



## **Independent Review of Legal Aid**

### **Response to the Call for Evidence**

#### **Context**

1. This is the response of the Criminal Cases Review Commission (the CCRC) to the call for evidence by the Independent Review of Criminal Legal Aid (ICLAR).
2. The CCRC's response is drawn from its consideration of applications for the review of criminal convictions in the Magistrates' Courts and Crown Courts of England, Wales, and Northern Ireland.<sup>1</sup>

#### **Summary**

3. The CCRC strongly supports the objectives of the Review. The CCRC agrees that improving the availability and delivery of high-quality legal advice to potential CCRC applicants will have corresponding gains in the administration of justice. Importantly, it will help avoid wrongful convictions and assist the CCRC in promptly identifying potential miscarriages of justice.

---

<sup>1</sup> The CCRC operates under the Criminal Appeal Act 1995. It started work in April 1997 and has processed over 27,000 applications. Over 750 cases have been identified as potential miscarriages of justice and referred to the appellate courts. More information on the CCRC's policies and its performance is published on its website at [www.ccrcc.gov.uk](http://www.ccrcc.gov.uk).

## Detailed Responses

4. The CCRC notes that responses are not requested to all questions. It has focussed on those questions where responses are directly informed by its experience. These are Q1, Q5, Q7 and Q9.

**Q1. What do you consider are the main issues in the functioning of the Criminal Legal Aid System? Please highlight any aspects or stages of the criminal justice process relevant to your response.**

5. For context, the CCRC's statutory remit relates primarily to post-conviction work. Individuals who believe they have been wrongfully convicted may apply to the CCRC. Applicants to the CCRC are convicted of summary and/or indictable offences. An application to the CCRC can precede or post-date a request for leave to appeal. The application to the CCRC can relate to conviction and/or sentence. Where appropriate, the CCRC issues a provisional decision and invites further comments before making a final decision.<sup>2</sup>
6. The CCRC's observations in response to this question are linked to the declining volume of legally aided applicants together with the corresponding issues, benefits and dangers. The CCRC's views are informed by several

---

<sup>2</sup> Decision Making Process at <https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1l/uploads/2020/09/DECISION-MAKING-PROCESS-2.pdf>.

academic research studies.<sup>3</sup> The most recent and relevant is the study undertaken by the University of Sussex: this was published in May 2021. The Commission has published a formal response and two press releases.<sup>4</sup>

### Declining Volume

7. The CCRC has seen a marked and very concerning decline in the number of applicants from England and Wales who receive legally aided representation. In 2006, around 34% of applicants to the CCRC were legally represented.<sup>5</sup> Between 2011 and late 2014, this proportion had dropped to 23%.<sup>6</sup> Since then, a steady and sustained downward trend has continued: during the business year 2018-19, the level of legal representation was close to 10%.<sup>7</sup> Likewise, the number of professionals who are willing and able to undertake CCRC work has also decreased. Both trends appear linked to a decline in funding and changes to criminal legal aid. Further information is contained in the University of Sussex study, the CCRC's formal response and the associated press releases.

### Benefits and Issues

8. The CCRC sees considerable benefit in applications submitted by legal representatives. In addition to pinpointing relevant legislation and caselaw,

---

<sup>3</sup> See Appendix 1.

<sup>4</sup> See Appendix 2.

<sup>5</sup> A Report prepared for the Legal Services Commission by Professor J Hodgson and Juliet Horne in 2008 (University of Warwick); at 4.1 and 4.2. Hyperlinked at Item 3 of Appendix 1.

<sup>6</sup> University of Sussex research at page 16. Hyperlinked via Item 1 of Appendix 1.

