**Summary of the report of the Westminster Commission on Miscarriages of Justice: “In the Interests of Justice”**

See full report [here](https://appgmiscarriagesofjustice.files.wordpress.com/2021/03/westminster-commission-on-miscarriages-of-justice-in-the-interests-of-justice.pdf)

See website of the All Party Parliamentary Group on Miscarriages of Justice [here](https://appgmiscarriagesofjustice.wordpress.com/)

1. The report is the result of the work of an independent Parliamentary Commission that commenced in 2019 and concluded March 2021. The review was conducted by a 6 member commission and evidence was taken, in writing and through oral testimony, from some of the foremost criminal appeal experts in the UK. Its conclusions and recommendations summarise the current position and lessons learnt in relation to the CCRC for England, Wales and Northern Ireland (the E CCRC). As underscored in the Executive Summary[[1]](#footnote-1), the report recommends a more pro-active approach throughout. It highlights the intrinsic value of the CCRC[[2]](#footnote-2), despite the criticisms made. It underscores the need for constitutional independence of the CCRC (in line with the judicial review case of *Warne*r)[[3]](#footnote-3).
2. On leadership, independence and resources[[4]](#footnote-4), evidence given to the commission highlighted the need for the CCRC to have leadership from those with a “proven track record in correcting miscarriages of justice”. Professor Hoyle recommended that the CCRC needed to “speak out more, and to be more critical of when things go wrong” in the criminal justice system[[5]](#footnote-5). There was discussion about reinforcing the independence of the commission in the selection and tenure of the commissioners, considering their occupational history[[6]](#footnote-6). It was underscored that the chair must have a sufficient time commitment.
3. With regard to independence[[7]](#footnote-7), it was noted that the Chair and Commissioners are appointed by the Queen on the advice of the PM and that the CCRC is sponsored by the MoJ which sets its budget and reviews. The APPG report notes that the Commissioners have not been salaried since 2017 and are now fee-paid with no holiday, no sick pay and no pension. Their daily rate is £358. There has been a 30% drop in Commissioner days from 2018/19-2019/20[[8]](#footnote-8). (In short it is chronically underfunded and undermined). The report notes the judicial review case of *Warner* in which the Divisional Court observed:

“The CCRC is much more than merely "operationally" independent; it is constitutionally independent from Government too, and must be seen to be so, if the public is to have confidence in its decisions. The relationship between the CCRC and MoJ … was very poor during this period, even dysfunctional. The poverty of this relationship undoubtedly tested the CCRC’s ability to remain independent of MoJ, and to be seen to be so.”[[9]](#footnote-9)

1. The report recommends that the role of the Chair and Commissioners should be strengthened looking to qualities of leadership and decision-making. Alongside that a statutory board including non-execs with relevant governance skills should provide oversight and support. **Recommendations on appointment structures are at page 26 of the** [**report**](https://appgmiscarriagesofjustice.files.wordpress.com/2021/03/westminster-commission-on-miscarriages-of-justice-in-the-interests-of-justice.pdf)**.**
2. On resources[[10]](#footnote-10), E CCRC case funding has been approximately cut in half over the last decade or so while incoming applications have risen by 50% in the last 5 years[[11]](#footnote-11). *Resources for legal representation* have also diminished. 90% of CCRC applicants are unrepresented[[12]](#footnote-12). While 8% of represented applicants had their case referred only 2% of unrepresented applicants had their case referred. On the issue of *sentencing cases and summary cases*, in the funding context, the report concludes:

“We do not recommend that the under-resourcing of the CCRC should be tackled by removing cases originating in the magistrates’ courts or those relating to sentences, as opposed to convictions, from its remit. In our view, a wrongful conviction in the magistrates’ courts can have a lasting and severe impact on a person’s life, while a manifestly excessive or unlawful sentence is an injustice which should be corrected”.

