Written evidence from the Criminal Cases Review Commission

Executive summary

1. The Criminal Case Review Commission is the statutory body created in 1997 to investigate alleged miscarriages of justice and refer appropriate cases to the appeal courts.

2. It has so far reviewed over 15,000 cases and referred more than 540 for appeal. The majority of those referrals were in relation to the most serious crimes.

3. Thanks to determined efforts to make ourselves accessible to all who might need us, applications to the Commission have risen by more than 50% since 2012. In spite of the increased workload, we have kept performance at or around 2012 levels.

4. Our real terms funding shrank by almost 23% between 2008/9 and 2012/13. As a result there were redundancies and other cost saving measures. In 2013/14, in response to increased application rates, we received a small funding increase and recruited to cope with the increased workload.

5. The Commission long argued that its powers to obtain information should cover the private as well as the public sector, as in Scotland. The issue becomes more pressing as more functions transfer from the public to the private sector, but progress remains painfully slow.

6. Between April and November 2013, we referred 24 cases. This looks set to return the referral rate to around 3.5% (the long term average) after two years when it dropped below 3%.

7. We have been concerned about a new series of cases involving the wrongful conviction of people arriving in the UK as refugees and asylum seekers, or as victims of human trafficking. These have become a significant feature of our work.

8. In 2012 the Ministry of Justice (MoJ) conducted its first Triennial Review of the Commission and passed it with flying colours.
Introduction

9 The Criminal Cases Review Commission is the statutory body responsible for investigating alleged miscarriages of justice and referring appropriate convictions and/or sentences to the appeal courts. It was established on 1 January 1997 by the Criminal Appeal Act 1995. It was the first body of its kind in the world.

10 To date, the Commission has reviewed more than 15,000 cases and has referred 540 for appeal. The overwhelming majority of cases dealt with are of the most serious type – murder, rape, terrorism, drugs and robbery.

11 Given the scope of its role, the volume and range of its casework, and its concern with the whole process from investigation and prosecution to conviction and sentencing, the Commission is uniquely placed to comment on all aspects of the criminal justice system and can offer unparalleled insight into the causes of wrongful convictions as well as into the ingredients which make for safe, successful convictions.

12 The Commission can assist others, not only in terms of the prevention of unsafe convictions, but also in improving the system’s ability to build successful cases and ensure safe convictions.

13 It is essential that the Commission is independent of the executive and the judiciary because prosecutions are brought by the state, because a Commission referral compels the appeal courts to hear the case and because it is sometimes the courts that are at fault.

14 Only if we are truly independent can we promote public confidence in the judicial system.

15 In addition to reviewing possible miscarriages of justice, the Commission can also be asked by the Court of Appeal Criminal Division to investigate and report on matters relating to live proceedings.

16 Commissioners and staff are drawn from a diversity of backgrounds including the legal profession, forensic sciences, law enforcement, journalism, academia and others.

17 As of 2 January 2014, there are eleven Commissioners appointed by the Queen on the recommendation of the Prime Minister and 94 staff (87.57 full time equivalent) based at offices in Birmingham.

18 The Commission is operating with a fiscal DEL budget of £5,178,000 funded through grant in aid from the MoJ.
Performance

19 The Commission has taken innovative steps to make itself accessible to all (see Accessibility below). As a result, we have seen a substantial and sustained increase in applications. Between 1997 and 2011 the Commission typically received around 900 applications per year. In the business year 2011/12 we received 1,040 applications; in 2012/13 that rose to 1,625. We expect case intake to remain at around this level.

20 Notwithstanding the increased caseload, in the year ending March 2013, we kept the average time taken to begin a review to just under six-and-a-half months for custody cases and nine months for liberty cases. In the current year to December, those figures are seven months for custody cases and nine-and-a-half months for liberty cases.

21 We measure the average time taken to review two types of cases. For cases which have not gone through the normal appeals process and therefore do not usually receive a full review it currently takes an average of 19 weeks to reach an initial decision. For those other cases that do go on to receive a full review, it takes an average of 21 weeks to reach initial decision stage.