<sup>7</sup> The CCRC's Annual Report 2018-2019 observes that approximately 90% of applicants are unrepresented. The number of applications received for that year was 1371 and 1439 had been received the previous year (page 10). We will continue to monitor this figure.

such submissions can be well-organised, professionally presented, realistic, candid and focussed. The representatives will usually have ensured that an application to the CCRC is the appropriate route to challenge the conviction (or sentence)<sup>8</sup> and will have often undertaken all relevant preparatory work.<sup>9</sup>

9. Such applications speed the progress of reviews and reduce the work that is necessary for the CCRC to undertake. Legally aided applicants also have the benefit of a representative who can liaise with the CCRC, explain a decision to an applicant and where appropriate challenge outcomes. A decrease in legally aided applications has coincided with an increase in the work of the CCRC.
10. Importantly, although the CCRC is confident that it routinely identifies all salient issues in applications, it spends considerable time dealing with submissions that are poorly presented, misplaced and that are irrelevant. That is not the fault of the unrepresented applicant.
11. Additionally, many applicants have applied to the CCRC without exhausting their appeal rights. Under statute, the CCRC can only review these cases if there are exceptional circumstances.<sup>10</sup> Very few applicants use the dedicated

---

<sup>8</sup> Leave to appeal will have been sought or 'exceptional circumstances' will be identified. See also paragraph 11.

<sup>9</sup> Including inquiries with counsel (in line with *R v McCook* 2014 EWCA Crim 734), securing waiver of privilege and engaging with the police and CPS regarding the testing of exhibits in line with *R (Nunn) v Chief Constable of Suffolk* UKSC [2014] 37. In respect of *Nunn* see 23-4 below.

<sup>10</sup> Section 13 of the Criminal Appeal Act 1995. 'Exceptional circumstances' can include situations that require the CCRC to use its statutory powers (for example cases requiring inquiries into police surveillance and informants), cases where applicants have particular vulnerabilities (such as those traumatised by torture and persecution in asylum cases) and where there are ongoing, linked reviews (as was the position in the recent Post Office appeals). See also the CCRC's policy at [Exceptional Circumstances](#).

space in the CCRC's easy-read application form to address exceptional circumstances. Consequently, many individuals (around 380 each year) are redirected by the CCRC to the appellate courts.<sup>11</sup> This causes frustration for applicants, incurs an administrative overhead for the CCRC and wastes time for all concerned. Higher quality and more widely available legal advice would either result in more applicants explaining why their case is exceptional – or appropriate applications being made to the appellate courts directly. This aspect of the CCRC's work formed the basis of a recommendation by the Westminster Commission under the chairmanship of Lord Garnier and Baroness Stern (see 24-25 below and Appendix 3).

### Dangers

12. The CCRC is also concerned that the scarcity of practitioners to assist applicants may prevent meritorious cases being brought to its attention through a lack of awareness of its existence and functions. This is because, although the CCRC ensures that it advertises, undertakes outreach work and that its application process is straightforward, it is possible that a wrongfully convicted person remains either unaware of the CCRC as a route to challenge their conviction or feels unable to make a submission.
  
13. Also, following on from 11 above, there appears to have been some reluctance by applicants to appeal directly. Having made an application to the CCRC and

---

<sup>11</sup> Based on data for business years 01.04.2015 – 31.03.2020. Further information is contained in the CCRC's annual parliamentary reports. These are available online.

been told that there are no exceptional circumstances, a convicted person with a meritorious but unexceptional appeal ground may not lodge an appeal.<sup>12</sup>

**Q5. Does the present structure of Criminal Legal Aid meet the needs of suspects, defendants, victims, and witnesses? Please explain your answer.**

14. No. The current structure has led to a marked decline in the number of practitioners who are able and willing to assist with applications to the CCRC. The CCRC emphasises that it has adapted its processes and remains accessible to all. Moreover, it aims to provide every applicant with the same high quality of case review and will always do so irrespective of whether an applicant is represented or not. However, we note that many more applicants would wish to be represented than is currently the case. Likewise, although the CCRC is confident that unrepresented applicants are not disadvantaged in the outcome of a review, there are considerable benefits that legal representatives bring: both in terms of speeding up CCRC reviews and for the criminal justice system overall by ensuring applications are properly directed (see also paragraphs 8-12 above).
15. The CCRC is also deeply concerned that deficiencies in the provision of Criminal Legal Aid have led to inadequate representation during police

