 2669 (calls charged at local rate) and we will send a hardcopy of the relevant policy free of charge.

This is a quality-controlled document. Significant changes from the last issue are in grey highlight: like this. Significant deletions are shown as: [text deleted].

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## Introduction

This policy explains the CCRC's approach to judicial review proceedings.

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## Key Points

- 1) An applicant may commence proceedings in the Administrative Court for judicial review of an action or decision taken by the CCRC in respect of his/her application.
- 2) An applicant usually has a period of three months from the date of the action or decision under challenge in which to apply to the Administrative Court.
- 3) Judicial review proceedings may be proposed or issued during a review or after the CCRC has made a final decision.
- 4) The applicant should write a letter before action to the CCRC setting out, in general terms, the basis of the challenge (this is to comply with 'the pre-action protocol').
- 5) The CCRC will not accept service of proceedings unless they have been properly issued and sealed by the Administrative Court and a Court reference number has been allocated.
- 6) The CCRC Chairman may decide that the applicant's challenge should be conceded.
- 7) Service of a letter under the pre-action protocol, judicial review proceedings, and any other related responses and material is by post, DX, or email only.
- 8) Any correspondence served on a non-working day or after 4pm will be deemed served on the following working day.

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## Definitions

Key Word	Meaning
Administrative court	A division of the High Court which deals with judicial review cases.
Applicant	A person who is applying (or has applied) to the CCRC
CCRC	Criminal Cases Review Commission
Chairman	Chairman of the CCRC; the person in charge
Commission	Another name for the CCRC
Concede	To accept that the decision was flawed
Counsel	A lawyer (particularly a barrister)

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Key Word	Meaning
Judicial Review	An independent process in which judges look at the CCRC's decision and decide if that decision was either lawful or illegal.
Quash	Cancels an earlier decision such as a conviction
Reference	The CCRC's decision to send a case to an appeal court because we believe there is a reasonable chance that the court will quash a conviction or amend the sentence.
Statutory Power	The source of our powers to investigate and refer cases; they come from the Criminal Appeal Act 1995.

## 1 General Information

- 1.1 An applicant may commence proceedings in the Administrative Court for judicial review of an action or decision taken by the CCRC in respect of his/her application.<sup>1</sup>
- 1.2 Proceedings will be issued on the basis that the action or decision under challenge breached one or more of the public law principles of lawfulness, fairness and reasonableness.
- 1.3 An applicant usually has a period of three months from the date of the action or decision under challenge in which to apply to the Administrative Court for permission to proceed judicial review. Outside this time limit, s/he must apply to the Court for leave (ask permission) to apply out of time.

## 2 When Proceedings may be Issued

### 2.1 During the course of the review

Judicial review proceedings may be proposed or issued at any time during the course of a review. They may relate, for example, to:

- Delay in progressing a case.
- A question of interim disclosure or
- A decision not to exercise a statutory power, pursue a particular investigative step or interview a witness.

<sup>1</sup> The Administrative Court Judicial Review Guide can be downloaded from <https://www.gov.uk/government/publications/administrative-court-judicial-review-guide>

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## 2.2 After a final decision has been taken

Judicial review proceedings may be proposed or issued in relation to the CCRC's decision not to refer. The grounds of review will vary significantly from case to case but may include, for example:

- a) A challenge to the CCRC's interpretation of the law.
- b) A significant error of fact or law.
- c) The assessment of fresh evidence or the credibility of a witness.
- d) The application of the "real possibility"<sup>2</sup> test or
- e) The exercise of the discretion not to refer.<sup>3</sup>

## 2.3 Our refusal to conduct a further case review

This is no limit on the number of times an applicant can make an application to the CCRC for their case to be reviewed (although sometimes restrictions are imposed). If an initial or subsequent application to the CCRC does not result in a reference being made, then an applicant may choose to submit another application - we refer to this as a 're-application'. We may, for a variety of reasons, decide not to conduct a further case review of the re-application.<sup>4</sup> Our decision not to conduct a further review may be subject to challenge by way of judicial review.

