



Ministry  
of Justice

# Tailored Review of the Criminal Cases Review Commission



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## Ministerial Foreword

The CCRC was established by the Criminal Appeal Act 1995 and celebrated its 20<sup>th</sup> Anniversary in 2017. It is one of only three similar bodies in the world and provides a vital function in investigating suspected miscarriages of justice in England, Wales and Northern Ireland.

The rule of law is a fundamental tenet of any developed country and possible miscarriages of justice, if not correctly investigated and appropriately rectified, undermine this essential principle: justice is never served where innocent people are wrongly convicted or convictions are unsafe. The CCRC has a critical role in supporting the Ministry of Justice's key aims of advancing and protecting the principles of justice.

Assessing the effectiveness of the CCRC is not straightforward given the complexity and volume of its work. The review team's assessment of the Commission was detailed and in-depth and focused on its performance against its Key Performance Indicators, the quality of its work and its internal governance arrangements.

My department received 46 responses to the public call for evidence and over 300 replies from serving prisoners and I would like to thank all those who contributed to this review through written responses or engagement with the review team. I am grateful to members of the review's Challenge Panel who generously gave up their time to provide assurance to the robustness and impartiality of this review. I should also thank Richard Foster, the CCRC Chair at the time of the review, the CCRC Commissioners, Chief Executive and all members of staff for their vital contribution to this review.

This report notes the continued excellent work of the Commission but also highlights the challenges it faces in maintaining and building on its current standing.

The review concludes that whilst the organisation is effective and efficient, there is room to do more and it makes recommendations relating to the Commission's form and function, its internal governance, diversity, performance, quality and transparency.

I fully endorse all these recommendations and believe that they will allow the CCRC to operate in a more effective and efficient manner and I will be taking a keen interest in their timely implementation. I have asked my officials to provide advice and assistance where required.

## Executive Summary

- 1.1 Tailored Reviews provide assurance to government and the public on the continuing need for the functions delivered by public bodies, as well as assessing the potential for improved efficiency, effectiveness, governance and different delivery mechanisms. Within the Ministry of Justice (MoJ) these reviews are conducted by the Arm's Length Bodies (ALB) Centre of Expertise and are independent of the MoJ policy leads. The Criminal Cases Review Commission (CCRC) was previously assessed under the Triennial Review programme in 2013.
- 1.2 To assess the body, the review team issued a public Call for Evidence and made available a questionnaire for serving prisoners who had applied to the CCRC (Call for Evidence questions can be found at **Annex A**, respondents at **Annex B** and the prisoner questionnaire at **Annex C**). The review team also considered a wide range of information including reports, stakeholder views, and governance assessments. A Challenge Panel (its makeup is shown at **Annex D**) provided rigor to the review and recommendations. The scope and purpose of the review process can be found at **Annex E**.
- 1.3 The Chair of the CCRC will be held accountable for the implementation of the recommendations and reporting on progress to the MoJ via regular updates to the Partnership Team in the MoJ ALB Centre of Expertise. To promote transparency, the recommendations should be reflected in Business Plans and progress reported on in Annual Reports.

## Main findings

- 1.4 The review found that the current delivery model as an Executive Non-Departmental Public Body (NDPB) is still the most appropriate. Whilst the majority of the Commission's functions are still required, the CCRC and the MoJ should consider the possibility of removing the requirement for the CCRC to review summary cases (cases that are heard by a magistrates' court) and sentence only cases dealt with on indictment (cases heard and sentenced at a Crown Court).
- 1.5 The review noted that the composition of the CCRC Board is not compliant with the UK Corporate Governance Code and Cabinet Office Guidance. The effectiveness of the Board would be improved through the creation of a smaller and balanced Board focusing on key responsibilities.
- 1.6 Following the CCRC's internal reviews into casework processes, including a Whole System Review in 2015, the organisation has made significant progress on several of its Key Performance Indicators (KPIs). However, the review found there is scope for further and continued improvements in the effective delivery of its operational functions.

## Conclusion

- 1.7 The review concludes that the form of the CCRC is still appropriate and the majority of the functions are still required. This report focuses on areas considered to need improvement and makes several recommendations to further improve performance and internal governance, including consideration of the removal of one of its current functions. A summary of the recommendations is shown in Table 1.

