

# **Exceptional Circumstances in 'No Appeal' Crown Court cases**

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## **Project Overview**

### **i. Project Purpose**

The purpose of this project is to research 'No Appeal' Crown Court cases that were accepted for review on the basis that there were potential 'Exceptional Circumstances' ("ECs"). The aim of this research is to establish what ECs are submitted by the applicant in comparison to the ECs accepted by the CCRC, outline any themes or trends that arose, and put forward any recommendations for improvement.

### **ii. Introduction to Exceptional Circumstances**

*"A No Appeal (NA) case can only be passed for a review if there are potential Exceptional Circumstances (ECs). The existence of ECs means the usual appeals process does not need to be followed."* ([CW-SOP-02](#), pg. 2).

There are no automatic ECs in the sense that ECs are considered on the facts of each case. As per the 'Exceptional Circumstances' Policy ([CW-POL-06](#)), the CCRC applies core principles when considering ECs to facilitate a fair and consistent approach. The purpose behind a thorough case-by-case approach is as follows:

*"It is vital that the CCRC does not usurp the conventional appeals process by reviewing No Appeal cases where there are no potential ECs. To review those cases would cause a delay in the CCRC's ability to review the cases of those applicants who have already satisfied the previous appeal requirements. CCRC investigations of No Appeal cases will, therefore, be limited to those cases where the CCRC considers that there are potential ECs."* (pg. 3)

When an application is received, and the time limit for pursuing an appeal has not expired, the application will be rejected, and the applicant advised to appeal in the usual way. In all other instances where the applicant has not appealed, a Case Review Manager ("CRM") will consider whether there are any potential ECs.

The process for considering ECs:

1. If the CRM considers that there are no potential ECs, a draft decision will be prepared and the case proceeds to a Commissioner for decision.
2. If the CRM considers that there are potential ECs, the case is put through for review, and the Group Leader ("GL") will screen the case. If the GL does not think there are potential ECs, they will discuss the case with the CRM.
3. Where potential ECs are apparent, a CRM will conduct an investigation that is limited to the issues directly associated with the potential ECs. Once that review is complete, the case proceeds through the normal decision-making process.
4. Where there are no potential ECs, but a real possibility is apparent, the applicant will be advised in writing to apply for leave to appeal.

### iii. Data Used

This project considered triable either way and indictable only offences. The 'No Appeal' Crown Court cases include cases where the applicant entered a plea in the magistrates' court but were committed for sentence in the Crown Court. For the purposes of this project, if the applicant was convicted or sentenced in the Crown Court, it is considered a Crown Court case.

I analysed the 'No Appeal' Crown Court cases with potential ECs from 2020 and 2021, to establish:

1. What ECs were submitted by the applicant.
2. What ECs were accepted/found by the CCRC.
3. The offence and sentence.
4. The outcome of the review and how this was communicated to the applicant.
5. Diversity information; including age, gender, and ethnicity.

When looking at what ECs, if any, were suggested by the applicant themselves, the whole application form was assessed and, in particular, the question asking why they cannot appeal directly to the courts themselves.

When assessing what potential ECs were identified by the CCRC, the first stage of the review process was considered. This included the initial triage, conducted by a CRM, and the screening by the GL. For the purposes of this project, a case had a potential EC if one was found at the aforementioned stages, regardless of whether the review ended because the EC was ultimately found not to exist later in the review. An analysis into when the ECs are found not to exist during the review is outside the scope of this project.

There were 62 cases from 2020<sup>1</sup> and 35 cases from 2021<sup>2</sup>.

### iv. Diversity Information

#### a. 2020 Cases

Of the 62 cases, 65% of applicants identified as male, 16% identified as female, and 19% chose not to state their gender.

These figures are reflective of the general pool of applicants in that the majority of applications are from those who identify as male. However, 12% of female identifying

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<sup>1</sup> Please note that some cases in the 2020 group have a case reference number containing '2019'. These cases were set up on the system in 2019, but the review of these cases did not commence until 2020. Therefore, they have been included amongst the 2020 cases for the purpose of this project.

<sup>2</sup> Please note that some cases in the 2021 group have a case reference number containing '2020'. These cases were set up on the system in 2020, but the review of these cases did not commence until 2021. Therefore, they have been included amongst the 2021 cases for the purpose of this project.

applicants is higher than expected.<sup>3</sup> 8 out of 10 female identifying applicants in this group of cases were applying to the CCRC as part of the Post Office cases ('PO cases')<sup>4</sup>, which could explain the discrepancy. Nonetheless, the reason for this higher statistic is unknown and assumptions should not be made when considering this statistic in the context of ECs.

The below table depicts the ethnicity breakdown for the 2020 cases.

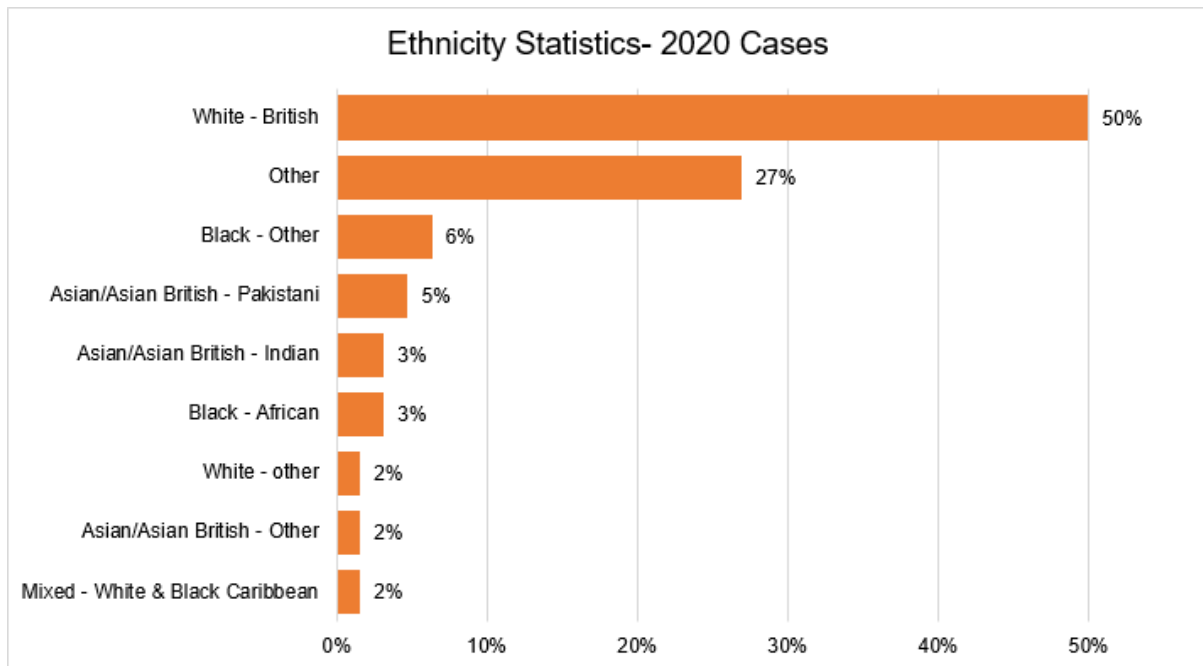


Figure 1: Graph depicting the breakdown by ethnicity for the 62 cases from 2020 as stated by applicants on the diversity monitoring form.

