

Response by the Criminal Cases Review Commission ("CCRC") to the call for evidence from the Commission on Justice in Wales

Introduction and overview

1. The CCRC's response is drawn from its experience in looking into alleged wrongful convictions in England, Wales and Northern Ireland.
2. Since its inception in 1997, the CCRC has considered about 23,000 applications (but only a small percentage of those have been referred to appellate courts at the conclusion of a review – 650 cases between April 1997 and May 2018).
3. In relation to the evidence requested, the CCRC has a close interest in issues that impact on the fairness of proceedings to the extent that potential miscarriages of justice may result and welcomes the opportunity to participate in this consultation process.
4. Most of the questions raised concern matters that are outside of the CCRC's expertise. We are, however, able to offer some insight which we hope is relevant to the Commission's considerations.

Welsh cases and the CCRC

5. Below is a table of the number of applications which have come to the CCRC from someone in a Welsh prison or from someone at liberty using a Welsh postcode; and/or the crime was investigated by a Welsh police force:

Application year	Total applications for the year	Applications with a Welsh connection	As a percentage of all applications	Referrals of cases with a Welsh connection
Pre 1999	2,463	55	2.23%	3
1999/00	775	17	2.19%	0
2000/01	799	17	2.13%	0
2001/02	834	31	3.72%	1
2002/03	933	31	3.32%	3
2003/04	884	41	4.64%	1
2004/05	955	43	4.50%	0
2005/06	937	40	4.27%	2
2006/07	1,028	46	4.47%	2
2007/08	984	34	3.46%	0
2008/09	917	30	3.27%	0
2009/10	931	28	3.01%	1
2010/11	936	39	4.17%	1
2011/12	1,040	29	2.79%	0
2012/13	1,628	67	4.12%	2
2013/14	1,469	58	3.95%	1
2014/15	1,604	102	6.36%	1
2015/16	1,479	55	3.72%	0
2016/17	1,398	70	5.01%	0
2017/18	1,444	56	3.88%	0
2018/19	417	19	4.56%	0
Total	23,851	908	3.81%	18

Welsh prisons and the CCRC

6. The CCRC engages in a rolling programme of visits to prisons in England, Wales and Northern Ireland. The purpose of the visits is to inform inmates and staff about what the CCRC does, its powers and the CCRC's restrictions and limitations, i.e. to make sure that prison staff and prisoners are aware of our existence should they genuinely believe that they are a victim of a miscarriage of justice, and that they are aware of our statutory powers.
7. The presentation is designed to raise informed awareness among prisoners, prison listeners, wing representatives and prison staff, which is followed by a question and answer session and then a 'one to-one'

session for those prisoners who prefer speaking to CCRC staff about their case in confidence.

8. We seek to manage expectations, emphasising the need to have appealed first and the need for new evidence. Our research indicates that our prison visits do not elevate the number of applications made to us by any great degree and tend to reduce the proportion of applications coming from those who have not yet explored the ordinary appeal process.
9. The visits are also useful for the CCRC, as they provide us with a source of information about the needs and expectations of our applicants, particularly when it comes to the communication needs for those applicants with literacy difficulties. We learn from prison visits any untruths or 'myths' that have/are being circulated around the prison system about the work and role of the Commission, which we can then address.
10. The level of engagement of prison management that we experience across our jurisdiction varies hugely. In respect of the Welsh prisons, we have good engagement with HMP Berwyn. Amongst other sources, information about the CCRC and our video is available to all prisoners at Berwyn in their cells via the prison hub. Sadly, our experience of all other prisons in Wales is poor. Our attempts to arrange visits to the remaining Welsh prisons, over a number of years, have met with apparent disinterest.
11. By way of illustration, as recently as May this year, we received an email from someone in a managerial position in the Offender Management Unit at HMP Swansea concerning their receipt of a bundle of CCRC posters and application packs. We routinely supply prisons with this material and accompany it with a letter explaining the PSO Order that such literature must be on display. Rather disappointingly, the email said:

“Our Resettlement department have taken delivery of the above forms and have approached the Offender Management Unit as they have never seen this forms before and though that they are for the attention of the OMU. OMU staff have not seen these forms before and are making a general enquiry as to whether these are new forms or who should be distributing these to the men in custody.”

Digital future

12. The Commission will be aware of the overarching plans for considerable reforms including increased use of digital media, digital case files shared on a Common Platform, intranet and possibly restricted internet services to prisoners and in cell phones (with restricted use). In the future the CCRC can envisage prisoners accessing its services and sharing information about their cases in different ways to how it has been in the past. We would hope that the Commission will consider these future developments as part of its review and recommendations.

Causes of miscarriages of justice

13. Looking across convictions that the CCRC has referred to the appeal courts from the point of its commencement in 1997, a number of themes have come and gone (or at least their prevalence has significantly reduced). Examples include:

- Child sex offence cases involving medical evidence in the light of a changed understanding of the significance of medical findings
- Shaken baby and SIDS cases
- West Midlands Police Serious Crime Squad cases
- Flying Squad Rigg Approach cases
- Importation of drugs cases, involving ‘controlled deliveries’ by Her Majesty’s Customs and Excise
- Northern Ireland Youth Confession cases

- Cases involving specific discredited experts
- Developments of law

14. A theme which is much more perennial might loosely be called 'material non-disclosure', but more accurately encompasses both non-disclosure in the strict legal sense but also failures to make reasonable enquiries. By its nature, it doesn't attach to any one type of offence. We have seen it across offences concerning sex, drugs, murder, wounding and even obtaining services by deception. It is, however, our sense that sex offence cases and those involving covert forms of investigation are probably most 'at risk'. We have no doubt that the Commission is already well-aware of the contemporary concerns over 'disclosure'.

15. A brief analysis of the Welsh cases (using the same loose definition at paragraph 5 above) referred to the appeal court does not reveal any themes unusual to those cases.

13 July 2018