---

<sup>12</sup> The CCRC notes that the appellate courts are now using easy-read forms to assist individuals who are self-representing.

interviews, incomplete requests for disclosure and ill-informed guilty pleas.<sup>13</sup> The CCRC considers that it is inconceivable that sustained reductions in Legal Aid can have improved (or even maintained) the standard of representation. The consequences of poor representation will have been particularly pronounced in the Magistrates' Court because that is where most criminal work is transacted. Likewise, this will have created more issues for resolution in the appellate courts and by the CCRC. The CCRC considers that there is a strong case that better investment at first instance would be repaid by a reduction in the higher costs of appellate work. This in turn will increase efficiency, strengthen public confidence in the legal system and most importantly, avoid miscarriages of justice.

#### Accessibility

16. The CCRC should be accessible to all applicants. It has always been a valuable and popular message for the CCRC to say: 'it is free to apply, and you don't need a solicitor to do so'.
17. To this end, the CCRC offers easy read application forms and will accept submissions in any practical format. It can process applications from individuals as well as those made on behalf of individuals by family, friends or campaign groups – or those that are drafted by legal professionals.

---

<sup>13</sup> The CCRC has referred numerous cases where potential defences were not considered in relation to offences committed by asylum seekers while fleeing persecution. The CCRC and the Court of Appeal have acknowledged the complexity of the relevant statute and case law in this area. The event at paragraph 30 included some practitioners' concerns on these matters.

18. However, the situation has shifted to the extent that applicants appear to have little or no freedom of choice in the matter of deciding whether to use the services of a legal representative in a CCRC application.
19. There are some associated consequences for some victims. The CCRC does not inform all victims of applications but will do so in appropriate circumstances.<sup>14</sup> Victims are often concerned to learn of reviews and are apprehensive about the potential need for a return to court. The CCRC recognises that these issues will exist irrespective of whether an applicant is legally represented. However, if, as is anticipated, a corollary of better representation are speedier reviews, there will be by shorter periods of anxiety for victims and any witnesses.

**Q7. What reforms would you suggest to remedy any of the issues you have identified?**

20. The CCRC is an inquisitorial body rather than adversarial. It does not view its investigative work as litigation.<sup>15</sup>
21. The CCRC would support increasing the number of legal practitioners who are willing and able to undertake the work relating to CCRC applications. Qualifying work would include drafting submissions to the CCRC, managing correspondence, liaising with an applicant in relation to matters such as waiving legal privilege, explaining a CCRC decision, making further representations in

---

<sup>14</sup> Victims of Crime Policy at <https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1/uploads/2020/04/VICTIMS-OF-CRIME.pdf>.

<sup>15</sup> Its decisions are open to challenge by way of judicial review.

relation to a Provisional Statement of Reasons and whether there is a basis for challenging a final decision by way of judicial review.

22. The CCRC appreciates that achieving this will require practitioners receiving fair and prompt remuneration. The CCRC recognises that different cases will be of different complexity and require different amounts of work. On balance, payment based on time and professional experience would seem more appropriate than a fixed fee.

**Q9: Is there anything else you wish to submit to the Review for consideration?**

23. Yes. There are four additional matters that the CCRC wishes to bring to the Review's attention:
- i. Post-conviction requests for testing and disclosure in line with *Nunn*.
  - ii. The Report of the Westminster Commission.
  - iii. General observations on the standard of defence work.
  - iv. Willingness to assist further with the Review.