As can be seen, most applicants from this group of cases, identify as White-British (50%). Furthermore, 21% of applicants from this group identify as being from a BAME background. This is reflective of the general pool of applicants who apply to the CCRC.<sup>5</sup> As such, ethnicity has had no impact on the finding of ECs.

No applicant from the 2020 cases declined to provide their ethnicity.

<sup>3</sup> As per the '[Annual Equality and Diversity Report 2020-21](#)', for the year 2019-2020 7.1% of applicants identified as female and for 2020-2021 5.6% of applicants identified as female.

<sup>4</sup> The CCRC has received applications from former sub-postmasters and mistresses who were convicted of offences such as fraud, theft, and false accounting. The applicants submitted that they were wrongly convicted following the High Court judgement in 2019. This judgement concluded that there were significant problems with the Horizon system and the accuracy of the branch accounts produced. There was a material risk that apparent branch shortfalls were caused by bugs, errors and defects in Horizon. The outcome of the civil case created an influx of applications to the CCRC, and these are called the 'Post Office cases'.

<sup>5</sup> As per the '[Annual Equality and Diversity Report 2020-21](#)', for the year 2019-2020 48.9% of applicants identified as White and 23.6% identified as being from a BAME background. In 2020-2021 43.8% of applicants identified as White and 19.8% identified as being from a BAME background.

*b. 2021 Cases*

Of the 35 cases, 60% of applicants identified as male, 9% identified as female, and 31% chose not to state their gender. These statistics are reflective of the general pool of applicants to the CCRC.

The below table depicts the ethnicity breakdown for the 2021 cases.

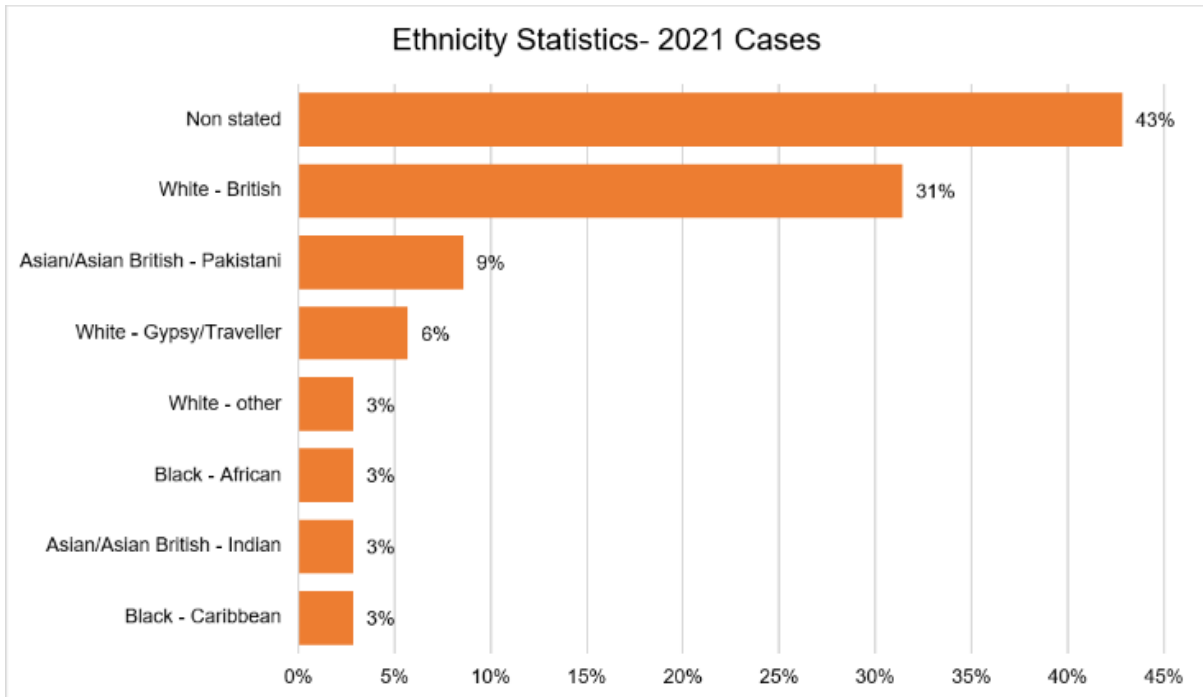


Figure 2: Graph depicting the breakdown by ethnicity for the 35 cases from 2021 as stated by applicants on the diversity monitoring form.

As with the 2020 cases, the majority of applicants identify as White-British (31%). However, 43% declined to provide their ethnicity.<sup>6</sup> For this reason, the number of applicants for whom we have ethnicity data is too small and a conclusion on the impact of ethnicity on the finding of ECs cannot be drawn.

In response to the drop in the number of applicants who provided diversity information, the CCRC modernised the diversity form.

<sup>6</sup> As per the '[Annual Equality and Diversity Report 2020-21](#)', in the year 2019-2020 for 27.4% of applicants their ethnicity data was either 'Other' or unknown. In the year 2020-2021 for 35.8% of applicants their ethnicity data was either 'Other' or unknown.

## Chapter 1: Findings

### 1.1 Overview

There were a variety of offences and sentence types across both sets of data, meaning there was no discernible pattern or trend with regards to this data and ECs.

The following graphs depict the outcome of the reviews.

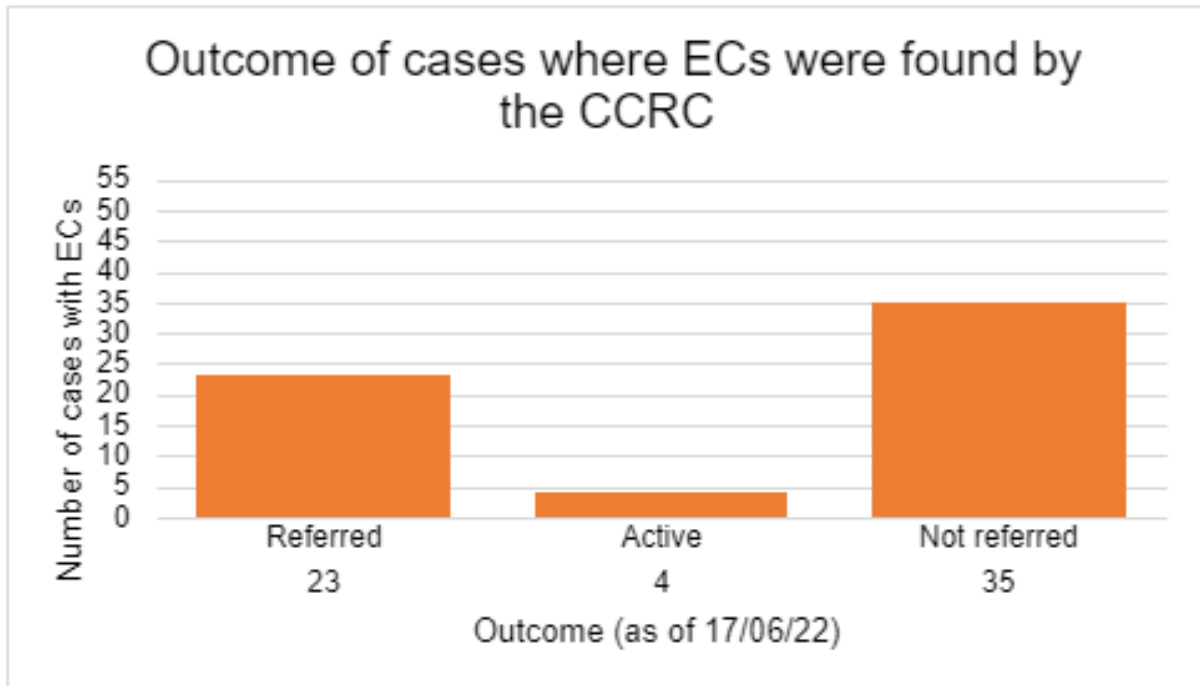


Figure 3: Graph depicting the outcomes of the reviews of 'No Appeal' Crown Court cases that had potential ECs from 2020.