22 See annex A for average waiting times and annex B for duration of reviews.

Accessibility

23 The Commission became concerned about the accessibility of its services when research showed that particular groups were under-represented in our case intake. These groups included people with learning disabilities and/or difficulties, young people, women in custody, asylum seekers/refugees and victims of human trafficking.

24 In January 2012 we designed an Easy Read application form to assist people with learning disabilities. The Easy Read format uses simple words and images to help people who struggle with the written word; there is evidence that other groups, including young people and foreign nationals, prefer Easy Read forms to conventional ones.

25 We have extended the Easy Read principle to other Commission documents and have worked throughout this process with the charity Keyring’s Working for Justice Group. The MoJ has been supportive of these improvements.

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1 Custody cases are applications to the Commission from people in custody. Liberty applications are applications from people who are at liberty.
2 The Commission is essentially a post-appeal organisation and applicants usually need to have appealed, or at least sought leave to appeal, before the Commission can review their case. In some cases, where there are exceptional circumstances, the Commission can review a case in the absence of a prior attempt to appeal.
The Financial Backdrop

26 The Commission has, like most government organisations, experienced budget reductions in recent years. In the five years to 2012/13, our normal cash budget (fiscal DEL budget) has reduced by more than 13.5%. Compensating for inflation, the reduction is almost 23%. However, we are pleased to report that our 2013/14 budget increased slightly. After taking out one-off costs incurred in 2012/13, and factoring in additional savings made, this allowed us to recruit staff to help deal with rising business volumes.

27 The budget reductions in the previous five years amounted to £0.8m in money terms (£1.5m expressed in today’s money). To cope with these cuts we implemented efficiencies and cost savings. As staff costs account for more than 85% of our budget, significant savings had to come from reducing staff costs. A combination of a recruitment freeze and redundancies reduced our caseworking staff over this period from 56.5 FTE to 46.9 FTE (a 17% reduction). Our current year budget has enabled us to increase our casework staff complement back to 53.9 FTE average for the year to date. The use of additional short contract staff should bring the total up to about 60 FTE for the whole year.

Legislation

28 The Commission’s power under section 17 of the Criminal Appeal Act 1995 to secure material from public bodies is a key investigative tool. There is no corresponding power in respect of private bodies or persons and the absence of such a power inhibits our work. At best, the protracted negotiations to obtain private sector material can delay a review by months, and at worst our inability to obtain information could
mean an issue remains unresolved and a miscarriage of justice
perpetuated.

29 The problem is becoming more acute as responsibility for material
once held by public bodies is increasingly entrusted to private sector
bodies.

30 In 2006 an inter-departmental working party concluded that the
Commission should have the ability, under judicial oversight, to require
the disclosure of material by private bodies and individuals as is the
case with the Scottish CCRC. Disappointingly, although action has
been supported in principle by Ministers, and in spite of the fact that
there have been some twenty pieces of criminal justice related
legislation since then, no appropriate statutory vehicle has apparently
presented itself to remedy this defect.

Directions for Investigation by the Court of Appeal

31 The Commission can be directed by the Court of Appeal to investigate
and report on matters in relation to live appeals (and applications for
permission to appeal). Since 1997 we have received an average of four
such directions a year (eight per year since 2006/07). Such cases can
involve lengthy, complex investigations; because they relate to live
proceedings they necessarily take priority over cases awaiting review.

32 Three of the cases that we have completed since our last Select
Committee report have required very significant amounts of work.

33 Allegations of jury contamination or bias through the inappropriate
internet use has been a notable theme of recent enquiries.

Referrals

34 Between April and November 2013, we received 949 applications and
referred 24 cases to the appellate courts. In 2009/10 the rate of
referrals as a percentage of all cases closed was 3.48% (31 referrals
out of 892 cases). In 2010/11, that fell to 2.3% (22 out of 947 cases),
but in 2011/12, it rose to 3.5% again (31 out of 887 cases).

35 See annex C for referral outcomes.

Northern Ireland

36 The Commission continues to receive a steady flow of cases from
Northern Ireland the majority of which are Troubles related.

