



Criminal Cases Review Commission

CASEWORK POLICY

Policy Title: **Assisting the Royal Prerogative of Mercy (s.16)**
Reference: **CW-POL-26** Version: **1.0**

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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.

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].

Introduction

This document sets out the CCRC’s approach to cases concerning the Royal Prerogative of Mercy (RPM) under the two situations envisaged by section 16 of the Criminal Appeal Act 1995: references to the CCRC by the Executive, and cases where the CCRC recommends the RPM.

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This Policy and the relevant powers cover convictions and sentences in England, Wales and Northern Ireland. They also extend to the Court Martial and the Service Civilian Court.

Key Points

Unless otherwise stated, all references to 'sections' are in relation to the Criminal Appeal Act 1995.

References by the Executive to the CCRC under section 16(1) or 16(2A)

- 1) The reference will be made to the CCRC by the relevant Minister.
- 2) The relevant Minister is either the Secretary of State for Justice (in England and Wales) or the Minister in charge of the Department of Justice (in Northern Ireland).
- 3) This reference will be made in writing and is not revocable.
- 4) The CCRC will conduct an investigation using its experience, resources and statutory powers appropriately.
- 5) A Statement setting out the results of the investigation and the CCRC's conclusions will be provided to the relevant minister.
- 6) In coming to its conclusions, the CCRC will take account of any recent and/or historical practices regarding the RPM and its use.
- 7) The Statement will be approved by a committee of at least three Commissioners.
- 8) The relevant Minister is to treat the CCRC's Statement as conclusive of the matter referred.

Recommendations by the CCRC under section 16(2) or 16(2B)

- 9) This will usually have arisen in the context of a CCRC investigation.
- 10) Any such recommendation will be considered by a committee of at least three Commissioners.
- 11) In the case of such a recommendation, a Statement setting out the results of the investigation, the CCRC's conclusions and its reasoning will be provided to the relevant Minister.
- 12) In coming to its conclusions, the CCRC will take account of any recent and/or historical practices regarding the RPM and its use.
- 13) The CCRC's Statement is not binding on the relevant minister.

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Definitions

Key Word	Meaning
MOJ	Ministry of Justice
Recommendation	The CCRC's conclusion in respect of a matter under section 16(2) or 16(2B) and concerning the RPM. It is advisory and non-binding.
Reference	A request to the CCRC under section 16(1) or 16(2A).
Relevant Minister	In cases from England and Wales, this is the Secretary of State for Justice. In cases from Northern Ireland, this is the Minister in charge of the Department of Justice.
RPM	Royal Prerogative of Mercy
SSJ	Secretary of State for Justice
Statement	A report required by the Criminal Appeal Act 1995 setting out the CCRC's conclusions and reasons.

1 General Information

- 1.1 The Royal Prerogative of Mercy (RPM) permits the British monarch to grant a pardon to a convicted person or to vary a sentence. It does not overturn a conviction.
- 1.2 In practice, the power is exercised through the Secretary of State for Justice (SSJ) in England and Wales¹ or the Minister in charge of the Department of Justice in Northern Ireland.²
- 1.3 The policy and power extends to the Court Martial and the Service Civilian Court.³

2 The CCRC's Powers

- 2.1 Section 16 of the Criminal Appeal Act provides for the CCRC to consider the RPM in two distinct situations:
 - I. References to the CCRC by a relevant Minister, and
 - II. Recommendations to a relevant Minister by the CCRC.

¹ Section 16(1) of the Criminal Appeal Act 1995.

² Section 16(2A) of the Criminal Appeal Act 1995.

³ Section 16(3) of the Criminal Appeal Act 1995.

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2.2 Relevant Minister's Power to Refer to the CCRC

- 2.2.1 The relevant statutory provisions are set out in sections 16(1) and 16(2A) (see [Appendix 1](#) for the entire section 16 of the Act).
- 2.2.2 Section 16(1) covers cases from England and Wales. The Secretary of State means the Secretary of State for Justice.
- 2.2.3 Under section 16(2A), a similar provision exists in respect of references from Northern Ireland. The relevant Minister in Northern Ireland is the Minister in charge of the Department of Justice.

2.3 CCRC's Power to make Recommendations to a Relevant Minister

- 2.3.1 The relevant statutory provisions are set out in sections 16(2) and 16(2B) (see [Appendix 1](#) for the entire section 16 of the Act).
- 2.3.2 This refers to cases where the issue arises in the course of an application to the CCRC. Section 16(2) covers cases from England and Wales. Again, the Secretary of State is the Secretary of State for Justice.
- 2.3.3 Under section 16(2B), a similar provision exists in respect of Northern Ireland. Again, the relevant Minister in Northern Ireland is the Minister in charge of the Department of Justice.

3 **Court Martial and the Service Civilian Court**

- 3.1 The Armed Forces Act 2006 extends the CCRC's powers under section 16(1) of the Criminal Appeal Act 1995 to include convictions in the Court Martial and the Service Civilian Court.⁴
- 3.2 Depending on the facts of a case from either the Court Martial or the Service Civilian Court, the CCRC would determine whether the relevant Minister was the SSJ or the Minister in charge of the Department of Justice.