## 3 **The Pre-action Protocol**

- 3.1 The pre-action protocol was introduced in England and Wales in 2002 to reduce the increasing number of claims issued in the Administrative Court. There is an equivalent procedure in Northern Ireland.
- 3.2 The applicant is required to write a letter before action to the CCRC setting out, in general terms, the basis of the challenge.
- 3.3 The CCRC's response to any letter issued under the pre-action protocol for judicial review will be provided within **14 days** of receipt (21 days in cases from Northern Ireland).
- 3.4 Any letter received at the CCRC which indicates an intention to commence proceedings for judicial review will be passed promptly to the CCRC's legal team.

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<sup>2</sup> Set out in section 13 of the Criminal Appeal Act 1995.

<sup>3</sup> See 'CW-POL-07 The Discretion to Refer' for further information.

<sup>4</sup> See 'CW-POL-04 Case Review Process' and 'CW-POL-14 PAM (Persistent, Abusive, Malicious) Applicants' for further information.

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- 3.5 The Head of Legal will form a view as to whether the challenge should be conceded or contested. If a concession is proposed, the Head of Legal will refer the matter to the Chairman.

#### **4 If Proceedings are Issued**

- 4.1 The CCRC will not accept service of proceedings unless they have been properly issued and sealed by the Administrative Court and a Court reference number has been allocated. When received at the CCRC, all relevant documents will be passed to the Legal Team. A lawyer will review the documentation relating to the action or decision under challenge and consult as necessary.
- 4.2 Unless the application is to be conceded, an Acknowledgement of Service must be filed at the Administrative Court within **21 days** of receipt. This is a formal document setting out the CCRC's considered response to the applicant's challenge.
- 4.3 Ordinarily, the Acknowledgement of Service will be drafted by the Head of Legal or Senior Lawyer. In an appropriate case, it may be necessary to instruct outside counsel to advise on the issues raised in the claim and/or to draft the Acknowledgement of Service.
- 4.4 After the Acknowledgment of Service has been filed, the papers relating to the application for permission will be considered by a Single Judge of the Administrative Court, who will issue a written decision as to whether to grant or refuse permission to proceed.
- 4.5 If permission is refused, the applicant may usually renew the application, at which point an oral permission hearing will be scheduled by the Administrative Court. If the Single Judge considers the request for judicial review to be 'totally without merit', there is no right to renew.

#### **5 If Permission is Granted**

- 5.1 If permission is granted by the Single Judge, the Head of Legal will consider whether the claim should be conceded or contested and make an appropriate recommendation to the Chairman. The Chairman will decide, after consulting as necessary, whether or not the claim should be conceded or contested.

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## 6 If the Challenge is Conceded

- 6.1 In an appropriate case, the Chairman may decide that the applicant's challenge should be conceded. This may occur as a result of correspondence exchanged through the pre-action protocol, after proceedings have been issued in the Administrative Court or after leave is granted by the Single Judge.
- 6.2 [Text moved to create paragraph 7.1 below]
- 6.3 If a challenge is conceded, in whole or in part, the Chairman will decide:
- I. Whether any discrete piece of additional work is to be undertaken.
  - II. Whether the case should be re-opened and a fresh review commenced.
  - III. Whether the same Case Review Manager should be involved.
  - IV. Whether the same Commissioner(s) should be involved.
  - V. What, if any proposals, should be made in respect of any costs incurred by the applicant.
- 6.4 The Casework Operations Director and the Head of Quality will be notified of the Chairman's decision to re-open a case. As a general rule, any review work to be undertaken will commence immediately.

## 7 Agreement to Settle

- 7.1 The CCRC and the applicant may be able to reach agreement as to how the challenge can be resolved without recourse to litigation or at any stage of proceedings. Where appropriate, a Consent Order will be agreed and submitted to the Court.

