

CCRC

Criminal • Cases • Review • Commission

From the Chair: Richard Foster CBE

The Rt Hon James Arbuthnot MP
House of Commons
London
SW1A 0AA

Your ref:
Our ref:

RF/JC

9 March 2015

Dear James

Thank you for your letter of 5 March.

Anyone who has been convicted by the courts in England, Wales and Northern Ireland can appeal to this Commission against their conviction or sentence. Normally we cannot consider an application unless the applicant has exhausted their other avenues of appeal to the criminal courts. However, even where they have not done so we can consider applications in, "exceptional circumstances". "Exceptional circumstances" include, but are most certainly not limited to, conviction by those who have pleaded guilty in the magistrates courts as there is no route to have such convictions overturned other than by way of appeal to this Commission; and applications by those who believe there is no possibility of having their application overturned other than by an investigation by this Commission using its statutory powers. An example of this latter would be an application from someone who believed that important information was withheld from them during the course of their prosecution which they cannot obtain by themselves but can only be obtained by this Commission exercising its statutory powers.

There is no charge to apply to the Commission or for the use of the Commission's services. If an applicant is legally represented then we would, encourage the applicant to come via their legal representative. But there is no requirement for this to happen and in fact the majority of those applying to us are not legally represented. I enclose with this letter a number of our "Easy Read" forms. As you can see, these are designed to make the process of applying to us as straightforward as possible.

The Commission deals exclusively with criminal cases and has no role in civil proceedings. Nevertheless, if you or your colleague MPs have information about separate or parallel civil cases it would be helpful to have as much detail as you can supply on these as there is often an important read-across between civil and criminal proceedings. For example, information disclosed in civil proceedings can be of considerable relevance in criminal trials.

The Commission is an investigative body with considerable investigate powers. We can require any public body to preserve and make available to us any material which they hold and which we think may be relevant to our enquiries. Around half of our staff are lawyers while others have backgrounds as former police officers, experts in

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The independent public body which investigates possible miscarriages of justice in England, Wales and Northern Ireland

science and so on. The same is true of our Commissioners. Should we judge it necessary we can instruct the police to conduct an investigation on our behalf and under our supervision.

If the Commission decides to refer a case back to the courts then the courts must reconsider it. The test we apply in deciding whether to refer a case is known as the "real possibility" test as set out in the Criminal Appeals Act 1995. In lay terms, we would expect to refer a case if we discover new evidence or argument not available at trial which – in our judgment – had it been available at the time might well have led the jury or the court not to convict. The most common form this takes is failure by those responsible for bringing the prosecution to disclose to the defence information in the prosecution team's possession which had it been disclosed might have assisted the defence.

A plea of guilty at trial is not a bar to applying to us or to the case being reconsidered by the courts. On the contrary we have referred a number of cases recently where defendants had been wrongly advised to plead guilty and where, as a result of our referrals, the guilty plea has been set aside and convictions have been quashed.

Obviously we cannot reach a view on cases until we have had the opportunity to investigate them so I can offer no view on the particular cases you described to me. The Commission receives around 1500 applications yearly but only a very small percentage of these – around 20 or 30 a year – result in our deciding to refer the matter back to the courts. However, most of those cases that we refer back to the courts do result in the conviction being quashed.

Although we are under very considerable resource pressure at present, in the event that we do receive a number of applications, I intend to ask Sally Berlin our Director of Casework Operations to set up a dedicated unit to handle these.

I am sending a copy of this letter to your colleague, Kevan Jones. Please feel free to bring it to the attention of any other MP who you think should see it.

I hope this is helpful.

Yours sincerely

GRO

Richard Foster
Chair

c.c. Kevan Jones MP