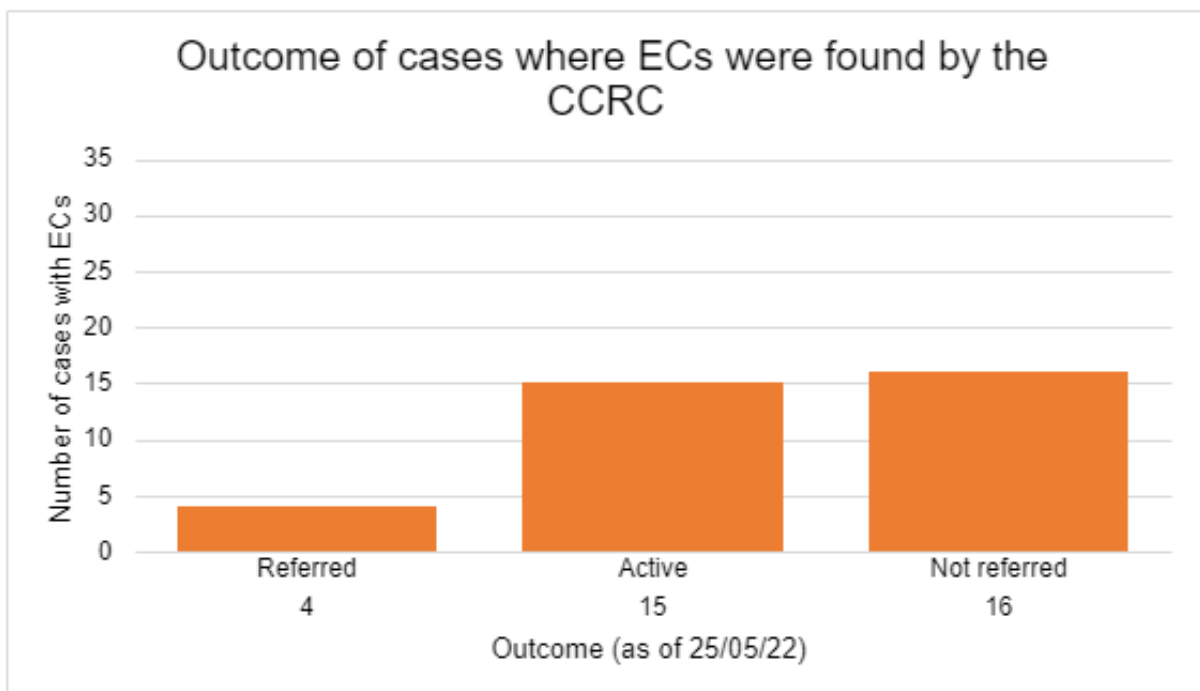


Figure 4: Graph depicting the outcomes of the reviews of 'No Appeal' Crown Court cases that had potential ECs from 2021.

As can be seen, many of the 2021 cases are still active. Therefore, there is incomplete data as to how the decision of these reviews was communicated to the applicant.

When communicating the outcome of the review to the applicant, there is a fairly consistent approach; a longer report style Statement of Reasons where the case is referred and a shorter Decision Notice style Statement of Reasons when the case is not referred.

## 1.2 Good practice amongst 'No Appeal' EC cases

### **Overview**

- **Generally, ECs are considered on the case narrative. There were 8 instances from 2020 where ECs were not expressly considered on the case narrative.**
- **ECs are kept under review throughout the process.**
- **CRMs felt able to and did ask for advice and opinions on ECs from other CRMs and GLs.**

### *ECs on the case narrative*

Although ECs were expressly considered and stated on the case narrative in most cases, this did not always happen. For 8 cases from 2020 there are no specific entries on the case narratives addressing ECs or considering whether ECs needed to be investigated. ECs could have been considered in these cases pre-allocation, but no entry was made on the case narrative confirming this.

For three of these cases (A1/2020, A2/2020, and A3/2020), ECs were not considered as the cases formed part of the Shrewsbury 24<sup>7</sup> group. These cases were reviewed on the basis that other cases in the group had been referred to the Court of Appeal, thus a consideration of ECs was not necessary. In these instances, the case narratives state, "*We have recently referred the convictions for the linked cases to the CoA.*"

Similarly, three of these cases (A4/2020, A5/2020, and A6/2020) were PO cases. These cases were considered as part of a group and individual ECs did not need to be identified. However, in the other PO cases, the case narratives expressly referred to ECs not being necessary. Despite this, ECs must have been considered as these three PO cases were put through for a review on the basis that they were PO cases.

In two cases, the CCRC's s.17 powers<sup>8</sup> were discussed on the case narrative, but neither expressly stated that this was the EC being considered. On the case narrative

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<sup>7</sup> The 'Shrewsbury 24' cases refer to the applicants who were convicted of offences such as affray and unlawful assembly following incidents during the builders' strike in the early 1970s. The Court of Appeal quashed the convictions of 14 members of the 'Shrewsbury 24' (22 men were convicted in total).

<sup>8</sup> Section 17 of the Criminal Appeal Act 1995 addresses the CCRC's power to obtain documents from those serving in public bodies.



for A7/2020, the 'Early Considerations' box where potential ECs are discussed was not completed and on the case narrative for A8/2019 this box was missing altogether. It is suggested that, for consistency purposes, CRMs and GLs ensure that they complete the 'Early Considerations' box so it is clear what ECs (if any) have been considered.

This project contains a number of hybrid cases.<sup>9</sup> When a hybrid case is being reviewed, there needs to be a consideration of ECs with regards to the conviction. This consideration should be featured on the Case Narrative. There were no instances of a failure to record ECs in hybrid cases on the Case Narrative for the groups of cases reviewed in this project.

The new<sup>10</sup> guidance, 'Overview of ECs' ([CW-REF-11](#)), emphasises the need to state the consideration of ECs on the Case Narrative:

***Remember to record** concise, but comprehensive, reasons for your recommendation / decision **in the CW-F-01 Case Narrative**. Detailed reasoning as to how you reached your decision about whether there are any potential ECs, may assist in the drafting of the decision document.”*

Hopefully this guidance will remind and encourage CRMs to record their investigation into ECs on the Case Narrative.

