



House of Commons
Justice Committee

Criminal Cases Review Commission

Twelfth Report of Session 2014–15

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 17 March 2015*

HC 850

Published on 25 March 2015
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Justice Committee

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Contacts

Correspondence should be addressed to the Clerk of the Justice Committee, House of Commons, 14 Tothill Street, London SW1H 9NB. The telephone number for general enquiries is 020 7219 8196 and the email address is justicecom@parliament.uk.

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Summary

The Criminal Cases Review Commission (CCRC) was set up in 1997, by the Criminal Appeal Act 1995, on the recommendation of the Royal Commission on Criminal Justice. The CCRC investigates alleged miscarriages of justice, post-conviction and post-appeal, and has the power to refer cases back to the Court of Appeal for reconsideration. We held a one-off evidence session on the work of the CCRC in January 2014, and then sought some views on the issues raised. We subsequently decided to hold an inquiry on the CCRC, and launched it with a general call for evidence.

The ‘real possibility’ test, which requires that for a referral to be made there must be a real possibility that the conviction or sentence would not be upheld on appeal, was one of the most controversial aspects of the CCRC. We found that criticisms broadly fell into one of three areas: that the test itself is wrong; that the test is being applied incorrectly by the CCRC; or that the Court of Appeal’s approach to criminal appeals is overly restrictive. Our Report considers each of these areas in turn.

Critics of the test felt that it inherently prevents the CCRC from being truly independent of the Court of Appeal. We conclude that any change would have to be in light of a change to the Court of Appeal’s grounds for allowing appeals.

We were told by the CCRC that the 70% success rate of its referrals showed that it was applying the test correctly. We also took account of academic research which had found that the CCRC was applying the test as it anticipated the Court of Appeal would do. Despite this, we are convinced that, given the importance of overturning miscarriages of justice, there is room for the CCRC to be less cautious in its application of the test, and we recommend that it alter its approach accordingly.

We were told by some witnesses that the Court of Appeal, especially in the absence of fresh evidence, was overly reluctant to interfere with properly delivered jury verdicts. In our Report we consider the jurisprudence on this matter, and conclude that it is concerning that there is no clear or formal mechanism to consider quashing convictions arising from decisions which have a strong appearance of being incorrect. We therefore recommend that the Law Commission review the Court’s grounds for allowing appeals.

We also considered whether increased use of the CCRC’s power to refer cases to the Secretary of State for application of the Royal Prerogative of Mercy would be a solution to any of these problems. We conclude that it would not, as it would bring the executive back into the process in precisely the manner the creation of the CCRC was intended to avoid, and would be inappropriate and inadequate for a falsely convicted person.

Our Report also contains a consideration of the adequacy of the CCRC’s resources, powers and working practices. We recommend that the CCRC be granted additional funding in order to reduce the backlog in applications, alongside a discretion to refuse to investigate certain categories of cases so that it can better focus its resources on more serious and deserving cases.

Section 17 of the Criminal Appeal Act 1995 gives the CCRC the power to require public

bodies to disclose documents and other material to it to assist in its investigations. We were told that the lack of a time limit or sanction connected with the power leads to excessive delays and even failures to comply on the part of some public bodies. We were also told by the CCRC that the fact that it had no power to require disclosure on the part of private bodies had hampered some of its investigations. We recommend that legislation be brought forward to rectify both deficiencies.

Some witnesses told us that the CCRC's investigations were of a poor quality. On the other hand we received academic evidence which disputed these claims. We express concern about variations in approach and expertise between Case Review Managers, and say that there remains room for improvement even within the CCRC's resource constraints, including in its level of engagement with applicants such as through meeting with applicants more often, and we recommend accordingly.

We also recommend that the CCRC take advantage of its unique position and develop a formal system for feeding back into the criminal justice system on the causes of miscarriages of justice.

In this Report our overall conclusion is that the CCRC is performing reasonably well, with areas for improvement identified, but that it could be doing more to increase understanding of its work. We also say that the Commission needs to be given the resources and powers it requires to perform its job effectively. It remains as important and as necessary a body as ever.

1 Background to this inquiry

The Royal Commission on Criminal Justice and the CCRC

1. The Criminal Cases Review Commission (CCRC) was set up on the recommendation of the Royal Commission on Criminal Justice. The Royal Commission was announced in response to political pressure by the Home Secretary on the day in March 1991 that the convictions of the Birmingham Six were quashed on appeal, with terms of reference to look at the effectiveness and efficiency of the criminal justice system as a whole. As the circumstances of its creation were largely associated with a number of high-profile miscarriages of justice, such as the Guildford Four and Maguire Seven, the Royal Commission had a specific term of reference to consider “whether changes are needed in: [...] the arrangements for considering and investigating allegations of miscarriages of justice when appeal rights have been exhausted.”¹

2. In its Report, published in July 1993, the Royal Commission concluded that the existing arrangements on this matter were not working to a satisfactory standard. The only option for a person maintaining their innocence after conviction, and if unsuccessful on appeal, was to apply to the Criminal Case Unit of C3 Division of the Home Office in the hope that, after investigation, the Home Secretary would refer the case back to the Court of Appeal. The Royal Commission noted that successive Home Secretaries had been reluctant to refer cases, in part for fear that they would be accused of interfering with the courts and that this could be seen as constitutionally inappropriate. Therefore the Royal Commission recommended that a new body should be set up, independent of both the Government and the courts, to take over the task of investigating alleged miscarriages of justice and, if appropriate, referring them to the Court of Appeal. This body was established by the Criminal Appeal Act 1995 (henceforth ‘the 1995 Act’) as the CCRC and began operations in March 1997 to review potential miscarriages of justice in England, Wales and Northern Ireland.²

3. Throughout this inquiry we have tried to gauge what expectations were for the CCRC when it was first set up. We have found that these initial expectations were as diverse as the campaigners and groups that fought so tirelessly to have it created. One strand of opinion was represented by Paul May, a campaigner against miscarriages of justice, who said that what they wanted was simply “something better than C3”,³ while Dr Carole McCartney spoke of “dancing around the room thinking, ‘We have cracked miscarriages of justice because we are going to learn what the causes are.’”⁴ Everyone who gave evidence to us said they had been optimistic at the time about what the new body could achieve.

¹ The Royal Commission on Criminal Justice, [Report](#), Cm 2263, July 1993, pp i–ii

² An equivalent but separate body for Scotland, the Scottish Criminal Cases Review Commission, was established two years later.

³ [Q 79](#)

⁴ [Q 36](#)

Our inquiry

4. Alongside the coming into force of the Public Bodies Act 2011 the Government decided that all remaining non-departmental public bodies should begin to undergo triennial reviews in order to ensure that they were still required, both in function and form, and complying with principles of good governance. The first triennial review of the CCRC was published in June 2013, confirming that the CCRC should be retained as a non-departmental public body with no change to its functions.⁵ In January 2014 we took oral evidence from Richard Foster and Karen Kneller, Chair and Chief Executive of the CCRC respectively, in a one-off evidence session on that review and the work of the CCRC.⁶ They defended the record of the CCRC in investigating and referring cases, although they also told us that the Commission was being impeded in its work by a lack of resources and funding. Without launching a general call for evidence, we decided to seek comment and written submissions from a small number of solicitors and academics with an interest in, and in many cases critical of, the CCRC's work; responses we received raised various concerns, including that the CCRC had failed to remain truly independent of the Court of Appeal, that it was failing to carry out investigations properly and proactively, and that as a result of these weaknesses some miscarriages of justice were going uncorrected.⁷ We wrote in June 2014 to the CCRC to share these comments and invited them to respond to these criticisms, which they did.⁸ These submissions are all published on our web pages.

5. Upon receiving the CCRC's response we decided that the concerns raised required more detailed scrutiny, and so we launched an inquiry into the CCRC on 17 October 2014. We invited evidence on all aspects of the work and effectiveness of the CCRC, but in particular on the following points:

- Whether the CCRC has fulfilled the expectations and remit which accompanied it at its establishment following the 1993 Report of the Royal Commission on Criminal Justice;
- Whether the CCRC has in general appropriate and sufficient (i) statutory powers and (ii) resources to carry out its functions effectively, both in terms of investigating cases and in the wider role of promoting confidence in the criminal justice system;
- Whether the 'real possibility' test for reference of a case to the Court of Appeal under section 13(1) of the Criminal Appeal Act 1995 is appropriate and has been applied appropriately by the CCRC;
- Whether any changes to the role, work and remit of the CCRC are needed and, if so, what those changes should be.

⁵ Ministry of Justice, [Triennial Review of the Criminal Cases Review Commission](#), June 2013

⁶ Oral evidence taken by the Justice Committee on [14 January 2014](#), HC (2013–14) 971

⁷ [Written evidence on the CCRC](#), February 2014

⁸ Criminal Cases Review Commission, [Written evidence on the CCRC](#), June 2014

While we accepted evidence describing individual circumstances and individual grievances with the CCRC, we made clear that we would not be investigating or adjudicating on any individual cases.

6. We have received some evidence highlighting the effects of both the existing provisions regarding the admissibility of fresh evidence to the Court of Appeal, which generally requires it not to have been available at trial, and of the requirements necessary for a victim of a miscarriage of justice to obtain compensation, under which the person must prove beyond reasonable doubt that they did not commit the offence. Both of these issues fall outside the terms of reference of this inquiry, but it has been drawn to our attention that there is widespread concern that they are having an unjust effect. There may therefore be some benefit in these being reviewed by our successor Committee in the next Parliament.