1. **Recommendations on funding are at p31 of the** [**report**](https://appgmiscarriagesofjustice.files.wordpress.com/2021/03/westminster-commission-on-miscarriages-of-justice-in-the-interests-of-justice.pdf)**.**
2. On statutory framework and relationship to the Court of Appeal[[13]](#footnote-13), the ***test for referral to the Court of Appeal*** was addressed in detail in evidence. It was noted that the Miscarriage of Justice test for the Scottish CCRC mirrored the statutory test applied by the Scottish Court of Appeal. One criminal appeal QC suggested that the threshold for referral should be whether there is an arguable ground of appeal. The Commission reflected on the New Zealand CCRC test[[14]](#footnote-14) and its recommendations also follow in part from that. It was noted that the CCRC’s success rate on referrals to the CoA (almost 70%) appeared to indicate it was being too cautious[[15]](#footnote-15). The APPG report makes the following recommendation[[16]](#footnote-16):

***“the 'real possibility' test should be redrafted to expressly enable the CCRC to refer a case where it determines that the conviction may be unsafe, the sentence may be manifestly excessive or wrong in law or where it concludes that it is in the interests of justice to make a referral. By definition this would include all cases where it finds that a miscarriage of justice may have occurred including 'lurking doubt' cases.”***

It recommends targets for success rates should be removed.

1. The report makes recommendations with regard to “No Appeal” cases[[17]](#footnote-17) proposing that the 28-day time limit on bringing an appeal in the first instance needs to be extended and that ‘exceptional circumstances’ (for reviewing no appeal cases) must be read more broadly[[18]](#footnote-18). It states:

“the CCRC should adopt a broader interpretation of the ‘exceptional circumstances’ requirement. This should include cases where applicants can show that there were reasons why they were unable to exercise an appeal right in time, including the inability to access legal advice and representation, as well as where there is new evidence or new techniques which were not available at the time.”

1. **The APPG report recommends the removal of any discretion not to refer[[19]](#footnote-19)**
2. On the issue of the Court of Appeal’s legal framework[[20]](#footnote-20) a number of consultees proposed that the CCRC should be given the ***power to quash a conviction***. The report concludes that there should be no power to quash[[21]](#footnote-21). The recommendations propose a solution via the Law Commission asking it to consider statutory changes to: a. 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; b. mandating and encouraging a cumulative review of issues; c. introducing the premature destruction of crucial evidence which could have undermined the safety of a conviction as a standalone ground of appeal; d. broadening the law on post-conviction disclosure to assist appellants in accessing evidence to make applications for leave to appeal.
3. With regard to the issue of investigation[[22]](#footnote-22) the importance of face-to-face interviews with applicants is noted[[23]](#footnote-23). Recommendations on the issue of investigation are as follows[[24]](#footnote-24):

***“• The CCRC’s budget should be increased so that***

***o it can carry out more face to face inquiries with both applicants and other relevant individuals***

***o it can conduct thorough inquiries into all potentially relevant material***

***o it can obtain and review complete trial transcripts where relevant to the points at issue in the case***

***• The CCRC should review its key performance indicators, so that they are less generic and do not focus solely or mainly on timeliness. Each case should have a regularly updated individual case plan, with target activities and dates.***

***• The CCRC should set up an advisory panel of external forensic experts to consult on scientific and technical issues and on developing forensic strategies.***

***• When investigating allegations against police or other law enforcement personnel, the CCRC should always interview officers separately, and where necessary obtain primary source information to substantiate these accounts through senior officers unconnected with the initial investigation.”***