**Table 1: Table of Recommendations**

<b>Form and function</b>	
1.	When there is scope for legislative change, the CCRC and the MoJ should discuss the possibility of removing the requirement for the CCRC to review cases dealt with summarily and sentence only.
2.	In order to ensure independence of decision making, the CCRC should continue to operate in its current form as an Executive Non-Departmental Public Body at arm's length from government and comply with government guidance on managing public money and ensuring good governance.
<b>Internal governance</b>	
3.	With a view to improving the internal governance of the organisation, the CCRC should improve the effectiveness of the Board and compliance with the UK Corporate Governance Code, by creating a smaller and balanced Board comprising: <ul style="list-style-type: none"> <li>• three senior executives (Chief Executive plus two Senior Management Team (SMT) members);</li> <li>• three Commissioners (including the Chair plus two Commissioners selected on a rotational basis); and,</li> <li>• three Non-Executive Directors.</li> </ul>
4.	With a view to improving the internal governance of the organisation, the CCRC should:
(a)	clarify the role and effectiveness of the Board by focusing on: <ul style="list-style-type: none"> <li>• formulating the CCRC's overall strategy;</li> <li>• approving the yearly Business Plan, three yearly Corporate Plan, Annual Report and Annual Accounts;</li> <li>• ensuring the CCRC is compliant with its Framework Document with the MoJ;</li> <li>• considering and responding to reports and points raised by the Assurance, Risk and Audit Committee (ARAC);</li> <li>• holding Board meetings every other month; and</li> <li>• ensuring effective oversight of performance.</li> </ul>
(b)	commission the ARAC to review monthly Management Information packs, undertaking deep dives into performance concerns as required. Any concerns should be reported to the Board and actioned for a response by the next ARAC. CCRC should strengthen the ARAC Terms of Reference to explicitly include this within its remit.
(c)	regularly review, update and publish its Framework Document, clearly defining: <ul style="list-style-type: none"> <li>• the role and responsibilities of the Chair (including conducting and keeping records of Commissioner appraisals in personnel files);</li> <li>• the role and responsibilities of the Accounting Officer;</li> <li>• the role and responsibilities of the Chief Executive;</li> <li>• the role and responsibilities of the Non-Executive Directors;</li> <li>• the role and responsibilities of Commissioners on the Board; and,</li> <li>• the Board's constitution.</li> </ul>
(d)	To support Ministerial accountability, the CCRC should liaise with policy sponsors to agree an appropriate level of Ministerial engagement at the beginning of each year.
(e)	The CCRC should put in place conduct and propriety rules in relation to the future employment of Commissioners.

<b>Diversity</b>	
5.	With a view to improving diversity:
(a)	the CCRC should develop a strategy to increase diversity (particularly ethnicity and disability) across the organisation (including NEDs) in line with wider government strategy;
(b)	the MoJ Public Appointments Team should continue to focus on diversity as a key element in the recruitment of new Commissioners.
<b>Performance</b>	
6.	With a view to improving the performance of the organisation, the CCRC should:
(a)	move responsibility for the final decision on non-referrals in Type 1 and 2 cases from Commissioners to Case Review Managers (CRMs);
(b)	consider establishing a small team of CRMs to review and decide on Type 1 and 2 cases and introduce other 'specialist teams' working on cases that fall into a particular theme (as with asylum cases) to promote more efficient working;
(c)	establish ways to improve consistency throughout the casework process, in particular in the approach to decision documents and statement of reasons.
(d)	ensure updates to all applicants are sufficiently detailed, in a way that is easy to comprehend and that the frequency of updates is appropriate.
(e)	allocate resources more proportionately by redirecting the final decision as to whether no appeal cases raise exceptional circumstances from Commissioners to CRMs. This should be supported by guidance based on the experience of Commissioners.
(f)	consider the possibility of using video-link applications where available to reduce the number of no appeal applications and to address the issue that many applicants are unable to compose a cogent written application.
<b>Quality</b>	
7.	With a view to ensuring the robust monitoring of quality, the CCRC should:
(a)	include type 3 and 4 cases, along with type 1, 2 and no appeal cases in quality assurance sampling. The Chief Executive should continue to have responsibility for Quality Assurance and issues identified should be dealt with expeditiously;
(b)	feedback cases of good or poor practice to Commissioners as part of Commissioner development and appraisal.
(c)	look for opportunities to increase feedback on emerging themes to the wider criminal justice system.
<b>Transparency</b>	
8.	With a view to improving transparency in the reporting of its performance to the public, the CCRC should:
(a)	monitor spend per case (or hours spent) and report this information for the four categories of case;
(b)	publicly report on the number of cases awaiting allocation every month and at the end of the year, and the number of cases awaiting allocation longer than three months, as part of the waiting times KPI.
(c)	publish the number of cases processed through to the review stage, the number of re-applications and no appeal cases received, and the percentage of these taken through to the review stage, per year, in Annual Reports.
(d)	distinguish between custody cases and at liberty cases, and by the four categories of case (Type 1 to 4), when reporting on both measures that make up the duration of review KPI in Annual Reports.