37 The Commission has so far received 367 applications from Northern
Ireland. Of the 316 cases now closed, 39 cases have been referred for
appeal. Of the 34 cases decided by the Northern Ireland Court of
Appeal, 30 have resulted in convictions being quashed or sentences
reduced while convictions were upheld in four cases. One summary conviction was quashed by the County Court.

38 On 23 May 2012, the Northern Ireland Court of Appeal handed down the judgment in the cases of *R v Brown, Wright, McDonald and McCaul* [2012] NICA 14. These cases, referred by us in 2009, concerned admissions made by defendants who were 15 or 16 years old at the time of their arrest and interview in the 1970s. None of the applicants had access to a solicitor during detention before making admissions and none was accompanied by a parent or independent person during interview.

39 The Court quashed the convictions of Messrs McDonald and McCaul but upheld those of Messrs Brown and Wright. Following the judgment, the Commission was able to progress a number of other “youth confession” cases which could not be reviewed until the outcome of those cases was known. In all but two of those cases a decision was made not to refer; the two cases remain under review.

40 The Commission is required by statute to have a Commissioner with particular knowledge of the criminal justice system in Northern Ireland and a new Northern Ireland Commissioner is about to be appointed.

**Casework themes**

41 We have recently seen some new strains of miscarriage of justice arising alongside the disappointingly familiar ones such as those caused by the non-disclosure of material that could have been useful to the defence, investigative tunnel vision, failure to make adequate background checks on witnesses and complainants and changes in the medical or scientific understanding of evidence.

42 The most significant new strain of cases has involved refugees or asylum seekers.

**Cases involving immigration-type offences**

43 Over the last few years, we have identified a series of cases where refugees or asylum seekers have been prosecuted for offences relating to their entry into the UK, such as having a false passport, having no passport or attempting to obtain services by deception. The Commission is concerned about those cases where there has been a failure to deploy available defences which are designed to protect people escaping persecution. In a number of cases individuals have been prosecuted and advised to plead guilty when a statutory defence was available.

44 We have raised awareness of the issues with charities and other organisations working with people who may be wrongly convicted in this way. We have also raised awareness with the judiciary, the
defence and the prosecution to seek to minimize the risk of further wrongful convictions.

45 Nevertheless, we continue to receive applications from people convicted in these circumstances, some quite recently. Between November 2011 and November 2013, we received approximately 80 applications of this type. Since our last report to this Committee, we have referred fourteen such cases; twelve convictions have been quashed; one person abandoned their appeal and one case remains to be heard. There is likely to be a significant further stock of such cases from people who are unaware that their conviction is unsafe. We are working with Crown Prosecution Service to identify these.

46 Another new type of case that concern us are those involving victims of human trafficking who may have been compelled to commit the crime for which they are convicted and, thus, have a defence. Those convicted are often children or young adults.

Courts Martial cases

47 In 2009 the Commission’s jurisdiction was extended to cover convictions and sentences arising from the Court Martial or Service Civilian Court after 31 October 2009. As anticipated, the impact of this has been slight with only three applications received to date.

Triennial Review of the Commission

48 During 2012/13 a triennial review of the Commission took place; the final report was published in June 2013. We are delighted with the positive endorsement of our work and the support for our continued existence.

49 The report recommended strengthening the role of Chair and changing governance structures. There have been preliminary discussions within the Commission and proposals on the role of the Chair are agreed. As regards governance more generally, it was not considered appropriate to reach a settled view when the MoJ’s process to advertise the post of Chair and make an appointment was ongoing. The Chair was re-appointed in November 2013 and the matter will now be discussed at the next Commission Board meeting on 28 January.

50 The triennial review reinforces the need for the Commission’s independence and the requirement for a separation of powers between the executive and the judiciary. Whilst that is welcome, the Commission remains concerned about what may be perceived as an erosion of its independence arising from pressures on it, and on other Arms’ Length Bodies, to conform to centralised controls applied in ways that, in our view, fail to give due consideration to the essential differences between central government and independent public bodies. For those reasons, the Commission remains concerned about the loss of its own website.
Website and branding

51 The Commission was disappointed to have been required by the Government’s 2010 website rationalisation programme to close its own dedicated website. We pursued every available avenue to oppose the loss of our site and made what we considered to be a strong business case based on the premise that having our own site was an important demonstration of our independence and a vital tool for ensuring that potential applicants and other interested parties had reasonable access to us.