7. In the course of our inquiry we received 47 written submissions and we held four oral evidence sessions, hearing from Glyn Maddocks and Mark Newby, solicitors, Dr Dennis Eady, Case Consultant, Cardiff University Law School Innocence Project, and Dr Michael Naughton, Director, University of Bristol Innocence Project; Professor Jacqueline Hodgson, University of Warwick School of Law, Professor Carolyn Hoyle, Centre for Criminology, University of Oxford, and Dr Carole McCartney, Northumbria University School of Law; Lord Runciman, Chair, and Professor Michael Zander QC, Member, Royal Commission on Criminal Justice; Paul May and Bob Woffinden; Richard Foster, Chair, and Karen Kneller, Chief Executive, CCRC; and Rt Hon Mike Penning MP, Minister of State for Policing, Criminal Justice and Victims, and Stephen Muers, Director for Sentencing and Rehabilitation, Ministry of Justice. Towards the conclusion of the inquiry we received an offer from the former Lord Chief Justice, Lord Judge, to give oral evidence; unfortunately we were unable to take him up on his offer because of a lack of available time, but he subsequently submitted written evidence to the inquiry. We are grateful to all those who gave written and oral evidence to us in this inquiry.

2 The ‘real possibility’ test

The legal basis for making a reference

8. The test applied by the CCRC in deciding whether or not to refer a case to the Court of Appeal is known as the ‘real possibility’ test. This is derived from section 13 of the Criminal Appeal Act 1995, which states that:

A reference of a conviction, verdict, finding or sentence shall not be made [...] unless the Commission consider that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made.

Lord Bingham, sitting in the High Court, gave a judicial interpretation of the test in *R v Criminal Cases Review Commission (ex parte Pearson)*:

The ‘real possibility’ test [...] denotes a contingency which, in the Commission’s judgment, is more than an outside chance or a bare possibility, but which may be less than a probability or a likelihood or a racing certainty. The Commission must judge that there is at least a reasonable prospect of a conviction, if referred, not being upheld.⁹

9. Fifty-four per cent of responses to the triennial review which expressed a view on the test for referral agreed that it is the right one.¹⁰ We have received a similar split in responses to our question on whether it is appropriate. Despite this we have also found a broad agreement, or at least perception, that something in the test or its application is not working properly, with many witnesses alleging that the CCRC’s current referral rate of 3% to 4% is too low. This compares with a referral rate of around 7% by the Scottish CCRC, which operates under a different referral test mirroring that applied on appeal by the Scottish High Court; the CCRC told us that its referral rate would be similar if looked at “as a percentage of the cases that Parliament intended us to look at”, disregarding applications which fall outside its remit but which it still includes in its calculations.¹¹

10. The evidence we have received has revealed that simply asking whether the ‘real possibility’ test is the right test is too narrow and misses the subtle underlying dispute as to where the issues raised really lie. In fact, debate about the existing referral system focuses on three issues, which we will deal with in turn: the ‘real possibility’ test itself, the CCRC’s application of the ‘real possibility’ test, and the Court of Appeal’s approach to criminal appeals.

Is it the right test?

11. The main criticism of the ‘real possibility’ test itself concerns how it frames the relationship between the CCRC and the Court of Appeal. In its written evidence the

⁹ [1999] 3 All ER 498

¹⁰ Ministry of Justice, *Triennial Review of the Criminal Cases Review Commission*, June 2013, p 9

¹¹ Oral evidence taken by the Justice Committee on [14 January 2014](#), HC (2013–14) 971, Q 18

Cardiff University Law School Innocence Project claimed that the test “explicitly makes the CCRC subservient to the Court of Appeal.”¹² In response to our request for comments in February 2014 Dr Michael Naughton, Director of Innocence Network UK, argued that the test “is entirely contrary to what the Royal Commission envisaged and directly against its recommendation that it be ‘independent of both the Government and the courts’” and “means that the CCRC are always in the realm of second-guessing what the Court of Appeal may think about cases that are received following a referral by the CCRC.”¹³ Glyn Maddocks, a solicitor specialising in appeal cases, contended that it creates “an unfair or unequal relationship between the Court of Appeal and the CCRC. Therefore, the CCRC cannot be independent because it is frightened of the Court of Appeal.”¹⁴

12. The issue that such critics raise is that, in their view, to be truly independent the CCRC needs to be able to stand up to the Court of Appeal when it disagrees with an actual or predicted decision. The CCRC’s supposed difficulty in doing so is reflected in the fact that only two cases have ever been referred to the Court of Appeal by the CCRC more than once.¹⁵ Witnesses argued that this leaves the Commission susceptible to being effectively steered by the Court of Appeal. David Jessel, a former CCRC Commissioner, has previously highlighted sentence referrals, historical cases and shaken baby syndrome cases as areas in which the Court of Appeal has indicated an unwillingness to receive such cases and so the CCRC has subsequently found it difficult to refer.¹⁶ Dr Carole McCartney, of Northumbria University School of Law, echoed this when she told us:

Also, the difficulty with the Court of Appeal is that if they are taking a very cautious approach, or there is a narrow interpretation of something, that percolates down to the Case Review Manager inasmuch as when they are investigating or looking through the bundle, as we say, they are coming at that from a very narrow perspective because they are already thinking three steps ahead [...] all the way through the system, we have this very narrow focus that we are getting the lead from the Court of Appeal.¹⁷

13. The claim implicit in this is that the CCRC’s investigations are coloured throughout by the ‘real possibility’ test. This seems to be the perception of many of those who have submitted evidence to us, that the Commission’s investigations are into whether a case has a ‘real possibility’ of not being upheld rather than into whether a miscarriage of justice has actually occurred. Despite this, Richard Foster, Chair of the CCRC, explained:

When we start looking at a case, we don’t start looking at it from the point of view of there being a test called the ‘real possibility’ test and whether this case might pass it or not. We start, when we look at a case, in the way that

¹² Cardiff University Law School Innocence Project ([CCR0029](#)) para 1.3

¹³ Dr Michael Naughton, [Written evidence on the CCRC](#), February 2014, paras 22 and 8

¹⁴ [Q 14](#)

¹⁵ Cardiff University Law School Innocence Project ([CCR0029](#))

¹⁶ Innocence Network UK, [Report on the Innocence Network UK \(INUK\) Symposium on the Reform of the Criminal Cases Review Commission \(CCRC\)](#), August 2012), p 28

¹⁷ [Q 33](#)

anybody ought to start looking at the case – by saying, “Here’s the case. Is there anything here that concerns us? If there is, let’s investigate it.”¹⁸

14. A small number of alternative tests have been put to us, each of which advocates claimed would refocus the Commission from the Court of Appeal onto miscarriages of justice. The Cardiff University Law School Innocence Project submitted that “the view of the Royal Commission was that any test of referral should be in line with that articulated in 1994 by the organisation JUSTICE: namely ‘whether there is an arguable case that there has been a wrongful conviction’”, and that this was the right test.¹⁹ Dr Naughton supported a test of whether there is a ‘real possibility’ that a miscarriage of justice occurred.²⁰ Bob Woffinden, an investigative journalist, said that he thought the test should be, “If you were constituted as a jury, in view of all the evidence that you have seen, would you have found this particular person guilty?”²¹

15. There is also much opposition to changing the test. The CCRC itself supports the test, with Richard Foster telling us that “it is the best test” and that “I have never heard anybody suggest an alternative test that would work better”.²² The CCRC has however said that it would be open to a review of the test.²³ In response to the allegations that the CCRC has failed to remain independent, Lord Runciman, who chaired the Royal Commission, said that it “is subservient in the sense that it is not itself a court, and nor should it be.”²⁴ Lord Judge also defended the constitutional arrangement between the CCRC and the Court of Appeal, “The CCRC is not and never has been a court. The Commissioners are not judges. Evidence is sometimes put before the Commission by one side in the absence of the other.”²⁵ Professor Michael Zander, who was a member of the Royal Commission, defended the test and expressed his belief that if the Royal Commission had discussed grounds for referral it would have come up with something identical or broadly similar.²⁶ In her written submission Professor Carolyn Hoyle stated, “There is no evidence that a move away from the ‘real possibility’ test would increase the referral rate or the rate at which the Court of Appeal overturns convictions, without a simultaneous change to the Court’s ‘Safety Test’. There is no persuasive case for this.”²⁷ The Ministry summarised the position of many when it gave us its reasons for supporting the test as is:

The alternative of not having a ‘real possibility’ test implies that the Commission would be referring cases where there was not a real possibility of the Court of Appeal overturning them, which seems a slightly strange

¹⁸ [Q 115](#)

¹⁹ Cardiff University Law School Innocence Project ([CCR0029](#)) para 1.2

²⁰ [Q 18](#)

²¹ [Q 95](#)

²² Oral evidence taken by the Justice Committee on [14 January 2014](#), HC (2013–14) 971, Q 23

²³ Criminal Cases Review Commission ([CCR0055](#))

²⁴ [Q 51](#)

²⁵ Lord Judge ([CCR0057](#))

²⁶ Professor Michael Zander QC ([CCR0002](#))

²⁷ Professor Carolyn Hoyle ([CCR0024](#))

position to get into, given the attendant costs, the impact on victims and so on that you might get from that.²⁸

16. There was a strong difference of views amongst our witnesses on changing the ‘real possibility’ test. Any change would have to be undertaken in light of a change to the Court of Appeal’s grounds for allowing appeals, which we deal with later at paragraphs 21 to 28, and would have to take account of the need to avoid a waste of resources or a detrimental effect on applicants and victims alike. While an alternative test might allow the CCRC more scope to display its independence of the Court of Appeal, by definition the only additional referrals which a change to the test alone would allow would be those with less than a real possibility of success.