### 1.3 2020 Cases

#### **Overview**

- **Most applicants (34%) did not provide any ECs on their application form.**
- **The PO cases and Shrewsbury 24 cases may have skewed the 2020 data.**
- **Despite 4 applicants stating mental health difficulties as an EC on their application form, only 2 applicants were found as having mental health difficulties that amounted to an EC by the CCRC.**

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<sup>9</sup> Cases in which the applicant has appealed their sentence only but applies to the CCRC for a review of both conviction and sentence. If an applicant applies for a review of both conviction and sentence and has only appealed their conviction, the case will be treated as a review case ([CW-SOP-02 No Appeal Cases and ECs v1.0.docx](#)).

<sup>10</sup> CW-REF-11 was released on 27/10/2022.

*What ECs were on the application forms?*

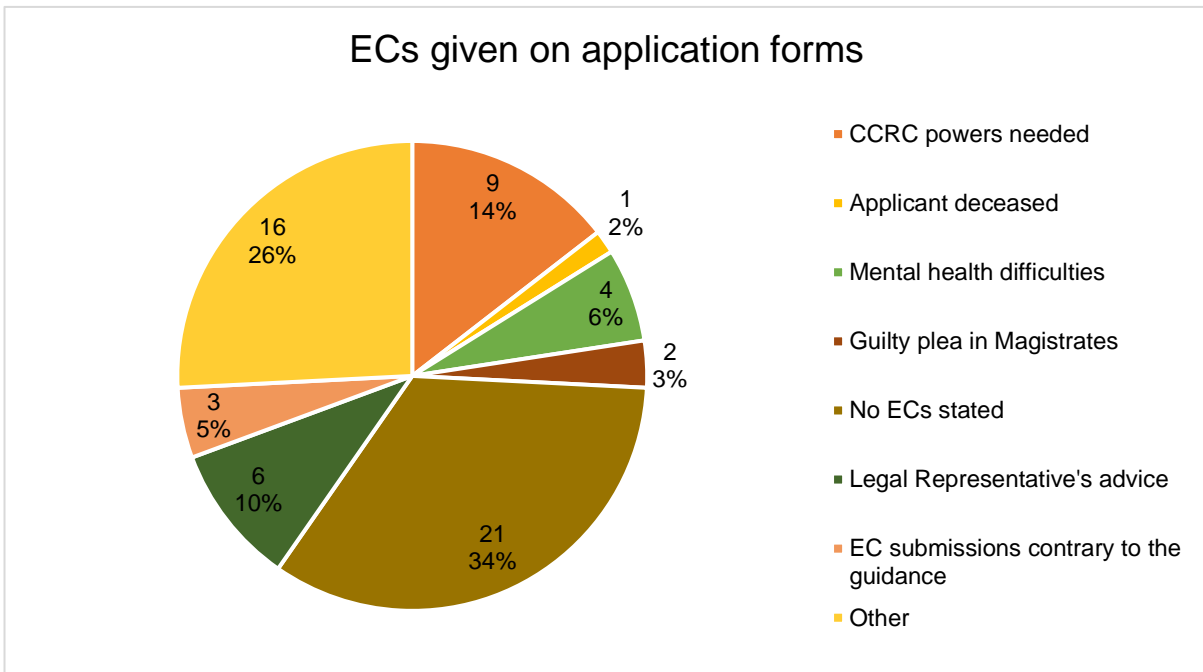


Figure 5: Graph depicting the breakdown of what ECs the applicants wrote on their application forms. For the purposes of this graph, 'Other' includes Post Office Civil Proceedings, Shrewsbury 24 referrals, and RPM. Please note, what constitutes 'EC submissions contrary to the guidance' is discussed at section 1.4.

*What ECs were found by the CCRC during the review?*

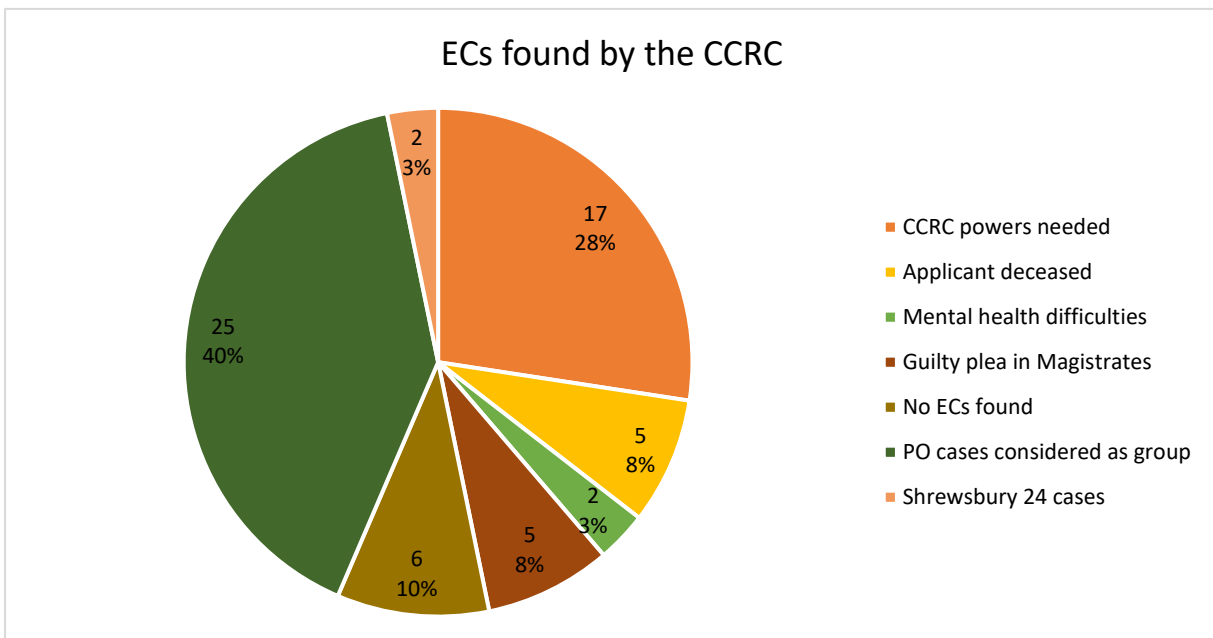


Figure 6: Graph depicting the breakdown of the ECs found by CRMs and GLs during the case review stage.

### *No ECs provided on the application form*

For the 2020 cases, many applicants (34%) did not provide any ECs on their application form. These applicants did not explain why they had not appealed to the courts directly or why they were unable to do so. This contrasts with the 10% of cases that were found to have no ECs by the CCRC during the first point of review.<sup>11</sup>

This 34% suggests that some applicants do not have a thorough understanding of ECs as they did not provide any, when in fact they should have. However, it is reassuring that despite the applicant not being aware of the ECs, the CRM and/or GL has nonetheless identified them. This demonstrates that the CCRC are thorough in their approach to considering ECs and do not only rely only on the information provided on the application form.