**Post-conviction Requests in line with *Nunn***

24. In *R (Nunn) v Chief Constable of Suffolk*<sup>16</sup> the UK Supreme Court clarified the position in relation to the post-conviction responsibilities of the police and prosecution regarding forensic testing and disclosure. These are now

---

<sup>16</sup> [2014] UKSC 37

embodied in the Attorney General's Guidelines on Disclosure. *Nunn* requires sensible judgment to be exercised ahead of applications to the CCRC.<sup>17</sup>

25. The Commission would support the work of legally aided representatives to seek disclosure in line with *Nunn*.

### The Westminster Commission

26. The Review will be aware of the work of the Westminster Commission.<sup>18</sup> There are several issues that are addressed by the Westminster Commission and that will be of interest to the Review.
27. The CCRC has recently responded to the Westminster Commission. Its Response is at Appendix 3. In particular, the Review is asked to note Recommendations 6 and 7 as these directly concern the issue of Criminal Legal Aid. For convenience, the CCRC sets out these recommendations and its responses, in full, at Appendix 3.

### Observations on Defence Practice

28. The CCRC has not detected any deterioration in the quality of defence practice in the past 25 years. Relatively, few references to the appellate courts have

---

<sup>17</sup>[Attorney General s Guidelines 2020 FINAL Effective 31Dec2020.pdf \(publishing.service.gov.uk\)](#) at paragraph 138. The CCRC is working with the NPCC to formulate further guidance on this matter.

<sup>18</sup> Also known as 'Report of the All-Party Parliamentary Group on Miscarriages of Justice'. The APPG was chaired by Lord Garnier and Baroness Stern. Its report is at: [Report of Westminster Commission on Miscarriages of Justice | Criminal Justice Hub](#)

involved a direct criticism of trial solicitors or counsel. None have been directly linked to a paucity of funding of the defence.

29. The CCRC is however mindful that there may be cases that are in the system and where a fair outcome is being jeopardised by insufficient funding. There may be others where an unfair outcome would occur in the future if problems identified by the Review are not resolved.

Willingness to Assist Further

30. The Commission has attended a round table event with practitioners and Sir Christopher Bellamy QC on 1 June 2021 in Birmingham. We will be pleased to provide further information about any aspect of our work and the CCRC (including its Chairman, some Commissioners, and staff) will be pleased to meet with Sir Christopher if that will assist the review.

**10 June 2021**

**END**

## Appendix 1

### Academic Studies relating to the CCRC and Legal Aid

1. [https://sro.sussex.ac.uk/id/eprint/99153/1/210420\\_CCRC\\_FinalReport%20%281%29.pdf](https://sro.sussex.ac.uk/id/eprint/99153/1/210420_CCRC_FinalReport%20%281%29.pdf)

**See the CCRC Response and Press Releases at Appendix 2**

2. [24-october-2018-3-The-Court-of-Appeal-and-the-Criminalisation-of-Refugees.pdf](#)
3. [The Extent and Impact of Legal Representation on Applications to the Criminal Cases Review Commission \(CCRC\) by Jacqueline Hodgson, Juliet Horne: SSRN](#)

### Detailed studies of the CCRC's work

4. ['Reasons to Doubt: Wrongful Convictions and the Criminal Cases Review Commission' by Carolyn Hoyle and Mai Sato | Oxford Law Faculty](#)

### Parliamentary Material

5. [Report of Westminster Commission on Miscarriages of Justice | Criminal Justice Hub](#)

**The CCRC Response to the Westminster Commission is at Appendix 3**

## Appendix 2

### CCRC Response to University of Sussex Research

#### Full Response

<https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1/uploads/2021/06/Response-to-Sussex-University-June-2021-07-06-2021.pdf>

#### Press Releases

### Criminal Cases Review Commission says ‘urgent improvements needed in legal aid funding’ in response to University of Sussex research report.

7th June 2021

After the University of Sussex published its findings into legal aid last month, the Criminal Cases Review Commission (CCRC) today shared its official response to the recommendations made.

Sussex University’s report [\*“The Criminal Cases Review Commission: Legal Aid and Legal Representatives”\*](#) was published in May 2021. Its work was funded by the Economic and Social Research Council.