Is the test applied properly?

17. More numerous than criticisms of the test itself in the evidence that we received have been criticisms of the way that the CCRC applies the test. In the previous section we noted criticisms that the CCRC was too cautious or too deferential to the Court of Appeal, being afraid of cases being rejected or of being rebuked by the Court for referring cases the Court deems to have no merit. In its defence the CCRC pointed to the fact that 70% of the cases which it referred were successful on appeal, which it believed proved that it had the balance right. The CCRC’s Key Performance Indicators include a targeted success rate for referrals of between 60% and 80%.

18. On the other side, critics of the CCRC said that this success rate proved the criticism, as the judicial interpretation of the test indicates that a ‘real possibility’ is not a high threshold.²⁹ Professor Jacqui Hodgson, of the University of Warwick School of Law, told us that:

When the CPS are looking at a realistic prospect of conviction, that is generally understood to be about 51% or more; so ‘real possibility’ seems to me to be potentially less than realistic prospects. I do not think it has to be as high as 70%.³⁰

Professor Carolyn Hoyle agreed that “they could be a little bit less cautious” in applying the test.³¹ We have also heard allegations of individual Case Review Managers and Commissioners glossing the test. Professor Hodgson told us that she has seen “different approaches from certain Commission members as well as in terms of whether they are trying to second-guess the Court of Appeal, and say, ‘I can just see the Court of Appeal knocking this back.’ Wrong test: that is not the test.”³² Bob Woffinden also thought that the

²⁸ [Q 146](#)

²⁹ Being “more than an outside chance or a bare possibility, but which may be less than a probability or a likelihood or a racing certainty”—Lord Bingham in *R v Criminal Cases Review Commission (ex parte Pearson)* [1999] 3 All ER 498.

³⁰ [Q 34](#)

³¹ [Q 33](#)

³² [Q 31](#)

CCRC often bypasses the ‘real possibility’ test and goes straight to a test of “is the Court of Appeal going to overturn the conviction?”³³

19. In his December 2013 doctoral thesis, which involved an empirical analysis of a random sample of 404 applications, Dr Stephen Heaton identified 26 cases in which he found the decision not to refer troubling. While Dr Heaton felt that these cases could have been referred, and felt them worthy of referral, he also found that in all of them “the committee [deciding the referral] had sought to apply the test as they anticipated the [Court of Appeal Criminal Division] would do. Ultimately, I considered that their conclusions were well founded and that whatever my doubts, if I had been charged with discharge of the statutory ‘real possibility’ test, I would have reached the same conclusion.”³⁴ Notably he also stated that in none of the troubling cases was he able to conclude that the applicant was innocent. This suggests that even a bolder approach to the test might not lead to a greater number of quashed convictions, and supports what Richard Foster told us:

A lot of this debate proceeds on the almost unspoken assumption that there are obvious cases of miscarriages of justice, obvious cases of lurking doubt, where if only people would see sense and refer that case, or if only the Court of Appeal took a slightly different view, then a wrongful conviction would be quashed. Our experience is that it is extraordinarily difficult, if not impossible, to judge from the outside a situation of that kind, and in particular many of the cases which have attracted huge support as “obvious miscarriages” turn out not to be.³⁵

He had also previously told us, “The view I have always taken, and pressed very strongly within the Commission and publicly, is that if we are in the grey area, we should always refer.”³⁶

20. We have seen no conclusive evidence that the CCRC is failing to apply the ‘real possibility’ test correctly in the majority of cases. We accept that application of the test is a difficult task and is by no means a precise science, but where potential miscarriages of justice are concerned we consider that the CCRC should be willing to err on the side of making a referral. The Commission should definitely never fear disagreeing with, or being rebuked by, the Court of Appeal. If a bolder approach leads to 5 more failed appeals but one additional miscarriage being corrected, then that is of clear benefit. We recommend that the CCRC be less cautious in its approach to the ‘real possibility’ test, and reduce the targeted success rate in its Key Performance Indicators accordingly.

³³ [Q 95](#)

³⁴ Stephen Heaton, [A critical evaluation of the utility of using innocence as a criterion in the post conviction process](#), December 2013, p 273

³⁵ [Q 121](#)

³⁶ Oral evidence taken on [14 January 2014](#), HC (2013–14) 971, Q 23

The Court of Appeal's grounds for quashing convictions

21. We have been told by some that criticisms of the CCRC and the 'real possibility' test, made by those who believe miscarriages of justice are not being rectified, would more properly be directed towards the Court of Appeal (Criminal Division) and its approach to cases. Since the 1995 Act the only ground on which the Court of Appeal can allow an appeal against a conviction is that "they think that the conviction is unsafe".³⁷ The central complaint about the Court of Appeal is that it is overly reluctant to interfere with a properly delivered jury verdict, requiring appellants to show some material irregularity or fresh evidence, which creates a high barrier for the CCRC to meet if a conviction is to have a 'real possibility' of being quashed. Lord Bingham laid out a comprehensive statement of this constitutional doctrine of the primacy of the jury in the 2002 case of *Pendleton*:

The Court of Appeal is a court of review, not a court of trial. It may not usurp the role of the jury as the body charged by law to resolve issues of fact and determine guilt. [...] Trial by jury does not mean trial by jury in the first instance and trial by Judges of the Court of Appeal in the second. The Court of Appeal is entrusted with a power of review to guard against the possibility of injustice but it is a power to be exercised with caution, mindful that the Court of Appeal is not privy to the jury's deliberations and must not intrude into territory which properly belongs to the jury.³⁸

22. Historically this reluctance to go behind a jury verdict has not been an absolute rule. In 1968 the grounds for appeal, as they then were, were expanded in line with the recommendations of the Donovan Committee to broaden the Court's approach—arguably this was Parliament's first attempt to make the Court rethink its deference to juries. As a result the Court developed the 'lurking doubt' doctrine, with which it could quash a conviction if there was "some lurking doubt in [its] minds which [made it] wonder whether an injustice has been done", even without fresh evidence or a material irregularity in the trial process.³⁹ Despite this, by the time of the Royal Commission's Report the doctrine had fallen into sparse use, leading it to state that it appreciated the Court's reluctance but that it did not "believe that quashing the jury's verdict where the court believes it to be unsafe undermines the system of jury trial". It therefore recommended that where "the Court of Appeal has a serious doubt about the verdict, it should exercise its power to quash" and that this should be made apparent in statute.⁴⁰ That change was not implemented and use of the doctrine has since been disapproved of for all but the "most exceptional circumstances", especially if there is no new evidence.⁴¹ This aspect of the Court of Appeal's jurisprudence is complex and understandably difficult to anticipate in the 'real possibility test'.

23. Professor Michael Zander, who was a member of the Royal Commission, has been particularly critical of the Court of Appeal's reluctance in this area. He stated in written

³⁷ This differs slightly from the Royal Commission's recommendation that the ground be that "they think that the conviction is or may be unsafe [emphasis added]".

³⁸ [2001] UKHL 66

³⁹ *R v Cooper* [1969] 1 QB 267

⁴⁰ As part of the redrafting of the Court of Appeal Criminal Division's grounds for allowing appeals.

⁴¹ *R v Pope* [2012] EWCA Crim 2241

evidence to us his view, “If the Court of Appeal were readier to act on [the Royal Commission’s] recommendation, many of the concerns raised by critics of the CCRC would be resolved.”⁴² Paul May supported this: “Much of the criticism levelled at the CCRC would in my view be better directed at the Court of Appeal which remains capable on occasions of quite breath-taking obduracy towards appellants claiming wrongful conviction.”⁴³ Dr Stephen Heaton’s research led him to a similar conclusion, “The overall performance of the Court of Appeal is a significant obstacle to addressing miscarriages of justice.” In his written evidence he blamed in part “the Court’s ‘atomistic’ approach. That is to consider the fresh material in an isolated fashion rather than review the whole picture in a case.” He also raised the issue of inconsistencies in the Court’s jurisprudence creating difficulties for the CCRC in predicting the Court’s approach, “I see no evidence that the Court of Appeal has at any point recognised this aspect of responsibility.”⁴⁴

24. In his written submission to us in February 2014 Professor Richard Nobles put forward a proposal that the CCRC be able to refer a case based on ‘lurking doubt’, as he questioned “whether the referral power should simply anticipate the Court of Appeal’s approach, given the tendency of the court to blow hot and cold in its willingness to reconsider jury verdicts.”⁴⁵ The University of Warwick School of Law supported this approach in its written evidence.⁴⁶ Professor Zander put forward a similar idea, based on ‘serious doubt’,⁴⁷ although then amended his proposal to acknowledge that section 13(2) of the 1995 Act already allows the CCRC to do this, as in exceptional circumstances it may refer cases without fresh evidence or argument.⁴⁸ Professor Hoyle told us that the CCRC was reluctant to go ahead with such cases, “if it thinks the case does not meet the ‘real possibility’ test.”⁴⁹ None of the propositions put to us include any formal change to the Court of Appeal’s approach and so do not address how any such referrals would have a real possibility of success. While supporters of such a change, or increased use of section 13(2), may be hoping that the CCRC having such a power and using it would inherently change the Court’s approach, the Lord Chief Justice indicated to us that a change in approach would be preferable through statute as the Court has to be “quite careful about overruling previous decisions.”⁵⁰