### *Skewed data*

A factor that possibly skewed the findings for the 2020 cases is an influx in the special groups of cases that the CCRC has received. For the 2020 data, this includes PO cases and Shrewsbury 24 cases. In these instances, the normal EC procedure was replaced with a societal and resource consideration. In 'normal' circumstances, cases that have a similar theme (for example, there are multiple cases from the same joint enterprise conviction) would not necessarily be accepted as having ECs on the basis that a case in that group has been referred. However, the PO and Shrewsbury 24 cases were considered as a group because of systemic issues. These cases were not found to have ECs simply because there were many of them, but because the EC was identified in earlier PO and Shrewsbury 24 cases, and it was decided that this EC could apply to further applications of this kind.

Of the 62 2020 cases, 40% were accepted as having ECs because the PO cases were being considered as a group. All 25 PO cases where it was suspected that the Horizon scandal impacted the conviction have similar case narrative entries addressing ECs:

*“We were previously operating on the basis that there were potential ECs arising from our ability to access material held by the PO and the DCO had agreed that approach. In light of the civil judgments, there is a possibility that the applicants could apply directly to the Court. We consider, however, that the applicants and the CJS are best served by the Commission considering these cases as a group - and potentially referring as a group – rather than individuals applying to the CA piecemeal.” (A9/2020 Case Narrative).<sup>12</sup>*

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<sup>11</sup> Each of the 6 cases where the CCRC found there were no ECs were hybrid cases. The reviews for these cases took place for the purposes of seeing if there were ECs with regards to the conviction. It was during this review that no ECs were identified for the purpose of reviewing the conviction further. However, as a review took place, they have been included in this project.

<sup>12</sup> Once the first group of PO referrals had been decided by the Court of Appeal, the CCRC recognised that there was no longer a need to consider all PO cases as a group, as the abuse of process had been established. The CCRC reviewed subsequent PO cases in line with the 'normal' EC policy.

Guidance regarding PO cases and ECs was released and updated regularly to ensure consistency and conserve time and resources.<sup>13</sup> This demonstrates that the CCRC recognise these 'special' groups of cases and appreciates that it would save resources and assist applicants to deal with them as a group.

Although creating a new EC for these groups of cases worked well, there is no formal guidance on what to do if these situations arise.<sup>14</sup> There is therefore scope for guidance to be produced to assist with what to do in these instances. It may be helpful for any potential guidance to address how to spot these 'special' groups of cases, the process of finding a group EC, and when this group EC will and will not apply (i.e., when ECs will stop being considered as a group).

### *Mental health difficulties*

Of the four applicants who stated mental health difficulties as an EC on their application form, only one was found as having mental health difficulties by the CCRC (another applicant who did not submit this EC on the application form was found to have mental health difficulties, bringing the total to two). There were different reasons why mental health difficulties were rejected as an EC by the CCRC for the three applicants:

1. A10/2020: On the application form, the applicant mentioned their mental health difficulties as they have PTSD. The CRM decided that this issue did not amount to an EC as the applicant had no communication problems so could apply directly to the court.
2. A11/2019: The applicant stated that he had an EC due to his mental health because he was in a coercive relationship, and he was raising diminished responsibility. During pre-allocation, it was stated on the case narrative that as this coercive relationship was not with the victim, it was unlikely to be significant in terms of the safety of the conviction. Further, the applicant's mental health and diminished responsibility were raised in a previous CCRC application, thus there are no ECs in this application.
3. A12/2019: The applicant submitted that they had mental health difficulties as they were diagnosed with bipolar affective disorder. However, it was decided that the case review would be limited to seeing if credibility checks would bring up anything new. Therefore, the CCRC's powers were identified as an EC and the applicant's mental health difficulties did not need to be considered for the purposes of ECs.

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<sup>13</sup> This guidance can be found at this link as of 25/10/2022: [Post Office Cases guidance No Appeal cases no ECs.docx](#). This guidance document is currently being evaluated by the CCRC's Quality Team and a QMS number will be assigned to this guidance in the near future. The above link may not be accessible after this date.

<sup>14</sup> [CW-REF-11](#) does provide some examples of when linked cases or cases involving co-defendants may amount to ECs, but this does not provide guidance for when these instances occur on a larger scale, such as the PO cases.

## 1.4 2021 Cases

### Overview

- Despite the CCRC finding that 14% of applications had ECs because the applicant was deceased, only 6% of application forms stated this as an EC.
- 7 of the 35 applicants provided a reason why they could not appeal directly to the courts and these reasons did not amount to ECs as they were contrary to the guidance.
- Despite a guilty plea in the magistrates' court being an automatic EC most of the time, only 5% of applicants stated this as an EC on their application form, whereas the CCRC found that 20% of applicants had this EC.

*What ECs were on the application forms?*

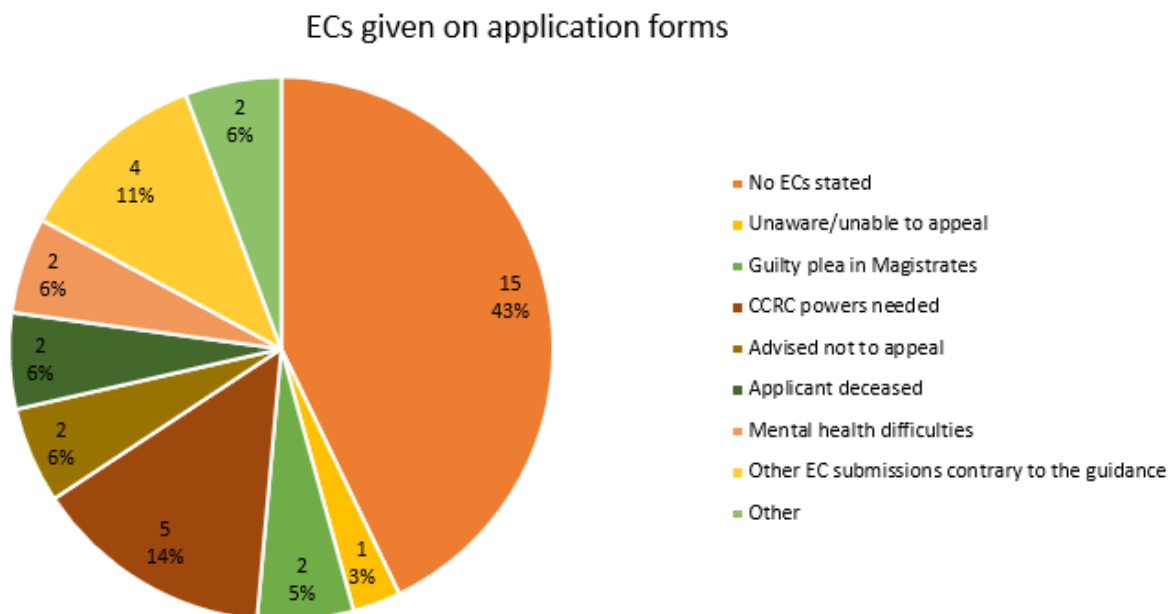


Figure 7: Graph depicting the breakdown of what ECs the applicants wrote on their application form. 'Other EC submissions contrary to the guidance' refer to EC submissions made that fall outside the group of common ECs that are contrary to guidance (the group of common ECs are already included in this graph, i.e., unaware/unable to appeal and advised not to appeal). For the purposes of this graph, 'Other' includes Victim of Modern Slavery and Court of Appeal declined out-of-time application to appeal, referring the matter to the CCRC because the applicant was deceased.

