



Criminal Cases Review Commission

## CASEWORK POLICY

Policy Title: **Exceptional Circumstances**

Reference: **CW-POL-06**

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.

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### Introduction

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.

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## Key Points

- 1) The CCRC can only refer No Appeal cases if there are “exceptional circumstances” (ECs) meaning ‘very special reasons.’
- 2) ECs are very rare, there are no automatic ECs.
- 3) The CCRC decides if there are ECs on the facts of each case.
- 4) Forgetting to appeal, missing the deadline to appeal, or being unable to get a lawyer to help you appeal are **not** ECs.
- 5) There has to be a good reason why you did not appeal and cannot appeal now without the CCRC’s help.

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## Definitions

Key Word	Meaning
CRM	Case Review Manager
ECs	Exceptional Circumstances (meaning ‘very special reasons’)

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## 1 General Information

- 1.1 The CCRC’s powers and responsibilities as regards decision-making arise 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.<sup>1</sup>
- 1.2 One of the conditions in section 13 of the Act is that, in any case, an appeal **must** already have been determined, or leave to appeal refused, unless there are exceptional circumstances (ECs). In other words: ECs can by-pass the need for a previous appeal in relation to a conviction, verdict, finding and sentence.

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<sup>1</sup> See ‘CW-POL-04 Case Review Process’ for further information.

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1.3 Meaning of appeal, or application for leave to appeal

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 (permission to appeal) 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 their appeal or application for leave to appeal to the Crown Court or the Court of Appeal.

1.4 There are no automatic ECs. The CCRC decides if there are ECs on the facts of each case.

1.5 Here are some examples of what are **not** considered to be ECs:

- I. You forgot to appeal or have missed the deadline - you can still ask the court for an appeal. This is called appealing “out of time”.
- II. You received advice from your solicitor or barrister that you have no grounds for appeal - this does not stop you from appealing.
- III. You have been unable to get a solicitor or barrister to help you appeal - you can apply for an appeal yourself without legal assistance.

**2 No Appeal cases - core principles applied by the CCRC**

2.1 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.

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- 2.2 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 EC justifying referral.
- 2.3 Where a real possibility is raised by an argument that since conviction there has been a change in the common law, an applicant will generally be advised to make an application for leave to appeal directly to the Court of Appeal.<sup>2</sup>
- 2.4 Where an applicant wishes to rely upon new expert evidence, ECs 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.
- 2.5 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.

### 3 No Appeal cases - initial consideration

- 3.1 When an application is received at the CCRC, it is considered initially by administrative staff. 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.
- 3.2 Cases where the applicant pleaded guilty in the magistrates’ court will be passed to a Group Leader for screening because there is no ordinary right of appeal following a magistrates’ court guilty plea and so there will always be **potential** exceptional circumstances. In all other instances where the applicant has not appealed, a Case Review Manager (CRM) will consider whether there are potential ECs.

<sup>2</sup> See ‘CW-POL-15 Development of Law as a Ground for Referral’ for more information.

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3.2.1 Where potential ECs are apparent (inc. magistrates' court guilty plea cases)

The case will be investigated by a CRM. That investigation will be limited to issues directly associated with the potential ECs. Once that review is complete, the case will proceed through the normal decision-making process.<sup>3</sup> The issue of ECs will be kept under consideration throughout the CCRC's review of the case and at the decision-making stage.

3.2.2 Where no potential ECs are apparent

Where the CRM has not identified any potential ECs, the case proceeds to a decision-maker for a decision. If the decision-maker agrees that there are no potential ECs, they 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 ECs, then the case will be processed as per paragraph 3.2.1 above.

3.2.3 Where there are no potential ECs but a real possibility is apparent

A real possibility may be apparent on the face of the application without there being any potential ECs. 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.

## 4 No appeal cases - review and decision making

4.1 When it has been decided that a No Appeal case should be investigated, it will be allocated to a CRM.

4.2 If the CCRC cannot identify any actual or potential new evidence or argument capable of amounting to a real possibility, in circumstances where ECs might also arise, a Statement of Reasons not to refer will be issued. Where appropriate, the applicant will be given a period of time, usually 20 working days, in which to make further submissions in response.<sup>4</sup>

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<sup>3</sup> See 'CW-POL-04 Case Review Process' for further information.

<sup>4</sup> See 'CW-POL-08 Further Submissions' for further information.

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- 4.3 It may become apparent at any stage during the review that there are no ECs 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 their own application for leave to appeal out of time.
- 4.4 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 ECs. The CRM will provide a reasoned summary of any potential ECs for consideration by a Single Commissioner or decision-making committee.
- 4.5 If a decision-making committee decides that there is a real possibility **and** there are ECs, a reference will generally be made unless there is some reason why the CCRC should exercise its discretion not to refer.<sup>5</sup>
- 4.6 If there is a real possibility but the decision-making committee finds there are no ECs, 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 ECs 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.
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<sup>5</sup> See 'CW-POL-07 The Discretion to Refer' for further information.

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## Appendices

None

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## Relevant CCRC Documents

Q-POL-01	CCRC Quality Policy
CW-POL-04	Case Review Process
CW-POL-07	The Discretion to Refer
CW-POL-08	Further Submissions
CW-POL-15	Development of Law as a Ground for Referral

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

Criminal Appeal Act 1995

## Case Law

*R v Nunn* [2014] UKSC 37

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## Document Control

Document author: Head of Legal

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## Version History

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