25. Professor Hoyle made the point that if the CCRC had a doubt about a case then it would pursue it with more tenacity and willingness to pursue all lines of investigation in order to gather enough evidence so that the case meets the test.⁵¹ Richard Foster also later told us the same thing, “If we find that we have a concern, then we will find a way of

⁴² Professor Michael Zander QC ([CCR0002](#))

⁴³ Paul May ([CCR0003](#)) para 27

⁴⁴ Stephen Heaton ([CCR0015](#))

⁴⁵ Professor Richard Nobles, [Written evidence on the CCRC](#), February 2014, para 4

⁴⁶ University of Warwick School of Law ([CCR0026](#)) para 8

⁴⁷ Professor Michael Zander QC ([CCR0048](#))

⁴⁸ Professor Michael Zander QC ([CCR0051](#))

⁴⁹ [Q 32](#)

⁵⁰ Oral evidence taken by the Justice Committee on [27 January 2015](#), HC (2014–15) 1018, Q 5

⁵¹ [Q 32](#)

referring it. I can give you particular examples where we have come at a case, time and time again, until we have found a ground on which we can get through the gateway”.⁵²

26. The judiciary was given an opportunity to respond to these criticisms, but declined to comment or provide evidence on anything more than factual matters. Towards the end of our inquiry we received a kind offer of assistance from the former Lord Chief Justice, Lord Judge, and then a submission from him. Lord Judge stated that he had discussed that submission with the present Lord Chief Justice, Lord Thomas, and that he had been authorised to say that Lord Thomas agreed with it. In his evidence Lord Judge pointed out that “if having examined the evidence, the court is left in doubt about the safety of the conviction it must and will be quashed.”⁵³ In the short time available to us at the end of the inquiry we were unfortunately unable to explore how this statement could be reconciled with the judgment in *Pope*, which we were told by the Court of Appeal represents a “very clear indication of what will be this Court’s approach” in relation to ‘lurking doubt’.⁵⁴ In that case the Court stated that “the application of the ‘lurking doubt’ concept requires reasoned analysis of the evidence or the trial process, or both, which leads to the inexorable conclusion that the conviction is unsafe [emphasis added].”⁵⁵ Lord Judge went on in his evidence to disagree with Professor Zander’s proposal for adding to the CCRC’s grounds for referral, “Just because the CCRC is a respected body, even if, on examination, the [Court of Appeal Criminal Division] disagreed with the CCRC and dismissed the appeal, public confidence in that verdict would never be restored. From the public point of view, whatever the true constitutional position might be, there would be two conflicting decisions by bodies with responsibility for considering the safety of a conviction.”⁵⁶

27. We are concerned that there may be some miscarriages of justice which are going uncorrected because of the difficulty the CCRC faces in getting some such cases past the threshold of ‘real possibility’, as a result of the Court of Appeal’s approach. While it is important that the jury system is not undermined, properly-directed juries which have seen all of the evidence may occasionally make incorrect decisions. The Court’s jurisprudence in this area, including on ‘lurking doubt’, is difficult to interpret and it is concerning that there is no clear or formal mechanism to consider quashing convictions arising from decisions which have a strong appearance of being incorrect. Any change in this area would require a change to the Court of Appeal’s approach, which would itself require a statutory amendment to the Court’s grounds for allowing appeals. We are aware that this would constitute a significant change to the system of criminal appeals in this country and that it would qualify to a limited extent the longstanding constitutional doctrine of the primacy of the jury. Neither of these things should be allowed to stand in the way of ensuring that innocent people are not falsely imprisoned.

28. We recommend that the Law Commission review the Court of Appeal’s grounds for allowing appeals. This review should include consideration of the benefits and dangers of

⁵² [Q 115](#)

⁵³ Lord Judge ([CCR0057](#))

⁵⁴ Lord Chief Justice of England and Wales ([CCR0047](#)), on behalf of the Court of Appeal Criminal Division

⁵⁵ [2012] EWCA Crim 2241

⁵⁶ Lord Judge ([CCR0057](#))

a statutory change to allow and encourage the Court of Appeal to quash a conviction where it has a serious doubt about the verdict, even without fresh evidence or fresh legal argument. If any such change is made, it should be accompanied by a review of its effects on the CCRC and of the continuing appropriateness of the ‘real possibility’ test.

The Royal Prerogative of Mercy

29. One possible solution that has been put to us to the problems mentioned above is for the CCRC to utilise its power under section 16 of the 1995 Act to bypass the Court of Appeal and refer cases to the Secretary of State for application of the Royal Prerogative of Mercy. This has only been done once since the creation of the CCRC, in a sentence-only case.⁵⁷ Professor Zander told us that he thought it should be used as a last resort, in “desperation.”⁵⁸ However, the Royal Commission recommended that the use of this power “should only be where the Court of Appeal is unlikely to be able to consider the case under the existing rules”.⁵⁹ The Lord Chief Justice argued that this would raise “a serious question of constitutional propriety”.⁶⁰ Lord Judge stated that this would lead to “precisely the problems which the [Royal Commission] successfully avoided.”⁶¹ **We do not think that the CCRC should change its approach to the Royal Prerogative. Greater use of the power under section 16 of the 1995 Act would bring the executive back into the process in precisely the manner that the creation of the CCRC was intended to avoid. In our view, increased use of the Royal Prerogative would be a wholly inadequate and inappropriate answer to the problems that have been raised, given that it does not lead to the quashing of the conviction or the correction of the miscarriage of justice but only commutes the sentence, and so does not provide complete justice for a falsely convicted person.**

⁵⁷ Professor Michael Zander QC ([CCR0002](#))

⁵⁸ [Q 64](#)

⁵⁹ The Royal Commission on Criminal Justice, [Report](#), Cm 2263, July 1993, p 184

⁶⁰ Lord Chief Justice of England and Wales ([CCR0052](#))

⁶¹ Lord Judge ([CCR0057](#))

3 Resources, investigatory powers and practices

Resources

Finances

30. Most written evidence submitted to us supported the notion that the CCRC is an under-funded and under-resourced organisation, facing a sharp increase in its workload at the same time as budget cuts under austerity. This is perceived by many to be one of the CCRC's most pressing problems, with numerous witnesses blaming budgetary pressure for long delays and what they see as poor quality investigations. We were told that “the CCRC are hindered in carrying out effective investigations by limited resources and funding”,⁶² that it “needs more resources and staff to cope with the significant rise in applications and to reduce the waiting lists”,⁶³ and that it “needs more money, so it can hire more staff to investigate cases more quickly and in greater depth.”⁶⁴ As well as these issues, when asked about the CCRC playing a wider role in feeding back into the criminal justice system, which we discuss below at paragraphs 52–53, both Richard Foster, Chair of the CCRC, and the Ministry pointed out that this kind of work was constrained by resources as the CCRC is a “casework organisation”.⁶⁵

31. As a non-departmental public body the CCRC is funded by the Ministry of Justice through a grant-in-aid. Early in 2014, Richard Foster told us that “austerity came to us rather early.”⁶⁶ Between 2009/10 and 2014/15 funding to the CCRC fell from £6.511 million to £5.250 million.⁶⁷ Adjusted for inflation this amounts to a 30 per cent cut. This means that whereas at the end of 2004/05 the CCRC had 42 Case Review Managers at full time equivalent,⁶⁸ as of the end of the 2013/14 financial year this number had fallen to 34,⁶⁹ well below the 50 that the Commission targeted in its early years. These budget cuts have come alongside a sharp increase in the CCRC's workload. The successful introduction of an Easy Read application form in 2012, alongside other work to ensure greater access to the CCRC's services, led to a 74 per cent increase in the number of applications to the Commission from 933 in 2010/11 to 1625 in 2012/13.⁷⁰ In combination these competing pressures have meant that, according to Richard Foster, in real terms “for every £10 that

⁶² Holly Greenwood ([CCR0035](#))

⁶³ Horatio Goodden ([CCR0008](#))

⁶⁴ Centre for Criminal Appeals ([CCR0027](#))

⁶⁵ [Q 122](#)

⁶⁶ Oral evidence taken by the Justice Committee on [14 January 2014](#), HC (2013–14) 971, Q 1

⁶⁷ Criminal Cases Review Commission ([CCR0055](#))

⁶⁸ Criminal Cases Review Commission, *Annual Report and Accounts 2010/11*, HC (2010–12) [1225](#), p 24

⁶⁹ Criminal Cases Review Commission, *Annual Report and Accounts 2013/14*, HC (2014–15) [207](#), p 26

⁷⁰ Criminal Cases Review Commission ([CCR0041](#)) para 12

my predecessor had to spend on a case a decade ago, I have £4 today”, which he described as “the biggest cut that has taken place anywhere in the criminal justice system.”⁷¹