*What ECs were found by the CCRC during the review?*

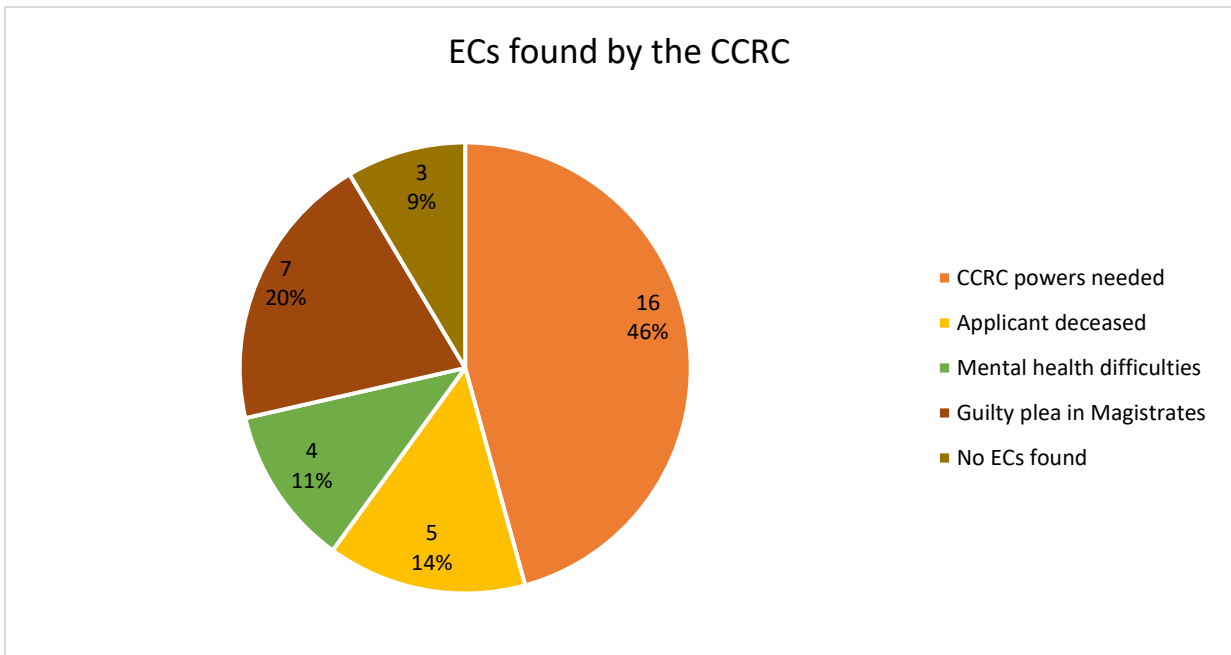


Figure 8: Graph depicting the breakdown of the ECs found by CRMs and GLs during the case review stage.

*Deceased applicant*

Despite the CCRC finding that 14% of applications had ECs because the applicant was deceased, only 6% of application forms stated this as an EC. In these instances, death of the applicant was accepted as an EC as they died over 12 months before the application to the CCRC was completed, meaning that an appeal cannot be lodged directly with the Court of Appeal by an ‘approved person’ by virtue of s.44A(4) Criminal Appeal Act 1968.

When the applicant is deceased, an ‘approved person’ (most commonly a relative) makes the application on their behalf. In many instances, the approved person did not state the death of the applicant as an EC, and they also failed to provide other reasons why they could not appeal directly to the court (apart from one application which stated that the Court of Appeal rejected the out of time application). As this EC has a checklist type criterion provided by statute, approved persons should be able to recognise this EC and record it on the application form. As this is not the case, I suspect that applicant guidance is needed on this EC (see the recommendations at section 2.4).

*EC submissions that are contrary to the guidance*

A common trend across both 2020 and 2021 cases were some applicants stating a reason why they could not appeal directly to the courts, but these reasons were contrary to the EC guidance. When the CCRC receive correspondence from potential applicants, we make it clear in the response and guidance given that ECs are rare and

that certain circumstances are not ECs. The same information is provided to those who apply online.<sup>15</sup>

In the CCRC guidance to applicants ([CW-POL-06](#)), the following are stated as not being ECs:

1. When you forget to appeal or miss the deadline.
2. When you receive advice from legal representation that you do not have grounds to appeal.
3. When you have been unable to get legal assistance to help with making an appeal.

Despite this, 3% of applicants (1 applicant) stated that they were unaware or unable to appeal, 6% of applicants (2 applicants) stated that they were advised not to appeal, and 11% of applicants (4 applicants) provided some other reason that did not amount to an EC. Due to this, it seems like some applicants are either confused about ECs or are not reading the guidance. This could result in applicants having unrealistic expectations about the outcome of their case review, or CCRC resources being expended for cases that have no prospect of meeting the EC test.<sup>16</sup> In these instances, the applicant could have been signposted to the appropriate course of action sooner.

Ultimately, this misunderstanding of ECs is impacting applicants as they are delayed in following the correct course of action. For this reason, some amendments are needed to the EC guidance given to applicants; possibly this guidance needs to be in a more accessible location on the webpage.

### 1.5 Similarities between 2020 and 2021 cases

#### **Overview**

- **17 applicants from 2020 and 16 applicants from 2021 had potential ECs on the basis that they could not appeal to the courts directly because their cases needed the CCRC's s.17 and/or s.18A powers.<sup>17</sup>**
- **The majority of applicants who provided ECs on their application form did not have legal representation (14 applicants from 2020 and 7 applicants from 2021).**
- **When the CRM and/or GL find that the CCRC's powers are needed, and this is not stated on the application form, those applicants are more likely than not to be legally unrepresented.**

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<sup>15</sup> Information on ECs can be found on the 'Can I apply?' section of the CCRC's website: <https://ccrc.gov.uk/can-i-apply/>.

<sup>16</sup> Criminal Appeal Act 1995, s.13(2).

<sup>17</sup> The CCRC's s.17 and s.18A powers are found in the Criminal Appeal Act 1995. Section 18A refers to the CCRC's power to obtain documents from those not serving in public bodies.