1. As to Investigations and non-disclosure[[25]](#footnote-25) it is noted that the performance of individual staff can potentially impact on the quality and success of an investigation[[26]](#footnote-26). The report emphasises the critical importance of the post-conviction retention of evidence[[27]](#footnote-27). Key recommendations on the retention and disclosure of evidence are made[[28]](#footnote-28) and propose increasing the CCRC powers[[29]](#footnote-29).
2. On the issues of accountability and transparency[[30]](#footnote-30), the report considers the poor level of communication between applicants and the commission and how this undermines trust. There is an easy read application form used to assist prisoners to apply but the evidence to the APPG demonstrated potential applicants and existing applicants struggle with a poor level of communication throughout the process - including case progression updates and decisions[[31]](#footnote-31). This was exacerbated in cases where there were language or literacy difficulties. The recommendations, in summary, include[[32]](#footnote-32):
* the CCRC should disclose the actions to be pursued and the case investigation plan to applicants and/or their legal representatives and allow them to comment, contribute or challenge decisions and actions or the failure to take actions;
* Statements of Reasons should be written in language that is as comprehensible as possible;
* the CCRC should appoint a small panel of experienced barristers and solicitors who will be available to provide advice and guidance, particularly in relation to contentious decisions and cases involving complex issues;
* the Criminal Appeal Act 1995 should be amended to allow the CCRC to disclose to applicants copies of material gathered in its review and to make public its Statements of Reason or parts of them, where it believes this is in the public interest, subject to the agreement of applicants;
* the CCRC should introduce an external element into its complaints procedure.
1. On youth justice and joint enterprise[[33]](#footnote-33) the report highlights the need for a youth justice specialist on the CCRC and specialist policies. The E CCRC has the power to refer a youth court case to the Crown Court for retrial. The report notes that is vital that the length of CCRC reviews are kept to a minimum in youth cases because of the detrimental impact of conviction on those under 18[[34]](#footnote-34). There are specific discussions on the impact of joint enterprise convictions. The recommendations include[[35]](#footnote-35):
	* + the CCRC should prioritise case reviews of prisoners who were under the

age of 18 when sentenced

* + - there should be funding for a specialist unit at the CCRC to deal with youth

justice cases and to proactively identify young people who may have been

wrongly convicted.

* + - the remit of advocacy services in under-18 custodial establishments should

be extended to include advice on applying to the CCRC

1. All conclusions and recommendations are summarised in the [report](https://appgmiscarriagesofjustice.files.wordpress.com/2021/03/westminster-commission-on-miscarriages-of-justice-in-the-interests-of-justice.pdf) at p65.
1. p6 [↑](#footnote-ref-1)
2. p17 [↑](#footnote-ref-2)
3. p20 [↑](#footnote-ref-3)
4. p21 [↑](#footnote-ref-4)
5. p21 [↑](#footnote-ref-5)
6. p22 [↑](#footnote-ref-6)
7. p22 [↑](#footnote-ref-7)
8. p23 [↑](#footnote-ref-8)
9. p25 [↑](#footnote-ref-9)
10. The chronic underfunding of the CCRC is set out p27-31. [↑](#footnote-ref-10)
11. p28 [↑](#footnote-ref-11)
12. p30 [↑](#footnote-ref-12)
13. p33 [↑](#footnote-ref-13)
14. p34 [↑](#footnote-ref-14)
15. p35 [↑](#footnote-ref-15)
16. p37 [↑](#footnote-ref-16)
17. p37 [↑](#footnote-ref-17)
18. p39 [↑](#footnote-ref-18)
19. p40 [↑](#footnote-ref-19)
20. p40 [↑](#footnote-ref-20)
21. p42 [↑](#footnote-ref-21)
22. p44 [↑](#footnote-ref-22)
23. p44. This may be especially relevant to the issue of applicants facing discrimination/youth/vulnerable etc. [↑](#footnote-ref-23)
24. p48 [↑](#footnote-ref-24)
25. p49 [↑](#footnote-ref-25)
26. p49 [↑](#footnote-ref-26)
27. p51 [↑](#footnote-ref-27)
28. p52 [↑](#footnote-ref-28)
29. The importance strong investigatory powers are also seen in the Norway CCRC [↑](#footnote-ref-29)
30. p53 [↑](#footnote-ref-30)
31. p56-58 [↑](#footnote-ref-31)
32. p59-60 [↑](#footnote-ref-32)
33. p61 [↑](#footnote-ref-33)
34. p62 [↑](#footnote-ref-34)
35. p63 [↑](#footnote-ref-35)