32. One result of this has been gradually increasing delays. The average waiting time after application to the start of the CCRC’s review of a case is currently 8 months for an applicant in custody and 13 months if the applicant is at liberty.⁷² We were told by Paul May that the case of Eddie Gilfoyle was still undergoing investigation, four and a half years after application, which Paul May called a “disgrace”.⁷³ We are aware that the CCRC wants to reduce these queues substantially, although it is of the opinion that without additional funding this will be very challenging. In January 2014 Richard Foster told us that the Commission needed about an extra £1 million in order to clear its queues.⁷⁴

33. When the Ministry was questioned on the rationale for cutting the CCRC’s budget while its workload was increasing, it said that the cuts were made due to budgetary pressure on the Ministry as a whole under austerity. It further explained that the “cuts that they have experienced here are not as deep, for want of a better word, as those that have been made in the Ministry of Justice as a whole.”⁷⁵ The CCRC successfully bid to the Ministry for a £500,000 temporary uplift in its budget in both the 2013/14 and 2014/15 financial years.⁷⁶ When we asked what assessment was made by the Ministry of what the effects of the cuts would be we were told that this consisted of “constructive negotiations with the Commission” which was asked “to propose efficiencies and savings, and how it could do better for less”, including a self-assessment. While the Ministry’s Annual Report 2013/14 contained a projected Resource Departmental Expenditure Limit budget for the CCRC in 2015/16 of £4.156 million, which would constitute a budget cut of over 20 percent on 2014/15, we have been assured that this was “a worst case scenario” and that the budget “will not be cut in line with [these] assumptions.”⁷⁷ We have not, however, been told whether or not this means that the CCRC’s budget is still facing cuts in 2015/16, albeit on a smaller scale.

34. The other aspect of the CCRC’s funding that we have been told causes it problems is the lack of certainty in its budget and therefore the lack of ability to plan ahead properly. Richard Foster told us that the fact that the CCRC’s budget was only agreed with the Ministry on an annual basis meant that by the time new staff were hired and trained the funds required to keep employing them might no longer be available. Karen Kneller added that this also meant that “core staff are looking to move on [...] because we can’t give them any certainty.”⁷⁸

35. If the CCRC is to function effectively it must be funded properly. We accept that the Ministry has had to find savings across the board and that it could not have predicted

⁷¹ [Q 108](#)

⁷² [Q 109](#)

⁷³ [Q 79](#)

⁷⁴ Oral evidence taken by the Justice Committee on [14 January 2014](#), HC (2013–14) 971, Q 15

⁷⁵ [Q 132](#)

⁷⁶ Ministry of Justice ([CCR0011](#)) para 23

⁷⁷ Ministry of Justice ([CCR0053](#))

⁷⁸ [Q 110](#)

the sharp rise in the CCRC’s workload. However it is now clear that the CCRC is struggling to cope with these additional applications at its post-austerity resource levels and, with the increased workload, is unable to deliver an improved service for less. The current level of delays is unacceptable and must be brought down, and this will inevitably require further funding. As so many of the CCRC’s other issues are also blamed on funding, an increase should also make identifying areas for further improvement an easier task. *We recommend that the CCRC should, as a matter of urgency, be granted the additional £1 million of annual funding that it has requested until it has reduced its backlog. Furthermore, the Ministry should engage with the CCRC in longer term budgetary planning so that the Commission can properly plan ahead and recruit efficiently, with a view to restoring it to a level of funding which enables it to eliminate lengthy delays in handling cases.*

Remit

36. A number of submissions have argued that the CCRC’s resource constraints could be eased by restricting its remit to allow it to focus on more serious and deserving cases. At present the CCRC is under a statutory duty to consider every application to it that falls within its responsibilities, which includes all convictions and sentences in cases dealt with on indictment, summarily, in the Court Martial, and in the Service Civilian Court. Two areas of this remit account for around a quarter of applications: sentence-only cases and cases which were heard in the magistrates’ court. With regard to the former category Professor Hoyle noted that “recently the Court has been fairly reluctant to allow challenges to sentences that seem to be disproportionate”.⁷⁹ Glyn Maddocks similarly told us, “In fact, the courts have restricted what they feel they want to see in relation to sentencing cases anyway, so I do not think anyone here would disagree with some of the trivial stuff being taken out of their remit.”⁸⁰ The CCRC has previously “questioned whether it should continue to review less serious offences” and noted, “The matter seems particularly pressing when our resources are so stretched.” However it also recognises the “inherent difficulties in deciding what ‘less serious’ means”, and has expressed concerns about cases being removed from its remit at a time when there is uncertainty about the effects the legal aid cuts will have on the number of miscarriages of justice, especially in the magistrates’ courts.⁸¹

37. The latter category is notable for two reasons. First, the Royal Commission predominantly looked at cases in the Crown Court and did not concern itself with the magistrates’ court, largely because of the nature and seriousness of the high-profile miscarriages of justice which led to its formation. We have been told that the “Royal Commission did not envisage the CCRC dealing with relatively trivial cases”.⁸² If it had been suggested at that time that the CCRC should deal with such cases, or sentence-only cases, Professor Zander, a member of the Royal Commission, did not think the Royal Commission would have agreed.⁸³ Second, the appeal options for a case heard in the

⁷⁹ Professor Carolyn Hoyle ([CCR0024](#)) para 16

⁸⁰ [Q 7](#)

⁸¹ Criminal Cases Review Commission ([CCR0041](#)) para 48

⁸² Professor Carolyn Hoyle ([CCR0024](#)) para 17

⁸³ Professor Michael Zander QC ([CCR0002](#))

magistrates' court are much broader than for a Crown Court case if the defendant pleaded not guilty, including the right to appeal to the Crown Court by way of a full rehearing of the case.⁸⁴

38. It has not been suggested to us that the CCRC should be prevented from considering magistrates' court cases altogether. As the University of Warwick School of Law pointed out, "the magistrates' court deals with the vast majority of criminal convictions and the range of offences now classified as 'either way' offences has increased significantly and many of these are far from trivial in nature".⁸⁵ Professor Hoyle has suggested that this should be a matter of discretion for the CCRC, so that they are not under a statutory duty to review magistrates' court cases which they deem to be trivial.⁸⁶ Professor Zander proposed that applicants in such cases should be put to the test of "establishing first that it is in the public interest that it should go to the Court of Appeal, and only secondly whether it has merits."⁸⁷

39. We acknowledge the serious consequences of every miscarriage of justice for the person convicted, no matter how minor the offence. Despite this, we also think that the effect of overturning a miscarriage in more serious cases is much greater and that the CCRC was originally envisaged as an organisation to deal with such serious cases. Given the serious funding constraints that we have identified, we are persuaded that the CCRC should have greater control over its caseload in order to better focus its resources where they would have the greatest effect. We recommend that the Ministry make statutory provision to allow the CCRC a discretion to refuse to investigate cases dealt with summarily, if they deem it not to be in the public interest to investigate, and a discretion to refuse to investigate sentence-only cases.

Investigatory powers

Enforcement of the existing section 17 powers

40. Under section 17 of the 1995 Act the CCRC has the power to compel a public body to produce documents or other material to it, to assist in its investigations. However, there is no specific mechanism for the CCRC to enforce this duty on public bodies if they are slow to co-operate or fail to do so altogether. We have received some evidence which suggests that there is occasional non-compliance with section 17 requests, as well as excessive delays. Professor Hoyle told us that the success rate for such requests ranged from about 67 per cent for local authorities to 90 per cent for the courts.⁸⁸ In his written evidence Paul May referred to a case he was aware of in which there had been a refusal to comply over a

⁸⁴ Which is how a reference from the CCRC in cases dealt with summarily operates.

⁸⁵ University of Warwick School of Law ([CCR0026](#)) para 21

⁸⁶ Professor Carolyn Hoyle ([CCR0024](#)) para 17

⁸⁷ [Q 53](#)

⁸⁸ [Q 41](#)

two year period.⁸⁹ Richard Foster said that “people usually comply in the end”, but he also told us that he would welcome the addition of a time limit and a sanction to the power.⁹⁰

41. In order to be effective and to reduce delays the CCRC’s existing section 17 powers to require public bodies to disclose materials need to be supplemented by enforcement measures or sanctions for failure to comply in an appropriate amount of time. We recommend that the Government bring forward legislation to add a time limit for public bodies to comply with a section 17 request, unless there are extenuating circumstances, and an appropriate sanction in case of non-compliance.

The extension of section 17 powers to cover private bodies

42. The CCRC has long asked for its section 17 powers to be extended to allow it to compel similar materials from private bodies by way of a court order. In contrast, such a power has existed for the Scottish CCRC since its inception. We were told by Richard Foster that “you can be confident that there are miscarriages of justice that have gone unremedied because of the lack of that power.”⁹¹ It has also been stressed to us that the need for this extension is a growing one, in part because of the privatisation of various criminal justice bodies and services, including the Forensic Science Service.

43. When we asked why the Government had not yet taken steps to introduce such a power, the Ministry told us that they “don’t have a primary legislative vehicle at the moment to do so”.⁹² Richard Foster previously stated that this “is something that well-meaning officials have been telling us since 2006”.⁹³ Professor Zander contended that this argument was “totally ridiculous” as “all it needs is one extra clause in a criminal justice bill. There will always be criminal justice bills, so it does not make any sense.”⁹⁴ In written evidence the Ministry also pointed to its efforts to introduce this through a Private Members’ Bill, specifically as a hand-out bill.⁹⁵ In February 2014 we were ensured by the Minister at that time that this was the intended way of enacting the extension. The Bill was not picked up by any MP successful in the Session 2014–15 ballot, although the principal clause in the Bill was included by John Hemming MP in his Transparency and Accountability Bill, which contained a series of other more contested provisions and was talked out at Second Reading.⁹⁶ The extension has therefore run out of opportunities to be brought forward this Parliament and it is unclear when the next opportunity to do so will be. Reliance on the Private Members’ Bill route for crucial legislation is in any event unsatisfactory, considering the great difficulties which they face in securing passage.