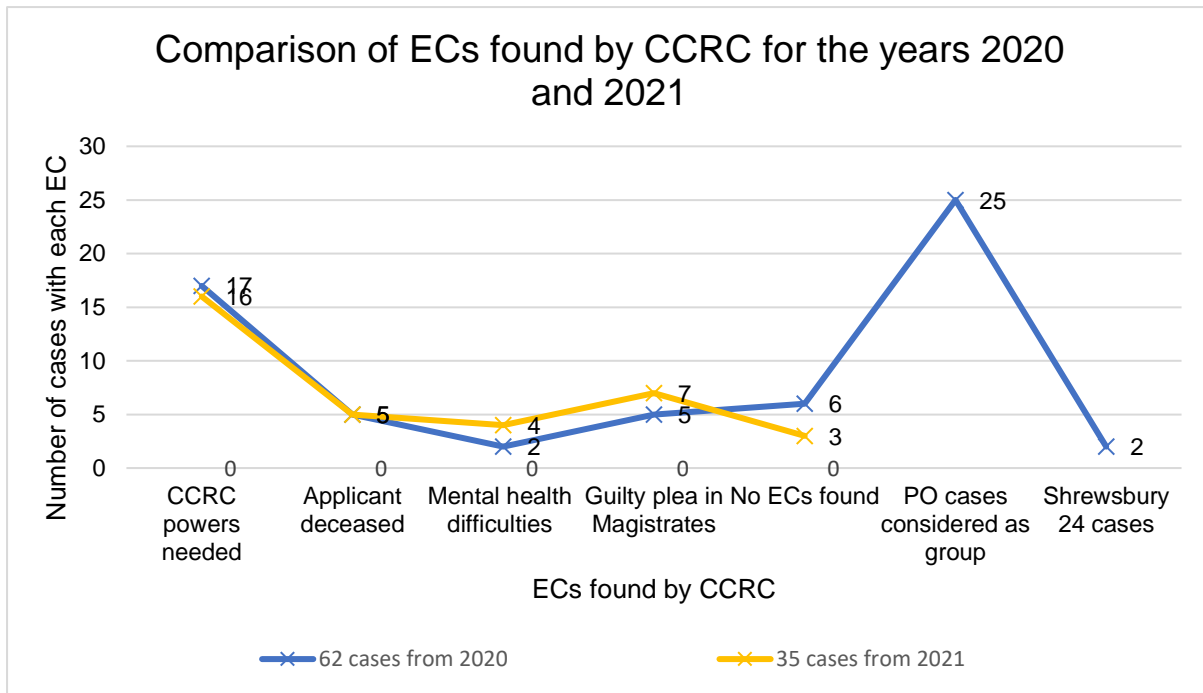


Figure 9: Graph comparing the ECs found by the CCRC for the years 2020 and 2021 to demonstrate trends in EC cases.<sup>18</sup>

### CCRC's powers

As shown from figure 9 above, 17 applicants from 2020 and 16 applicants from 2021 had potential ECs on the basis that they could not appeal to the courts directly because their cases needed the CCRC's s.17 and/or s.18A powers (28% of the 2020 cases and 46% of the 2021 cases). Of these 33 cases, 12 were cases where both the applicant and the CCRC identified that the CCRC's powers amounted to an EC. That is not to say that these cases went all the way through the review process. On the case narratives of 10 2020 cases and 5 2021 cases it was expressly stated that, upon closer examination, the CCRC's powers were not actually needed, or the material gained from the CCRC's powers did not raise something new.

What is interesting is the fact that this EC accounts for a large proportion of cases for each year, yet the CCRC's powers are maybe not the easiest EC to raise. Although the powers the CCRC has in terms of investigation and acquiring material is publicised by the CCRC, it requires judgement on the part of the applicant as to whether this is applicable in their case. To exercise this judgement an understanding of the Criminal Appeals Act 1995 is necessary. For this reason, I considered how many of the applicants who provided an EC on the application form, which were accepted by the CCRC upon review (whether it amounted to an EC or not), had legal representation when making their application.

<sup>18</sup> All the cases where the CCRC found there were no ECs were hybrid cases. The reviews for these cases took place for the purposes of seeing if there were ECs with regards to the conviction. It was during this review that no ECs were identified for the purpose of reviewing the conviction further. However, as a review took place, they have been included in this project.



*Legal representation*

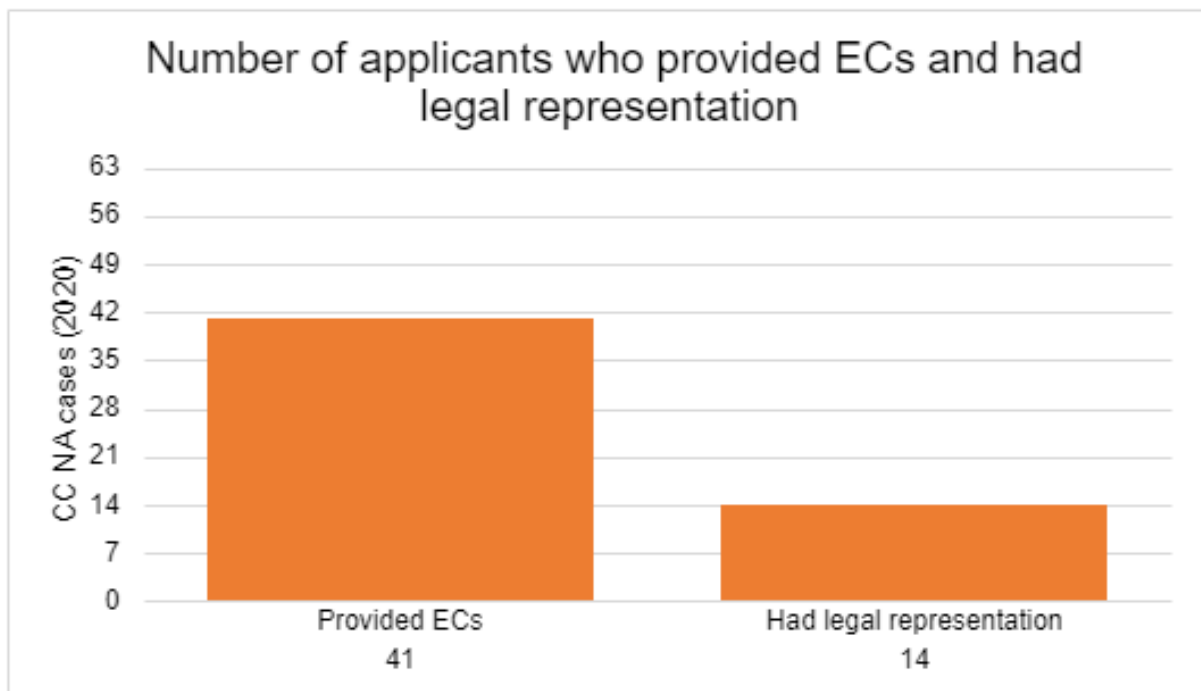


Figure 10: Graph depicting how many of the 2020 applicants that provided ECs on their application form had legal representation when making an application to the CCRC.

