



Criminal Cases Review Commission

CASEWORK POLICY

Policy Title: **Judicial Review**

Reference: **CW-POL-13**

Version: **1.0**

Contents

Key Points.....	2
Definitions	2
1 General Information	3
2 When Proceedings may be Issued.....	3
3 The Pre-action Protocol	4
4 If Proceedings are Issued	5
5 If Permission is Granted.....	5
6 If the Challenge is Conceded	6
8 Time Limits.....	7
9 Service.....	7
10 Delegation.....	7
Relevant CCRC Documents	8
Document Control.....	8

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.

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 explains the CCRC’s approach to judicial review proceedings.

OFFICIAL - Criminal Cases Review Commission		
Document Ref: CW-POL-13	Judicial Review	Date Issued: 15/07/2021
Page 1 of 8	Uncontrolled When Printed	Version: 1.0

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 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 at any time during a review and/or after the CCRC has made a final decision.
- 4) The applicant must write a letter before action to the CCRC setting out, in general terms, the basis of the challenge ('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 and/or after 4pm will be deemed served on the following working day.

Definitions

Key Word	Meaning
Administrative court	A type of court within the High Court which deals with judicial review cases.
Applicant	The person who is applying for a judicial review
CCRC	Criminal Cases Review Commission
Chairman	Chairman of the CCRC; the person in charge
Commission	Another name for the CCRC
Concede	To admit that we (the CCRC) were wrong
Counsel	A lawyer (particularly a barrister)
Judicial Review	An independent process in which a judge looks at the decision the CCRC makes and says if that decision was lawful or illegal.
Quash	Cancels an earlier decision such as a conviction

OFFICIAL - Criminal Cases Review Commission		
Document Ref: CW-POL-13	Judicial Review	Date Issued: 15/07/2021
Page 2 of 8	Uncontrolled When Printed	Version: 1.0

Key Word	Meaning
Referral	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 way in which we get our powers to investigate; it comes 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.¹
- 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 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 with an application for judicial review. Outside this time limit, he/she must apply for leave to apply for permission 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.
 - The question of interim disclosure or
 - A decision not to exercise a statutory power, pursue a particular investigative step or interview a witness.

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

OFFICIAL - Criminal Cases Review Commission		
Document Ref: CW-POL-13	Judicial Review	Date Issued: 15/07/2021
Page 3 of 8	Uncontrolled When Printed	Version: 1.0

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 challenge to the CCRC's interpretation of the law.
- The assessment of fresh evidence or the credibility of a witness.
- The "real possibility"² test or
- The exercise of the discretion not to refer.³

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. If an initial or subsequent application to the CCRC does not result in a referral 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.⁴ 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 in order to reduce the increasing number of claims being issued in the Administrative Court. There is no 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.
- 3.4 Any letter received at the CCRC which indicates an intention to commence proceedings for judicial review will be passed immediately to the CCRC's legal team.

² Set out in section 13 of the Criminal Appeal Act 1995.

³ See 'CW-POL-07 The Discretion to Refer' for further information.

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

OFFICIAL - Criminal Cases Review Commission		
Document Ref: CW-POL-13	Judicial Review	Date Issued: 15/07/2021
Page 4 of 8	Uncontrolled When Printed	Version: 1.0

- 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 proceedings will be passed to the Head of Legal, who 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 other member of the legal team. In an appropriate case, it may be necessary to instruct outside counsel to advise on the issues raised in the claim, 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 renew the application, at which point an oral permission hearing of 20-30 minutes will be scheduled by the Administrative Court.

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.

OFFICIAL - Criminal Cases Review Commission		
Document Ref: CW-POL-13	Judicial Review	Date Issued: 15/07/2021
Page 5 of 8	Uncontrolled When Printed	Version: 1.0

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 The CCRC and the applicant may be able to reach agreement as to how the challenge can be resolved without recourse to litigation.
- 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.
- 6.4 The Director of Casework Operations 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 The Overriding Principle of Fairness

- 7.1 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.
- 7.2 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.

OFFICIAL - Criminal Cases Review Commission		
Document Ref: CW-POL-13	Judicial Review	Date Issued: 15/07/2021
Page 6 of 8	Uncontrolled When Printed	Version: 1.0

8 Time Limits

- 8.1 The time limits referred to in this document relate to consecutive days, not working days. No additional time is afforded in lieu of weekends or Bank Holidays.
- 8.2 The 14-day time limit for responding to a letter issued under the pre-action protocol **cannot** be extended by consent of the parties.
- 8.3 The 21-day time limit for filing an Acknowledgement of Service **cannot** be varied by consent of the parties in accordance with Civil Procedure Rule 54.8 (3).
- 8.4 In order to ensure that the CCRC complies with its obligations in relation to these time limits, any Commissioner, case reviewer or administrator who receives any item of correspondence relating to judicial review will pass the matter to the Head of Legal immediately.

9 Service

- 9.1 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, 5 St Philip's Place, Birmingham, B3 2PW
DX - 715466 Birmingham 41
Email - info@ccrc.gov.uk

- 9.2 If we do not receive the correspondence via any of the above methods, then it will not be deemed served.
- 9.3 Any correspondence served on a non-working day and/or after 4pm will be deemed served on the following working day.

10 Delegation

- 10.1 The Chairman may, in any individual case, decide to delegate all or part of their role in the judicial review process as outlined above.

OFFICIAL - Criminal Cases Review Commission		
Document Ref: CW-POL-13	Judicial Review	Date Issued: 15/07/2021
Page 7 of 8	Uncontrolled When Printed	Version: 1.0

- 10.2 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.
- 10.3 In no circumstances will such delegation be to a Commissioner who made or took part in making the decision under challenge.

Appendices

None

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)

Criminal Appeal Act 1995

Civil Procedure Rules 1998 (as amended)

Document Control

Document author: Head of Legal

Issue authorised by: Director of Casework Operations

Version History

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OFFICIAL - Criminal Cases Review Commission		
Document Ref: CW-POL-13	Judicial Review	Date Issued: 15/07/2021
Page 8 of 8	Uncontrolled When Printed	Version: 1.0