52 Since 2011 we have relied, unhappily, on the justice.gov.uk site. It is with considerable trepidation that we face the prospect of the move later this year to the .gov.uk site. We view that as a further step along a road to which we were, as explained above, fundamentally opposed.

53 The nub of this is that potential victims of miscarriages of justice often see themselves as victims of the State as prosecutor. To say that to seek redress they can go to a body supposedly independent of the executive, but one whose website has the word “State” over the doorway, is to risk the appearance of absurdity if not worse.

54 There have also been moves to rationalise branding for public bodies including NDPBs such as the Commission. This proposal, under which the Commission would be required to adopt the same logo and other branding elements as a range of other public bodies, caused us considerable concern. Again, we argued that being required to adopt the coat of arms-based branding used by various bodies, including central government departments, would seriously compromise perception of our independence, undermine confidence in us and confuse actual and potential applicants. Towards the end of 2012 we received the welcome news that we will be exempted from those proposals.

Stakeholder Activity

55 Our aim has been to promote public understanding of our role and to raise informed awareness about the Commission with specific groups such as potential applicants, campaigners, the judiciary and the legal profession.

56 The main events of our stakeholder activity over the last four years have been the successful stakeholder conferences held in 2010 and 2012. We attracted excellent speakers and panellists and a wide range of attendees to both events.

57 We have made specific efforts to engage with innocence projects and other university-based pro bono projects interested in wrongful convictions and aiming to make applications to the Commission.
58 We have recently made available an advice line so that pro bono units can benefit from advice provided by casework staff. In 2012 we ran our first work experience placements for university students. The principal aim of our engagement with university projects is to encourage them to make timely and good quality applications in relation to appropriate cases.

59 In June 2013 we worked with Warwick University to provide Commission specific training for solicitors and barristers. We expect that this will have increased understanding of the Commission and helped to improve the quality of applications to us.

Academic research

60 The Commission has, with appropriate safeguards in place, allowed controlled access to a number of academic research projects exploring various aspects of our work. The research phase of two projects is complete and we expect to see publication of the results in 2014. Two further projects are still in the research phase and another has yet to begin. These projects are in addition to several published works based on access to Commission material.

IT

61 Until 2012/13 the Commission’s IT service was outsourced to a private company, but the decision was made to bring the service in-house. We also conducted a review of our third party support contracts. The resultant changes generated substantial savings.

62 The Commission has invested in secure remote working facilities for some Commissioners and staff. This has enabled more flexible working and has, together with some “hot-desking”, helped to accommodate the recently increased staff numbers in the much smaller premises to which the Commission moved, for financial reasons, in May 2010.

63 Other current IT projects include the crucial replacement of our ageing and now unsupported case management system.

Conclusion

64 The Commission has proved its value in the criminal justice system over the last 16 years. While we are grateful for the modest funding increase in 2013/14, particularly in light of the current economic climate, we are acutely aware that maintaining at least the same level of funding for next year will be crucial to our ability to deal properly with the sustained increase in applications. Only an increase in funding would allow us to reduce queues to more reasonable levels.
We believe that our casework function and its support services are as lean as they can be and our ability to investigate cases and reach the appropriate decision in each is as good now as it has ever been.

We are proud of and committed to our efforts to ensure that we remain independent and accessible to all who need us.

We aim to continue building relationships with individuals and organisations that will help us to fulfil our functions, to reach potential applicants and raise informed awareness of our role, and help us feed back our findings to the criminal justice system at large.

December 2013
Annex A

Waiting time [time from receipt to allocation]
Rolling 12m average

[Graph showing the waiting time from receipt to allocation over time, with two lines representing Liberty and Custody, and data points for different months and years from December 2008 to September 2013.]
Annex B

Duration of review
Receipt to decision - 12m average

Duration of review (weeks)

No Appeal  Review cases
Annex C

Outcome of referrals heard

Quashed/varied  Upheld