⁴ Section 16(3) of the Criminal Appeal Act 1995.

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4 References under Sections 16(1) and 16(2A)

- 4.1 The CCRC is obliged to consider references and will use its resources and statutory powers to assist the relevant Minister appropriately.
- 4.2 Once made, a reference is not revocable by the relevant Minister.
- 4.3 The precise nature of any investigation will be for the CCRC to determine. In making such a determination, the CCRC will have regard to its experience, published casework policies and casework procedures.
- 4.4 The CCRC will update the relevant Minister as necessary regarding timescales and progress.
- 4.5 If it considers appropriate to do so, the CCRC may inform and update other parties on its work and progress (including the convicted person, their representative, witnesses, victims or next of kin).
- 4.6 At the end of its investigation, a written Statement describing the CCRC's inquiries, its conclusions and supporting reasoning will be approved by a committee of at least three Commissioners and provided to the relevant Minister.
- 4.7 The relevant Minister is to treat the CCRC's Statement as conclusive of the matter referred.
- 4.8 In formulating its conclusions, the CCRC will take account of any recent and historical practices regarding the exercise of the RPM. This may include whether or not there is an appropriate route for the matter to be referred to an appellate court; whether there is clear evidence of innocence (or clear evidence that no crime has been committed) and whether there are any extraordinary circumstances.
- 4.9 The CCRC will consider any associated disclosure in line with its statutory obligations and published policies.⁵

⁵ See 'CW-POL-19 Disclosure by the CCRC' for further information.

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5 Recommendations under Sections 16(2) and 16(2B)

- 5.1 In the course of a case review, the CCRC may wish to consider making a recommendation to the relevant Minister regarding the RPM, or may be asked by an applicant or their representative to consider doing so.
 - 5.2 In the event that a Commissioner or case reviewer considers that such a recommendation may be appropriate, a committee of at least three Commissioners will be convened to discuss the matter.
 - 5.3 In the event that the CCRC decides to make such a recommendation, a written Statement describing the CCRC's inquiries and its supporting reasoning will be approved by the committee.
 - 5.4 In formulating its recommendation, the CCRC will take account of any recent and historical practices regarding the exercise of the RPM. This may include whether or not there is an appropriate route for the matter to be referred to an appellate court; whether there is clear evidence of innocence (or clear evidence that no crime has been committed) and whether there are any extraordinary circumstances. The applicant will also be provided with a copy of the Statement.
 - 5.5 In the event that the committee decides against making a recommendation, the CCRC will inform the applicant and provide reasons. In such circumstances, it will not be necessary for the CCRC to inform the relevant Minister.
 - 5.6 The CCRC will consider any associated disclosure in line with its statutory obligations and published policies.
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Relevant CCRC Documents

Q-MAN-01	CCRC Quality Manual
Q-POL-01	CCRC Quality Policy
CW-POL-19	Disclosure by the CCRC

Legal Documents (available for free from www.legislation.gov.uk)

Armed Forces Act 2006
Criminal Appeal Act 1995
Northern Ireland Act 1998

Document Control

Document author: Head of Legal
Issue authorised by: Director of Casework Operations

Version History

Date Issued	Version	Brief Details of Change	DCR
15/07/2021	1.0	First Issue	21/04

Appendix 1 - Criminal Appeal Act 1995 (excerpt)

The law stated below is provided here for information only. It is correct at the time this policy document was published. However, you should always check the www.legislation.gov.uk website for the latest version of the law

16 Assistance in Connection with Prerogative of Mercy

(1) Where the Secretary of State refers to the Commission any matter which arises in the consideration of whether to recommend the exercise of Her Majesty's prerogative of mercy in relation to a conviction and on which he desires their assistance, the Commission shall -

- (a) consider the matter referred, and
- (b) give to the Secretary of State a statement of their conclusions on it;

and the Secretary of State shall, in considering whether so to recommend, treat the Commission's statement as conclusive of the matter referred.

(2) Where in any case the Commission are of the opinion that the Secretary of State should consider whether to recommend the exercise of Her Majesty's prerogative of mercy in relation to the case they shall give him the reasons for their opinion.

(2A) Where the Minister in charge of the Department of Justice in Northern Ireland refers to the Commission any matter which arises in the consideration of whether Her Majesty's prerogative of mercy should be exercised on Her behalf under section 23(2) of the Northern Ireland Act 1998 in relation to a conviction and on which the Minister desires the Commission's assistance, the Commission shall -

- (a) consider the matter referred, and
- (b) give to the Minister a statement of their conclusions on it;

and for the purposes of the consideration of whether Her Majesty's prerogative of mercy should be so exercised, the Commission's statement shall be treated as conclusive of the matter referred.

(2B) Where in any case the Commission are of the opinion that Her Majesty's prerogative of mercy should be so exercised, they shall give the Minister reasons for their opinion.

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- (3) In subsection (1) “conviction” includes a conviction by the Court Martial or the Service Civilian Court, and in subsection (2) “case” includes the case of such a conviction.

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