

## **CCRC**

The CCRC will only usually consider whether or not to review a case where the following criteria are met:

- The defendant has at least tried to appeal his/her case to the Court of Appeal or, in the case of a Magistrates' Court conviction, the Crown Court or High Court. "Tried to appeal" means: applying for permission to the Court of Appeal or the High Court, or asking for the Crown Court to hear an appeal from the Magistrates' Court. The Commission will only usually agree to review cases in which permission to appeal has not been sought, in exceptional circumstances – for which see below.
- In addition, there must also be some important new evidence or legal argument available to the defendant – for which see below.

### **Exceptional circumstances**

The Commission will only agree to review a case which has not already been the subject of a refused application for permission to appeal, or an appeal hearing where the appeal has been dismissed, where it can be shown that there are exceptional circumstances justifying a failure to appeal in the usual way.

In essence the Commission is looking for an explanation for the failure to appeal. There is no simple definition of "exceptional circumstances", but it has been held to mean that there should be a strong argument as to why the person did not appeal, and why they cannot appeal now. Having missed the deadline for an appeal; forgetting; or being advised that they have no appeal are not considered to be sufficient arguments to meet this test because in all such circumstances the defendant may still apply to the relevant appeal court "out-of-time".

### **New evidence or legal argument**

Usually this means something that was not covered at the original trial or, if there was an appeal, at the appeal hearing. This may be new evidence not known about at the time, or something that has changed since the original trial, such as the appearance of a new witness or a new development in science or the law.

### **Comment**

Applying those criteria to the POL (and RMG) prosecutions, we are not aware of any cases which meet the first criterion.

As to the second, the Second Sight Interim report would fall within the scope of that criterion on the basis that it was information not known at the time of the original trial and which has emerged since conviction. However, in the usual course of events, the CCRC's remit does not cover reviewing such cases because the defendants already have, and have not availed themselves of, the right to appeal to the relevant Court.

I have attached, in 'cut and paste' Word Doc form, a suggested response to the CCRC. Please feel free to use it, or any part of it, (or not) as you will.