“We are grateful to the University for such detailed independent research on a topic which urgently needs serious improvements to be made if the Criminal Justice System is to be as effective as it can be”, said Chairman of the CCRC, Helen Pitcher OBE.

Sussex University suggested 12 recommendations in its findings. One of the key themes was the subject of legal aid funding. The report found there was a decline in levels of legal representation in the applications made to the CCRC. These submissions fell from a historical average of 34% to 23% in 2012-2014. Alarming, this figure dropped again to just 10% in 2018-2019.

Although the research suggests that there is an association between legal representation and the success of applications, Helen says it’s not essential for applicants to have legal counsel when asking for their case to be investigated – but it helps: “There is no doubt that applicants can sometimes be better served with input from a legal specialist. A legal eye can certainly help an applicant to better understand the key points surrounding their case and any key nuggets of evidence or information as part of that claim.”

“When an applicant understands what helps state their case, or has legal representation, that approach can certainly help with reviews and prevent unnecessary delays,” added Helen.

The CCRC agreed that the application of Sufficient Benefit Tests (SBT) by the Legal Aid Agency (LAA) in relation to CCRC casework should be reviewed to allow lawyers to conduct more sifting work and recognise the value of legal aid cases within the judicial system. The report also proposed that interim payments for CCRC casework be granted, to ease cashflow for law firms, which the CCRC also says is a good idea.

“We really welcome the recommendation that the Legal Aid Agency review its audits and assessments of our casework,” said Helen. “When it comes to assessing how we engage with lawyers we’d be more than happy to do more of this and introduce more interactive events. We also see the value in making sure legal representatives and applicants fully understand their submissions and keep them about updated on the status of their case reviews – taking account of any sensitivities concerned, of course.”

Legal professionals and the CCRC working more closely on post-conviction disclosure and section 17 powers were also cited in the report, although what the CCRC can disclose itself during and after its reviews is limited by law. The report found that legal professionals are selective about what information is provided as part of an application. It also stressed how important it is that legal professional make sure grounds are very clearly stated, what further investigations are considered necessary, and how that investigation will assist in determining the Real Possibility (RP) test: “This sort of approach is invariably of great assistance for us in helping shape the most efficient review possible. We always remain open to engaging more with legal representatives about how best they might add value to the applications they lodge with us.”

Interestingly, as with the Westminster Commission’s recent report, the University also emphasised the crucial need for the CCRC’s own funding to increase.

The University of Sussex is not the only organisation the CCRC has collaborated with on the issue of legal aid. It continues to support the [Independent Criminal Review of Legal Aid \(ICLAR\)](#) that was commissioned by the Ministry of Justice. The CCRC took part at a round table event about this in Birmingham last week and will be submitting its evidence to them shortly. It also plans meet the review’s Chairman, Sir Christopher Bellamy QC, to discuss this evidence in more detail soon.

The CCRC has submitted its response report back to the University and has personally thanked them for carrying out such important research.

**Ends**

### **Notes to editors**

You can read a full copy of the CCRC’s official response to the University of Sussex here: [Response-to-Sussex-University-June-2021-07-06-2021.pdf](#)

Other key headlines identified by the CCRC based on the University of Sussex report are:

- The declining level of legal representation in applications to us fell from 34% to 23% in the period 2012-2014, and then dropped to just 10% in 2018-2019.
- The number of people exiting the criminal bar because of funding cuts and low legal aid payment rates is an increasingly worrying trend.
- Many appropriately qualified solicitors simply cannot afford to continue representing people through legal aid. The same thing is happening with silks, and something really must change.
- It is not essential for applicants to have legal counsel when asking for their case to be investigated – but it helps.
- A legal eye can certainly help an applicant to better understand the key points surrounding their case and any key nuggets of evidence or information as part of that claim.
  