⁸⁹ Paul May (CCR0003) para 21

⁹⁰ [Q 113](#)

⁹¹ [Q 112](#)

⁹² [Q 134](#)

⁹³ Oral evidence taken by the Justice Committee on [14 January 2014](#), HC (2013–14) 971, Q 30

⁹⁴ [Q 62](#)

⁹⁵ Ministry of Justice (CCR0011) para 20

⁹⁶ For full detail of that Bill and its progress see: <http://services.parliament.uk/bills/2014-15/transparencyandaccountability.html>

44. The extension of the CCRC's section 17 powers to cover private bodies is urgently necessary and commands universal support. Successive Governments have no excuse for failing to do this and any further continuing failure is not acceptable.

45. *It should be a matter of great urgency and priority for the next Government to bring forward legislation to implement the extension of the CCRC's powers so that it can compel material necessary for it to carry out investigations from private bodies through an application to the courts. No new Criminal Justice Bill should be introduced without the inclusion of such a clause. Our successor Committee should monitor the progress of this to ensure that it happens promptly, and should continue to put pressure on the Government if necessary.*

Investigatory practices

46. An often repeated, although contested, criticism of the CCRC is that the investigations that it carries out are of a poor quality. Allegations which have been put to us range from claims that the CCRC was not being proactive enough in the way that it deals with applications, to individuals asserting that the Commission was unequipped to investigate and has wholly failed properly to follow all lines of inquiry in their cases, or cases which they have been involved with.⁹⁷

47. A number of submissions to us alleged that the CCRC was a reactive, rather than a proactive, organisation. Mark Newby gave us his viewpoint:

Applicants, in particular when they make their own applications, will submit a series of what they consider to be their appeal points. Many CCRC cases can be concluded simply by cross-checking those points, and we regularly find that to be the case, rather than taking a proactive stance and looking more deeply at what may be the unsafe aspects of a case that may not have occurred to an appellant.⁹⁸

Where this point is perhaps most apparent is in research undertaken by the University of Warwick, funded by the Legal Services Commission, which found a stark disparity in the success of legally represented applicants in having their cases progress past screening, to a full investigation, as opposed to unrepresented applicants. It found that 82 per cent of represented applicants got their cases past Stage 1 screening whereas only 50 per cent of unrepresented applicants managed to do the same.⁹⁹ One aspect of proactivity about which concerns have also been expressed to us was the level of engagement between the CCRC and applicants, including the perceived reluctance of Case Review Managers to meet applicants. Paul May told us that this highlighted an issue with variation of approach between Case Review Managers, as some engaged very well while others shared very little information with applicants.¹⁰⁰ He contended that meeting with applicants more often

⁹⁷ For example see Stanley Welsh ([CCR0031](#)), AF ([CCR0039](#)), Eifion Edwards ([CCR0045](#)), Neil Jackson ([CCR0046](#)) and George Skelly ([CCR0050](#))

⁹⁸ [Q 1](#)

⁹⁹ Jacqueline Hodgson and Juliet Horne, [The extent and Impact of Legal Representation on Applications to the Criminal Cases Review Commission \(CCRC\)](#), October 2009

¹⁰⁰ [Q 83](#)

“would enhance confidence in the CCRC and (in the significant number of instances where applicants are unable to express themselves fully in writing) assist the investigative process.”¹⁰¹ He also noted that the variation in the expertise of Case Review Managers is not properly utilised as “there is random allocation of cases, because that does not necessarily play to the strengths of Case Review Managers.”¹⁰²

48. Professor Hoyle disputed the allegation that the CCRC were not generally proactive, as a result of her ongoing research on the Commission with the University of Oxford. She argued that many cases were appropriately investigated by going through the bundle, and that “it is important to remember that this desk-based work is investigation [her emphasis].” Her research found that the CCRC carried out investigations ‘beyond-the-bundle’ in over a third of cases, and that “the CCRC undertakes further investigations – including section 17 requests for data – in an overwhelming majority of cases.” She therefore concluded that “there is no evidence that the CCRC typically fails to conduct thorough investigations.”¹⁰³ In response to this point Dr Dennis Eady, of the Cardiff University Law School Innocence Project, questioned whether it was indeed a positive as “people’s expectations with the CCRC [...] are that the CCRC will be proactive in some sense in every case, and that they will look beyond what the person is saying and what is in the bundle, so for an organisation to be proactive in only a third of cases is not necessarily a very positive impression.”¹⁰⁴

49. Even when the CCRC does investigate a case, we have been told that it often does so ineffectively. Des Thomas, a retired Detective Superintendent, was highly critical, calling the CCRC “a badly managed inept organization that lacks the knowledge required to conduct high quality and valid reviews.”¹⁰⁵ We received a number of pieces of evidence complaining of specific investigative failings in individual cases. In response to all of these allegations we were assured by Richard Foster that, despite assertions made to us that the CCRC’s Case Review Managers were untrained,¹⁰⁶ all those who joined the Commission were fully trained in the specifics of their work through an induction training course “which is quite intensive” and they then underwent continuing routine training.¹⁰⁷ Furthermore, in his research on the CCRC Dr Heaton concluded that any deficiencies “are not due to the quality or thoroughness of the investigation” and that any risk that cases might be missed “was not attributable to a lack of either thoroughness or independence.”¹⁰⁸

50. We are concerned with the evidence that we have received on the variation between Case Review Managers, both in approach and in terms of expertise. While this does not suggest that there are serious systemic shortcomings in the CCRC’s investigative work, there remains room for improvement even within its resource constraints.

¹⁰¹ Paul May ([CCR0003](#)) para 14

¹⁰² [Q 91](#)

¹⁰³ Professor Carolyn Hoyle ([CCR0024](#)) paras 5–6

¹⁰⁴ [Q 3](#)

¹⁰⁵ Des Thomas ([CCR0010](#)) para 6

¹⁰⁶ [Q 6](#)

¹⁰⁷ [Q 105](#)

¹⁰⁸ Stephen Heaton, [A critical evaluation of the utility of using innocence as a criterion in the post conviction process](#), December 2013, p 306

51. *We recommend that the Commission take steps to ensure that Case Review Managers consistently engage fully with applicants throughout the investigation in cases which progress past Stage 1 screening. As a matter of course this should include meeting with the applicant in all cases being given a type 3 or type 4 review, unless there are compelling reasons not to. We also recommend that variations in the experience and expertise of Case Review Managers be dealt with by assigning them to investigations more intelligently, so as to utilise fully their differing areas of proficiency and knowledge.*

The CCRC's role in the criminal justice system

52. The CCRC's vision statement includes "enhancing public confidence in the criminal justice system" and "contributing to reform and improvements in the law". We have received evidence pointing out that the CCRC is in a unique position to feed back into the criminal justice system on things going wrong and the causes of miscarriages of justice, but that this is not happening in as comprehensive a manner as might be desired. Dr Carole McCartney, of the University of Northumbria, told us that "It is that feedback loop we would like. Let us learn from these cases they are dealing with and feed back to the Judicial Studies Board how bad character is leading to miscarriages of justice and so forth."¹⁰⁹ The CCRC and Ministry both accepted that a lack of resources was forcing the CCRC to focus on its primary purpose, which is casework, and the CCRC has accepted that it could be doing more in terms of feedback.¹¹⁰ Bob Woffinden told us that he thought that the existence of the CCRC itself displayed a focus on just rectifying miscarriages after the fact rather than preventing them in the first place, which he sees as the wrong priority, "We need to make sure that the system functions properly first time, because it is costing the country millions of pounds and is creating awful distress for families, both the wrongly imprisoned and the victims and bereaved. I believe that more attention should be put on getting it right first time."¹¹¹ Commendably, the CCRC does allow academics to perform research about it, much of which we have cited in this Report, and has "created a research committee [...] to build upon the growing body of independent qualitative and quantitative research about the CCRC and its work." It also presents to police forces and in prisons and responds to criminal justice consultations, including a submission of illuminating and well-researched evidence to our recent follow-up inquiry into joint enterprise.¹¹²

53. **The Criminal Cases Review Commission, because it is the only body which investigates and refers to the Court of Appeal miscarriages of justice, is in a unique position to identify issues across the criminal justice system which lead to such miscarriages. We welcome the CCRC's willingness to allow academics to perform research alongside it and the steps it is currently taking to build upon that. We acknowledge that the CCRC is in a difficult position with regard to resources, but we think that there is a great benefit in preventing miscarriages of justice from occurring in the first place. Greater understanding within the criminal justice system of the causes**

¹⁰⁹ [Q 44](#)

¹¹⁰ [Q 122](#)

¹¹¹ [Q 97](#)

¹¹² Criminal Cases Review Commission ([CCR0041](#)) para 34

of miscarriages of justice would benefit the falsely accused, victims, public safety and the interests of justice, and could produce a saving in time and in money which would otherwise be spent by the courts and the CCRC in subsequently overturning false convictions. *We recommend that the CCRC should develop a formal system for regularly feeding back into all areas of the criminal justice system, from the police and Crown Prosecution Service through to the courts and the Ministry of Justice, on its understanding of the issues which are continuing to cause miscarriages of justice.*

4 Conclusion on the CCRC's effectiveness

54. We conclude that the CCRC is performing its functions reasonably well, and we have identified areas for improvement, but we were struck by the disparity between what critics believe it to be doing and what it claims that it is doing. At times there was complete disagreement, even on objective and factual matters. This indicates that at the very least the CCRC has a problem with public perception, including with the awareness of applicants as to what it can do for them and of all stakeholders, including applicants, their representatives, and others, as to how it operates. The CCRC will never convince its most vociferous detractors, but it could be doing more to ensure that its work and processes are well understood.