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## 8 The Overriding Principle of Fairness

- 8.1 The CCRC recognises the need for fair and independent consideration of any judicial review challenge. As a general rule, the Commissioner (or committee of Commissioners) who took the decision under challenge will not be consulted during the judicial review process, nor will they express any view on the merits of the challenge to those who are considering the matter at the CCRC.
- 8.2 The only exception to this general rule is when clarification of some factual matter is required. For example, if the caseworker involved in the case is on leave, or no longer employed by the CCRC, and some factual matter within the investigative or decision-making processes is not clear from written records.
- 8.3 Commissioners and caseworkers involved in are routinely informed of proceedings and the results.

## 9 Time Limits

- 9.1 [text deleted]
- 9.2 Pre-action correspondence should be issued in good time in order to permit the CCRC sufficient time to respond and for the response to be considered.
- 9.3 The time limit for responding to a letter issued under the pre-action protocol **cannot** be extended by consent of the parties.
- 9.4 The time limit for filing an Acknowledgement of Service **cannot** be varied by consent of the parties. [text deleted].
- 9.5 In order to ensure that the CCRC complies with its obligations in relation to these time limits, any Commissioner, caseworker or administrator who receives any item of correspondence relating to judicial review will pass the matter to Legal Team promptly.

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## 10 Service

- 10.1 Service of a letter under the pre-action protocol, judicial review proceedings, and any other related responses and material is by post, DX, or email only. The details are as follows:

Post - CCRC Legal Team  
23 Stephenson Street  
Birmingham  
B2 4BH

DX - 715466 Birmingham 41

Email - [info@ccrc.gov.uk](mailto:info@ccrc.gov.uk)

- 10.2 If we do not receive the correspondence via any of the above methods, then it will not be deemed served.
- 10.3 Any correspondence served on a non-working day or after 4pm will be deemed served on the following working day.
- 10.4 Incomplete claims will not be deemed to have been served.

## 11 Costs

- 11.1 If the CCRC successfully defends a challenge, the CCRC may seek an order from the Court requiring an applicant to pay appropriate costs.

## 12 Delegation

- 12.1 The Chairman may, in any individual case, decide to delegate all or part of their role in the process outlined above.
- 12.2 In the Chairman's absence (but only when necessary in order to meet a judicial review deadline) the decision as to whether a case is to be re-opened may be taken by the Chief Executive or a senior staff member.
- 12.3 In no circumstances will such delegation be to a Commissioner who made or took part in making the decision under challenge.

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## Appendices

None

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### Relevant CCRC Documents

Q-MAN-01	CCRC Quality Manual
Q-POL-01	CCRC Quality Policy
CW-POL-04	Case Review Process
CW-POL-07	The Discretion to Refer
CW-POL-14	PAM (Persistent, Abusive, Malicious) Applicants

### Legal Documents (available for free from [www.legislation.gov.uk](http://www.legislation.gov.uk))

Criminal Appeal Act 1995

Civil Procedure Rules 1998 (as amended)

### Other Useful Documents:

Administrative Court Guide:

<https://www.gov.uk/government/publications/administrative-court-judicial-review-guide>

Pre-action protocol for England & Wales:

[https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_jrv](https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv)

Pre-action protocol for Northern Ireland:

<https://www.judiciaryni.uk/judicial-decisions/practice-direction-03-18-judicial-review>

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### Document Control

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Issue authorised by: Casework Operations Director

### Version History

Date Issued	Version	Brief Details of Change	DCR
15/07/2021	1.0	First Issue	21/04
23/11/2021	2.0	Amend: Key Points, Definitions, 2.2, 2.3, 3.3, 4.5, 6.2, 6.3, 9.4, 10.1. Remove: 9.1. New: 7.1, 8.3, 9.2, 10.4, 11.1, other useful docs.	21/10

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