- When an applicant understands what helps state their case, or has legal representation, that approach can certainly help with reviews and prevent unnecessary delays.
- Our ability to disclose is legally determined by statute, case law and legal privilege. However, we do support the need for a consistent approach on this and encourage applicants to consider disclosing the decisions made by us, and the reasons for this, as appropriate.
- Long running cases account for just 6% of applications taking more than two years – with 80% of cases completed within 12 months. The average review time of our cases is less than 36 weeks.

## Spotlight on legal aid in commissioned report published by Sussex University

19th May 2021

An insightful report: “The Criminal Cases Review Commission: Legal Aid and Legal Representatives,” has been published by Sussex University, after the Criminal Cases Review Commission (CCRC) called for research exploring the effects of legal aid changes on applications made to the CCRC.

The report brought the issue of legal aid funding into sharp focus and the fact that many law firms and their representatives simply cannot afford to take on CCRC cases of this kind.

Chairman of the CCRC, Helen Pitcher OBE said: “The number of people exiting the criminal bar because of funding cuts and low legal aid payment rates is an increasingly worrying trend. Many appropriately qualified solicitors simply cannot afford to continue representing people through legal aid. The same thing is happening with silks, and something really has to change.”

Other findings of the report cited funding issues, the application system for legal aid and working with the legal profession to help them to better understand the journey of an application that is made to the CCRC, proposing 12 recommendations under four themes:

- Improving the system for applicants.
- Supporting legal professionals to conduct CCRC casework.
- Mitigating the impact of legal aid funding issues at the CCRC.
- Areas of further research.

An important finding explored the declining level of legal representation in applications to the CCRC, falling from a historical average of 34% to 23% in the period 2012-2014, and then falling further to 10% in 2018-2019.

The findings also support Hodgson and Horne’s assessment that legally represented applicants were more likely to have their cases sent for review. The CCRC has consistently said that applicants whose cases have potential are more likely to be able to secure legal representation.

Also featured in the report were issues raised by lawyers about post-conviction disclosure. The CCRC’s ability to disclose is legally determined by statute, case law and legal privilege. However, the CCRC does support the need for a consistent approach on this and encourages applicants to consider disclosing the decisions made by the CCRC, and the reasons behind them, as appropriate.

Although the research suggests that there is an association between legal representation and the success of applications, Helen says it’s not essential for applicants to have legal counsel when asking for their case to be investigated – but it helps: “There is no doubt that applicants can sometimes be better served with input from a legal specialist. A legal eye can certainly help an applicant to better understand the key points surrounding their case and any key nuggets of evidence or information as part of that claim.”

“When an applicant understands what helps state their case, or has legal representation, that approach can certainly help with reviews and prevent unnecessary delays,” added Helen.

The CCRC said lawyers can assist those who consider they have been wrongly convicted by facilitating an efficient review. They can also give advice to those who have not appealed, by outlining the case to an applicant and what might have gone wrong – and therefore help people to better understand the outcomes after a CCRC review.

Comments from individual lawyers about how long some applicants wait for decisions are acknowledged by the CCRC. However, long running cases account for just 6% of

applications taking more than two years – with 80% of cases completed within 12 months. The average review time of the CCRC's cases is less than 36 weeks.

“On behalf of the CCRC I would like to thank Sussex University for its detailed independent research on a subject which is of great importance to the Criminal Justice System. The CCRC has been delighted to work with them on this,” said Helen.

Looking ahead, the CCRC is factoring in the conclusions reached by Sussex University's research in its response to the recommendations recently made in the Westminster Commission report.

**Ends**

## Appendix 3

### CCRC Response to Westminster Commission

# CCRC releases official response to the Westminster Commission report

2nd June 2021

The Criminal Cases Review Commission (CCRC) has today published its response to the Westminster Commission's report: "*In the Interests of Justice – An inquiry into the Criminal Cases Review Commission*".

Published in March, the report made more than 30 recommendations covering a wide range of issues from resources and funding, through to governance and statutory legislation – the legal framework that the CCRC is legally obliged to work from.