55. The level of successful referrals from the CCRC shows that it remains as necessary a body now as when it was set up. We received very little evidence advocating its abolition, and even its strongest critics have said that they simply want it to improve. The existence of the CCRC is not enough in and of itself; it must be given the resources and powers it requires to perform its job effectively. The fundamental constitutional principle on which our criminal justice system rests and which the Commission exists to uphold is that the guilty are convicted and the innocent go free.

Conclusions and recommendations

The 'real possibility' test

1. There was a strong difference of views amongst our witnesses on changing the 'real possibility' test. Any change would have to be undertaken in light of a change to the Court of Appeal's grounds for allowing appeals, and would have to take account of the need to avoid a waste of resources or a detrimental effect on applicants and victims alike. While an alternative test might allow the CCRC more scope to display its independence of the Court of Appeal, by definition the only additional referrals which a change to the test alone would allow would be those with less than a real possibility of success. (Paragraph 16)
2. We have seen no conclusive evidence that the CCRC is failing to apply the 'real possibility' test correctly in the majority of cases. We accept that application of the test is a difficult task and is by no means a precise science, but where potential miscarriages of justice are concerned we consider that the CCRC should be willing to err on the side of making a referral. The Commission should definitely never fear disagreeing with, or being rebuked by, the Court of Appeal. If a bolder approach leads to 5 more failed appeals but one additional miscarriage being corrected, then that is of clear benefit. (Paragraph 20)
3. *We recommend that the CCRC be less cautious in its approach to the 'real possibility' test, and reduce the targeted success rate in its Key Performance Indicators accordingly.* (Paragraph 20)
4. We are concerned that there may be some miscarriages of justice which are going uncorrected because of the difficulty the CCRC faces in getting some such cases past the threshold of 'real possibility', as a result of the Court of Appeal's approach. While it is important that the jury system is not undermined, properly-directed juries which have seen all of the evidence may occasionally make incorrect decisions. The Court's jurisprudence in this area, including on 'lurking doubt', is difficult to interpret and it is concerning that there is no clear or formal mechanism to consider quashing convictions arising from decisions which have a strong appearance of being incorrect. Any change in this area would require a change to the Court of Appeal's approach, which would itself require a statutory amendment to the Court's grounds for allowing appeals. We are aware that this would constitute a significant change to the system of criminal appeals in this country and that it would qualify to a limited extent the longstanding constitutional doctrine of the primacy of the jury. Neither of these things should be allowed to stand in the way of ensuring that innocent people are not falsely imprisoned. (Paragraph 27)
5. *We recommend that the Law Commission review the Court of Appeal's grounds for allowing appeals. This review should include consideration of the benefits and dangers of a statutory change to allow and encourage the Court of Appeal to quash a conviction where it has a serious doubt about the verdict, even without fresh evidence or fresh legal argument. If any such change is made, it should be accompanied by a review of its*

effects on the CCRC and of the continuing appropriateness of the ‘real possibility’ test. (Paragraph 28)

6. We do not think that the CCRC should change its approach to the Royal Prerogative. Greater use of the power under section 16 of the 1995 Act would bring the executive back into the process in precisely the manner that the creation of the CCRC was intended to avoid. In our view, increased use of the Royal Prerogative would be a wholly inadequate and inappropriate answer to the problems that have been raised, given that it does not lead to the quashing of the conviction or the correction of the miscarriage of justice but only commutes the sentence, and so does not provide complete justice for a falsely convicted person. (Paragraph 29)

Resources, investigatory powers, and practices

7. If the CCRC is to function effectively it must be funded properly. We accept that the Ministry has had to find savings across the board and that it could not have predicted the sharp rise in the CCRC’s workload. However it is now clear that the CCRC is struggling to cope with these additional applications at its post-austerity resource levels and, with the increased workload, is unable to deliver an improved service for less. The current level of delays is unacceptable and must be brought down, and this will inevitably require further funding. As so many of the CCRC’s other issues are also blamed on funding, an increase should also make identifying areas for further improvement an easier task. (Paragraph 35)
8. *We recommend that the CCRC should, as a matter of urgency, be granted the additional £1 million of annual funding that it has requested until it has reduced its backlog. Furthermore, the Ministry should engage with the CCRC in longer term budgetary planning so that the Commission can properly plan ahead and recruit efficiently, with a view to restoring it to a level of funding which enables it to eliminate lengthy delays in handling cases.* (Paragraph 35)
9. We acknowledge the serious consequences of every miscarriage of justice for the person convicted, no matter how minor the offence. Despite this, we also think that the effect of overturning a miscarriage in more serious cases is much greater and that the CCRC was originally envisaged as an organisation to deal with such serious cases. Given the serious funding constraints that we have identified, we are persuaded that the CCRC should have greater control over its caseload in order to better focus its resources where they would have the greatest effect. (Paragraph 39)
10. *We recommend that the Ministry make statutory provision to allow the CCRC a discretion to refuse to investigate cases dealt with summarily, if they deem it not to be in the public interest to investigate, and a discretion to refuse to investigate sentence-only cases.* (Paragraph 39)
11. In order to be effective and to reduce delays the CCRC’s existing section 17 powers to require public bodies to disclose materials need to be supplemented by enforcement measures or sanctions for failure to comply in an appropriate amount of time. (Paragraph 41)

12. *We recommend that the Government bring forward legislation to add a time limit for public bodies to comply with a section 17 request, unless there are extenuating circumstances, and an appropriate sanction in case of non-compliance. (Paragraph 41)*
13. The extension of the CCRC's section 17 powers to cover private bodies is urgently necessary and commands universal support. Successive Governments have no excuse for failing to do this and any further continuing failure is not acceptable. (Paragraph 44)
14. *It should be a matter of great urgency and priority for the next Government to bring forward legislation to implement the extension of the CCRC's powers so that it can compel material necessary for it to carry out investigations from private bodies through an application to the courts. No new Criminal Justice Bill should be introduced without the inclusion of such a clause. Our successor Committee should monitor the progress of this to ensure that it happens promptly, and should continue to put pressure on the Government if necessary. (Paragraph 45)*
15. We are concerned with the evidence that we have received on the variation between Case Review Managers, both in approach and in terms of expertise. While this does not suggest that there are serious systemic shortcomings in the CCRC's investigative work, there remains room for improvement even within its resource constraints. (Paragraph 50)
16. *We recommend that the Commission take steps to ensure that Case Review Managers consistently engage fully with applicants throughout the investigation in cases which progress past Stage 1 screening. As a matter of course this should include meeting with the applicant in all cases being given a type 3 or type 4 review, unless there are compelling reasons not to. We also recommend that variations in the experience and expertise of Case Review Managers be dealt with by assigning them to investigations more intelligently, so as to utilise fully their differing areas of proficiency and knowledge. (Paragraph 51)*
17. The Criminal Cases Review Commission, because it is the only body which investigates and refers to the Court of Appeal miscarriages of justice, is in a unique position to identify issues across the criminal justice system which lead to such miscarriages. We welcome the CCRC's willingness to allow academics to perform research alongside it and the steps it is currently taking to build upon that. We acknowledge that the CCRC is in a difficult position with regard to resources, but we think that there is a great benefit in preventing miscarriages of justice from occurring in the first place. Greater understanding within the criminal justice system of the causes of miscarriages of justice would benefit the falsely accused, victims, public safety and the interests of justice, and could produce a saving in time and in money which would otherwise be spent by the courts and the CCRC in subsequently overturning false convictions. (Paragraph 53)
18. *We recommend that the CCRC should develop a formal system for regularly feeding back into all areas of the criminal justice system, from the police and Crown Prosecution Service through to the courts and the Ministry of Justice, on its*

understanding of the issues which are continuing to cause miscarriages of justice.
(Paragraph 53)

Conclusion on the CCRC's effectiveness

19. We conclude that the CCRC is performing its functions reasonably well, and we have identified areas for improvement, but we were struck by the disparity between what critics believe it to be doing and what it claims that it is doing. At times there was complete disagreement, even on objective and factual matters. This indicates that at the very least the CCRC has a problem with public perception, including with the awareness of applicants as to what it can do for them and of all stakeholders, including applicants, their representatives, and others, as to how it operates. The CCRC will never convince its most vociferous detractors, but it could be doing more to ensure that its work and processes are well understood. (Paragraph 54)
20. The level of successful referrals from the CCRC shows that it remains as necessary a body now as when it was set up. We received very little evidence advocating its abolition, and even its strongest critics have said that they simply want it to improve. The existence of the CCRC is not enough in and of itself; it must be given the resources and powers it requires to perform its job effectively. The fundamental constitutional principle on which our criminal justice system rests and which the Commission exists to uphold is that the guilty are convicted and the innocent go free. (Paragraph 55)

Formal Minutes

Tuesday 17 March 2015

Members present:

Sir Alan Beith, in the Chair

Jeremy Corbyn
John Howell
Mr Elfyn Llwyd

Andy McDonald
John McDonnell

Draft Report (*Criminal Cases Review Commission*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 55 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Twelfth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[The Committee adjourned.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/justicecttee.