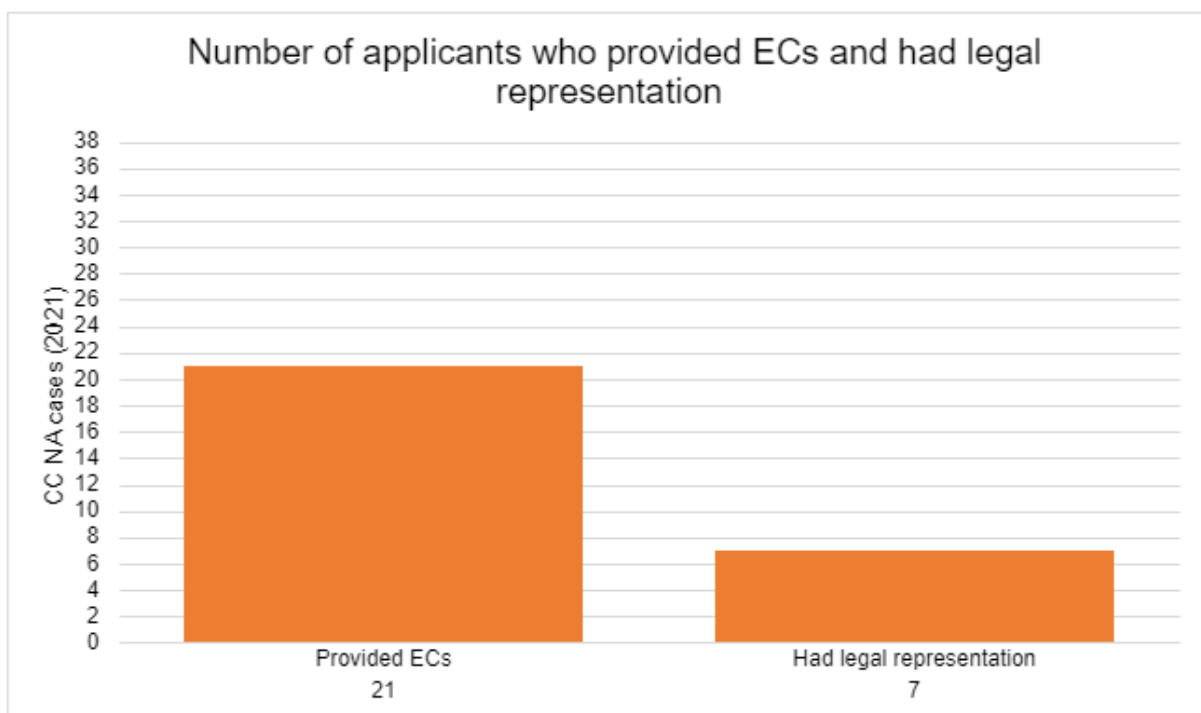


Figure 11: Graph depicting how many of the 2021 applicants that provided ECs on their application form had legal representation when making an application to the CCRC.

Of the 9 applicants from 2020 who raised the CCRC's powers as an EC, 7 were legally represented at the time of making their application to the CCRC. Of the 5 applicants from 2021 who raised the CCRC's powers as an EC, 3 were legally represented at the time of making their application to the CCRC.

In the majority of cases where the GL or CRM finds that the CCRC's powers are needed, the applicant has failed to raise this as an EC themselves. In 2020 9 applicants raised this EC and the CCRC found it applied in 17 cases, and in 2021 5 applicants raised this EC and the CCRC found it applied in 16 cases. This could suggest that having legal representation does assist applicants in stating the appropriate EC on their application form. However, as we are working with such a small number of applicants when assessing the impact of legal representation on CCRC applications and ECs, it is difficult to conclude whether having legal representation makes a difference for the purpose of raising ECs generally.

The most important takeaway from this analysis is that not enough applicants are legally represented and so they miss the opportunity to state ECs on their application form. This is particularly the case when the applicant needs the CCRC's powers. This issue is partially mitigated through the CCRC's own assessment of the case as it provides a safeguard to prevent cases that do have ECs from being missed.

It is difficult to see how the CCRC can further address this issue as the availability and cost of legal representation is a wider issue across the criminal justice system and is not confined to CCRC applications. Despite this, the CCRC emphasises that legal representation is not needed to apply to the CCRC and much of the CCRC literature is orientated at people with no legal background.

## **Chapter 2: Recommendations**

### **2.1 Preamble**

Publishing some more comprehensive guidance for applicants on ECs would be ideal. However, it is not possible to list every single EC and every single circumstance that is not an EC. Nevertheless, there are some smaller changes that could be made that would make the process of identifying ECs clearer and more accessible for both applicants and the CCRC. These recommendations can be found below.

#### **Overview**

- **CCRC should suggest amendments to the Easy Read magistrates' appeal form.**
- **Provide clearer guidance on when the applicant being deceased is an EC.**
- **Future research into the guidance on mental health difficulties as an EC.**

### **2.3 CCRC should suggest amendments to the Easy Read magistrates' appeal form**

Having looked at the [Easy Read Form for appealing a magistrates' decision](#), the CCRC may want to consider proposing an amendment to this form.

This form states that those convicted can only appeal against their sentence if they pleaded guilty but does not signpost people to the CCRC. This makes it seem like there is no route of appeal for those who pleaded guilty, which is not necessarily true as the CCRC can consider this as an EC. Having a short section on this form about applications to the CCRC in the instances of a guilty plea in the magistrates' court would be beneficial for applicants.

### **2.4 Clearer guidance on when the applicant being deceased is an EC**

Currently, there is no guidance for the applicant's representatives or the 'approved person' regarding when the death of an applicant is an EC. There is a checklist type criterion for when this EC applies, thus publishing this as guidance to applicants within the EC policy document would not cause any foreseeable issues, yet it would assist the approved person with completing the application form.

### **2.5 Future research into the guidance on mental health difficulties as an EC**

Across the 2020 and 2021 cases, there seemed to be some uncertainty about what needed to be recorded on the case narrative when considering mental health difficulties as an EC. This is because, in some cases, the thought process behind

either accepting or rejecting the mental health EC was not recorded on the case narrative (for example, A13/2020<sup>19</sup>).

However, 'Overview of ECs' ([CW-REF-11](#)), now reminds CRMs to record how they reached their decision on ECs on the case narrative (discussed above at section 1.2).

This recent casework guidance also states that:

*“It is only where mental illness gives rise to genuinely unusual circumstances that the CCRC will review the case in the absence of a prior appeal.”* (pg. 3)

When considering mental health difficulties as an EC, GLs and CRMs are now directed to look at the context of the application such as: the assistance available to the applicant, the applicant's ability to understand and explain their case, and the disadvantages the applicant faces in securing legal representation. Although CRMs may have been considering these issues prior to this guidance, this was not always recorded on the case narrative.

The 'Overview of ECs' guidance provides a starting point for considering mental health difficulties, and should encourage consistency when assessing whether the applicant's mental health amounts to an EC. The use of this guidance should be monitored, and periodical reviews of the questions CRMs should ask when assessing this EC should be conducted. This would ensure consistency and prevent the consideration of this EC being restricted to just the questions listed in the guidance, as each application should be considered on its own merits.

A deeper analysis into the effect of this guidance in ensuring consistency would not be appropriate at this time as it has not been in force long enough to impact casework. However, I would recommend that this be considered for a future research project.

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<sup>19</sup> The case narrative does refer to the applicant's mental health difficulties and the GL stated that this potential EC needed to be considered further by the CRM. However, there is no record on the case narrative of the CRM considering this EC until the Decision Notice was drafted.

## **Conclusion**

This project looked at a total of 97 'No Appeal' Crown Court cases across 2020 and 2021. These cases all involved some form of consideration of ECs, whether that be ECs raised by the applicant, ECs identified by the CCRC, or a mixture of both.

The analysis of the trends and themes that arose from this project showcase the CCRC's determined and independent approach to investigating miscarriages of justice. The above recommendations simply seek to make the EC process clearer and more accessible for applicants and CCRC staff alike.

I hope that this project can be used as a starting point for further research, including ECs in 'No Appeal' magistrates' court cases, and guidance on mental health difficulties as an EC.