Chairman of the CCRC, Helen Pitcher OBE, welcomes the fact that the report helps raise awareness of the important topic of miscarriages of justice, giving it the public attention that it deserves: "We are a vital public function, so it is important for us to recognise proper public scrutiny in relation to how we operate," said Helen. "In the current climate this has never been more crucial given the impact of reduced funding across the criminal justice system."

Agreeing that more funding is needed, regular and more meaningful updates should take place with its applicants, and Home Office reminders be flagged with the Police about their legal obligations on the retention of material, the CCRC also supports the report's proposals on statutory powers. Section 17 of the Criminal Appeal Act 1995 stipulates that all public bodies must comply with requests for case material. The CCRC embraced the suggestion that a fixed timescale be introduced to avoid lengthy delays, and that there could be sanctions in the rare event that bodies fail to comply.

On communicating with applicants, Helen Pitcher emphasised that, as an independent body, the CCRC cannot be in situation where it is perceived to be collaborating with an applicant: "However we do agree that the general direction of a case review and associated enquiries, unless sensitive, should be outlined in our regular updates to applicants and their legal representatives."

Other recommendations referred to themes under current law the CCRC must follow, including the Real Possibility (RP) test, disclosure, and the Statement of Reasons (SORs) which explain the CCRCs case decisions. "The SoRs contain personal data and are private communications with applicants and their representatives. Publishing these also has implications for third parties, including victims and witnesses, who, even if anonymised, can easily be identified by virtue of the case type.

However, as we made clear in our evidence to the Commission, we believe it would be useful if legislation allowed more discretion to publish the reasons behind our decisions. We welcome transparency, and the more transparent we can be with our reasons the more people will be confident about the work that we do. Ultimately, being able to publish SoRs would be good for confidence in the Criminal Justice System overall. We do encourage applicants and their legal representatives to publish their SoRs, which they have always been free to do – although very few have done this.”

When it comes to the RP test, the CCRC has always applied this benchmark. Since 2005, the Court of Appeal has looked at around 390 cases (which is just over half of the CCRCs referred cases). The RP test is *the* test, which it is legally obliged to follow: “Rest assured that we do apply this with great care and diligence, but we also support the recommendation for an independent review of this test,” said Helen.

On the issue of disclosure, the argument that the CCRC should do more is one that often comes up. As with the SORs, there can be a lot of sensitive information in an applicant’s case, including personal data and material protected by section 23 of the Criminal Appeal Act 1995.

The recommendation about disclosure would require changes in the law to help this to happen. “At the moment, our disclosure obligations are based on other legislation, case law and legal privilege,” said Helen. “Third parties, including the courts, the police, CPS and social services, must feel able to supply information to us in confidence. Applicants are supplied with all the necessary information to help state their best case. But we cannot provide material that is neutral or irrelevant to our decisions.”

The CCRC maintains that, as an independent body, it is appropriate that it determines what is disclosable – and it remains adamant that applications must not be used as a vehicle for people to obtain documents and information they have no legal right to.

Amongst other recommendations the report suggested introducing an advisory panel of experts to focus on forensics and a further panel made up of lawyers. The CCRC says such a move would be a retrograde step. “Having access to the best person for the job that has the latest and most appropriate knowledge is crucial for us,” said Helen. “Restricting ourselves to a single advisory panel would not make sense. If it is needed, then we already seek external legal advice but appointing a fixed team of lawyers does not sit well with our position as a maker of independent decisions.”

The Chairman expressed her thanks that the Westminster Commission has recognised the excellent work carried out by the CCRC. “Equally, we are open to scrutiny about how we operate. We have always been a forward-thinking organisation that is completely committed to continuous improvement.” added Helen.

The CCRC's full responses to all Recommendations are at:

[CCRC releases official response to the Westminster Commission report | Criminal Cases Review Commission](#)

Below are the **two** recommendations on criminal legal aid together with the CCRC's responses in full.