Tuesday 13 January 2015

Question number

Dr Dennis Eady , Case Consultant, Cardiff University Law School Innocence Project, Dr Michael Naughton , Innocence Network UK, University of Bristol Innocence Project, Glyn Maddocks , solicitor, and Mark Newby , solicitor	Q1-24
Professor Jacqueline Hodgson , University of Warwick School of Law, Professor Carolyn Hoyle , Centre for Criminology, University of Oxford, and Dr Carole McCartney , Northumbria University School of Law	Q25-44

Tuesday 20 January 2015

Lord Runciman , Chair, and Professor Michael Zander QC , Member, Royal Commission on Criminal Justice (Runciman Commission)	Q45-76
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Tuesday 3 February

Paul May , and Bob Woffinden	Q77-102
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Tuesday 3 February

Richard Foster , Chair, and Karen Kneller , Chief Executive, Criminal Cases Review Commission	Q103-131
Rt Hon Mike Penning MP , Minister of State for Policing, Criminal Justice and Victims, and Stephen Muers , Director for Sentencing and Rehabilitation, Ministry of Justice	Q132-155

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at www.parliament.uk/justicectee. INQ numbers are generated by the evidence processing system and so may not be complete.

- 1 AF ([CCR0039](#))
- 2 Bob Woffinden ([CCR0033](#))
- 3 British False Memory Society ([CCR0018](#))
- 4 C/O Cardiff University Law School ([CCR0030](#))
- 5 Cardiff University Law School Innocence Project ([CCR0029](#))
- 6 Centre For Criminal Appeals ([CCR0027](#))
- 7 Clifford Chance LLP ([CCR0036](#))
- 8 Court of Appeal Criminal Division ([CCR0022](#))
- 9 Criminal Cases Review Commission ([CCR0041](#)); and ([CCR0055](#))
- 10 Des Thomas ([CCR0010](#))
- 11 Dr Peter Freeman ([CCR0001](#))
- 12 Eifion Edwards ([CCR0045](#))
- 13 False Allegations Support Organisation ([CCR0042](#))
- 14 Friends of Susan May ([CCR0049](#))
- 15 George Skelly ([CCR0050](#))
- 16 Glyn Maddocks ([CCR0013](#)); ([CCR0054](#)); and ([CCR0056](#))
- 17 Holly Greenwood ([CCR0035](#))
- 18 Horatio Goodden ([CCR0008](#))
- 19 JENGBA ([CCR0040](#))
- 20 Lord Chief Justice of England and Wales ([CCR0047](#)); and ([CCR0052](#))
- 21 Lord Judge ([CCR0057](#))
- 22 Mark Newby ([CCR0021](#))
- 23 Maxine Mcevoy ([CCR0005](#))
- 24 Ministry of Justice ([CCR0011](#)); and ([CCR0053](#))
- 25 Neil Jackson ([CCR0046](#))
- 26 Nick Johnson ([CCR0032](#))
- 27 Northumbria University School of Law ([CCR0012](#))
- 28 Paul May ([CCR0003](#))
- 29 Prison Reform Trust ([CCR0034](#))
- 30 Professor Carolyn Hoyle ([CCR0024](#))
- 31 Professor Michael Zander QC ([CCR0002](#)); ([CCR0048](#)); and ([CCR0051](#))
- 32 SAFARI ([CCR0037](#))
- 33 Scottish Criminal Cases Review Commission ([CCR0043](#))
- 34 Stanley Welsh ([CCR0031](#))
- 35 Stephen Heaton ([CCR0015](#))
- 36 Steven Jonas ([CCR0028](#))
- 37 The General Council of the Bar of Northern Ireland ([CCR0006](#))
- 38 University of Warwick School of Law ([CCR0026](#))
- 39 Victims' Commissioner for England and Wales ([CCR0009](#))
- 40 Victor Nealon ([CCR0017](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/justicecttee.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

First Report	Revised Sentencing Guideline: Assault	HC 637
Second Report	Appointment of the Chair of the Judicial Appointments Commission	HC 770
Third Report	Government's proposed reform of legal aid	HC 681-I (Cm 8111)
Fourth Report	Appointment of the Prisons and Probation Ombudsman for England and Wales	HC 1022
Fifth Report	Appointment of HM Chief Inspector of Probation	HC 1021
Sixth Report	Operation of the Family Courts	HC 518-I (Cm 8189)
Seventh Report	Draft sentencing guidelines: drugs and burglary	HC 1211
Eighth Report	The role of the Probation Service	HC 519-I (Cm 8176)
Ninth Report	Referral fees and the theft of personal data: evidence from the Information Commissioner	HC 1473(Cm 8240)
Tenth Report	The proposed abolition of the Youth Justice Board	HC 1547 (Cm 8257)
Eleventh Report	Joint Enterprise	HC 1597 (HC 1901)
Twelfth Report	Presumption of Death	HC 1663 (Cm 8377)
First Special Report	Joint Enterprise: Government Response to the Committee's Eleventh Report of Session 2010–12	HC 1901

Session 2012–13

First Report	Post-legislative scrutiny of the Freedom of Information Act 2000	HC 96-I (Cm 8505)
Second Report	The budget and structure of the Ministry of Justice	HC 97-I (Cm 8433)
Third Report	The Committee's opinion on the European Union Data Protection framework proposals	HC 572 (Cm 8530)
Fourth Report	Pre-legislative scrutiny of the Children and Families Bill	HC 739 (Cm 8540)
Fifth Report	Draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013	HC 927
Sixth Report	Interpreting and translation services and the Applied Language Solutions contract	HC 645 (Cm 8600)
Seventh Report	Youth Justice	HC 339 (Cm 8615)
Eighth Report	Scrutiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals	HC 965 (HC 1119)

Council) Order 2013

Ninth Report	The functions, powers and resources of the Information Commissioner	HC 962 (HC 560 Session 2013–14)
First Special Report	Scrutiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013: Government Response to the Committee's Eighth Report of Session 2012–13	HC 1119

Session 2013–14

First Report	Sexual Offences Guidelines: Consultation	HC 93
Second Report	Women offenders: after the Corston Report	HC 92 (Cm 8279)
Third Report	Transforming Legal Aid: evidence taken by the Committee	HC 91
Fourth Report	Environmental Offences Guideline: Consultation	HC 604
Fifth Report	Older prisoners	HC 89 (Cm 8739)
Sixth Report	Post-legislative Scrutiny of Part 2 (Encouraging or assisting crime) of the Serious Crime Act 2007	HC 639 (HC 918)
Seventh Report	Appointment of HM Chief Inspector of Probation	HC 640
Eighth Report	Ministry of Justice measures in the JHA block opt-out	HC 605 (HC 972)
Ninth Report	Fraud, Bribery and Money Laundering Guideline: Consultation	HC 804
Tenth Report	Crown Dependencies: developments since 2010	HC 726 (Cm 8837)
Eleventh Report	Appointment of the Chair of the Office for Legal Complaints	HC 916
Twelfth Report	Crime reduction policies: a co-ordinated approach? Interim report on the Government's Transforming Rehabilitation programme	HC 1004
Thirteenth Report	Serious Fraud Office Supplementary Estimate 2013–14	HC 1005
Fourteenth Report	First Joint Report from the European Scrutiny, Home Affairs and Justice Committees of Session 2013–14: The Government's response to the Committees' Reports on the 2014 block opt-out decision	HC 1177
First Special Report	The functions, powers and resources of the Information Commissioner: Government Response to the Committee's Ninth Report of Session 2012–13	HC 560
Second Special Report	Post-legislative Scrutiny of Part 2 (Encouraging or assisting crime) of the Serious Crime Act 2007: Government Response to the Committee's Sixth Report of Session 2013–14	HC 918
Third Special Report	Ministry of Justice measures in the JHA block-opt: Government Response to the Committee's Eighth Report of Session 2013–14	HC 972

Session 2014–15

First Report	Crime reduction policies: a co-ordinated approach?	HC 307 (Cm 8918)
Second Report	Theft Offences Guideline: Consultation	HC 554
Third Report	Mesothelioma Claims	HC 308 (HC 849)
Fourth Report	Joint enterprise: follow-up	HC 310
Fifth Report	Manorial Rights	HC 657
Sixth Report	Robbery Offences Guideline: Consultation	HC 1066
Seventh Report	Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines: consultation	HC 1099
Eighth Report	Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012	HC 311
Ninth Report	Prisons: planning and policies	HC 309
Tenth Report	The work of the Committee during the 2010–2015 Parliament	HC 1123
Eleventh Report	Appointment of HM Chief Inspector of the Crown Prosecution Service	HC 1117
First Special Report	Mesothelioma Claims: Government Response to the Committee's Third Report of Session 2014–15	HC 849
Second Special Report	Joint enterprise: follow-up: Government Response to the Committee's Fourth Report of Session 2014–15	HC 1047
Third Special Report	Manorial Rights: Government Response to the Committee's Fifth Report of Session 2014–15	HC 1124