**Recommendation 6: The CCRC should adopt a broader interpretation of the “exceptional circumstances” requirement. This should include cases where applicants can show that there were reasons why they were unable to exercise an appeal right in time, including the inability to access legal advice and representation, as well as where there is new evidence or new techniques which were not available at the time. Applicants should not be required to supply documentary evidence that they have taken all reasonable steps to obtain access to material which the CCRC can acquire using its section 17 or 18A powers.**

The CCRC agrees that it will further consider the issue of Exceptional Circumstances (ECs) and how we approach ‘no appeal’ applications.

The CCRC is very much alive to the fact that our approach to ECs is something which we should keep under active review to ensure that we are acting in the best interests of each of our applicants. It is an area of our work to which we have already given significant thought including a revision to our policy in October 2014 and further changes to our internal processes as part of the whole system review in 2015.

The rationale behind the changes was to ensure a consistent approach to the assessment of ECs across the organisation and to avoid spending a disproportionate amount of our limited resources on applicants who have not exhausted their appeal rights where it is not appropriate for us to do so. The approach taken to no appeal cases also seeks to minimise any delay to the applicant appealing directly to the Court of Appeal where there are no potential ECs.

In addition to our own internal reviews, the CCRC welcomes the independent review of our work and has a dedicated Research Committee to facilitate this. We have taken on board recommendations arising from external research projects to continue to shape our approach to no appeal cases. For example, working with the Court of Appeal to develop an ‘easy read’ Form NG to assist unrepresented applicants. This form is now widely used, and we send this form to each applicant whose ‘no appeal’ application is not accepted for a full review. It is not yet clear whether the easy read Form NG has affected – and if so to what extent – the number of direct appeals by unrepresented appellants. The CCRC considers this to be important information to have if changes to our process for ‘No Appeal’ cases are contemplated.

Following on from the Commission's recommendation, the CCRC intends to give consideration as to whether things have moved on since the Whole System Review in 2015 to require further change and whether further research into this area of our work would now be beneficial.

The assessment of potential ECs is carried out by a Case Review Manager (CRM) who carefully considers not only the issues raised by an applicant but also other potential points which may amount to ECs. This is not simply an administrative process and requires the CRM to be satisfied that they have sufficient information about the applicant and the background to the case to make the assessment. It is important to note that a substantial number of 'no appeal' applications are accepted for a full review (just over 25%)<sup>4</sup> and, indeed, a proportion of these have resulted in referrals to the appeal courts (55% of our referrals were NA cases)<sup>5</sup>.

Whilst the CCRC is open to reviewing its interpretation of ECs, we are mindful that it is vital that the CCRC does not usurp the conventional appeal process, a point which we believe will be relevant to any such review. It is also essential that we remain as accessible as possible – and continue to conduct high quality case reviews – for those applicants who come to us having exhausted the appeal process. Although we acknowledge that cuts to Legal Aid have made it increasingly difficult for individuals to secure legal assistance with appeals, the CCRC does not consider that the lack of Legal Aid alone can amount to an exceptional circumstance. Unfortunately, approximately 90% of our applicants are now unrepresented, so it would require a very broad interpretation indeed for us to be able to assist all unrepresented applicants who have not sought to appeal. However, the current situation with Legal Aid and levels of legal representation remains a matter of deep concern to the CCRC and we wholeheartedly support a review of Legal Aid funding and an uplift in its availability.

We are responding to the current Independent Review of Criminal Legal Aid that is being chaired by Sir Christopher Bellamy QC separately. We also commissioned independent academic research by Sussex University about legal aid and legal representatives, which was published on 14 May 2021.<sup>6</sup>

**Recommendation 7: The 28-day time limit for lodging an appeal should be extended to reflect the difficulties faced by applicants, some of whom are unrepresented and vulnerable.**

The CCRC agrees with this recommendation.

A time limit of 28 days is too short, particularly for applicants who are not represented and/or not eligible for Legal Aid funds. It is also potentially unrealistic for individuals who are in prison, have poor literacy or limited support to appeal within this time.