(e)	publish a breakdown of the number of years each long-running case has been under review as part of the long-running cases KPI.
(f)	distinguish between custody cases and at liberty cases, and by the four categories of case (Type 1 to 4), when reporting on long-running cases in Annual Reports.
(g)	publish the number of referrals to the Court of Appeal by custody and at liberty cases.

## Purpose and Scope of Reviews

- 2.1 Tailored Reviews provide assurance to government and the public on the continuing need for a public body, its functions and its form. The Cabinet Office mandates that Tailored Reviews must be carried out for each public body at least once in the lifetime of a Parliament. Further detail on what Tailored Reviews are and how these reviews are carried out can be found in **Annexes D and E**. Where appropriate, reviews make recommendations to improve the efficiency, effectiveness, and governance arrangements of the bodies under review. It is the responsibility of the organisation and sponsoring department to ensure recommendations are fully implemented.

### Historical Context

- 2.2 The CCRC was established under the Criminal Appeal Act 1995<sup>1</sup> and has been operational since 31 March 1997. The Act made significant changes to arrangements for investigating allegations of miscarriages of justice when appeal rights have been exhausted, as a result of recommendations set out by the Royal Commission on Criminal Justice in its 1993 report.<sup>2</sup> The report identified the need to set up an independent public body with wide-ranging powers to investigate possible miscarriages of justice.
- 2.3 The Ministry of Justice (MoJ) carried out a Triennial Review<sup>3</sup> of the CCRC<sup>4</sup> in 2013. The review concluded that the CCRC's functions were still required and recommended no changes to the delivery model, but made several recommendations relating to governance

which have not been implemented (**Annex G** provides an update to these recommendations).

### Current context and developments

- 2.4 The CCRC marked its 20<sup>th</sup> Anniversary in 2017. This review took place against a backdrop of an increasing level of applications. During 2016/17 the Commission received 1,397 applications, including several high-profile cases, however, there have been fewer referrals to the Court of Appeal during the same period. Only 12 cases were referred to the Court of Appeal in 2016/2017, with the percentage of referred cases where the applicants won their appeal dropping further to 46% during 2016/17 after a drop to 53% in 2015/16. The introduction of a new Easy Read application form in 2012 has also led to an increase in the number of applications received, which has contributed to the number of backlogged cases discussed further in section 7.
- 2.5 The Commission made major changes to the way it carried out its casework during 2014/15 and 2015/16 which were consolidated during 2016/17. The CCRC's 2015-18 Corporate Plan sets out its intention that, by the end of 2017/18, an applicant to the CCRC can expect their review to begin within three months of filing an application. This has now been achieved.
- 2.6 During 2016/17 Commissioner resource decreased slightly with three Commissioners reaching the end of their terms during the autumn/winter of 2016. Five new Commissioners were then appointed towards the end of 2017. The number of Case Review Managers (CRMs), Casework Administrators and specialist support

<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1995/35/contents>

<sup>2</sup> <https://www.gov.uk/government/publications/report-of-the-royal-commission-on-criminal-justice>

<sup>3</sup> Triennial reviews provided challenge to and assurance on the continuing need for the functions and forms of NDPBs. They also reviewed the NDPB's control and governance arrangements. Triennial Reviews were replaced by Tailored Reviews in 2016.

<sup>4</sup> <https://consult.justice.gov.uk/digital-communications/ccrc-triennial-review/results/ccrc-triennial-review.pdf>



has remained relatively constant, although the complement of interns has fluctuated between one and four over the course of 2016/17. It should be noted that prior to this period, the CRM resource had been significantly reduced (by approximately 25%). This reduction is now being reversed.

## Location

- 2.7 The CCRC's current location is St Phillips' Place, Birmingham. This is occupied under a Memorandum of Terms of Occupation (MOTO) between the MoJ on behalf of CCRC and the Ministry of Housing, Communities and Local Government. The costs of occupation are payable by MoJ but are included in the Commission's accounts as notional expenditure. Their current term of occupancy runs until December 2020 with notice, if necessary, to be given by 31<sup>st</sup> March 2019.
- 2.8 The review team found that because the CCRC operate outside of London and the South East of England, there is no need to review their location under the Places for Growth agenda. However, the lease break opportunity in 2019 must be considered as an ideal opportunity for CCRC to align their ongoing accommodation requirements with the government's estates strategy by utilising potential government hubs that will be established in the region. To support this move, the review team further consider CCRC's development of an IT Digital Transformation Programme to be essential in order to maximise both their digital infrastructure and to support their transition to a more flexible, modern and cost-effective estate.

## Purpose and structure

- 3.1 The CCRC is a body corporate under the Criminal Appeal Act 1995 and is responsible for investigating possible miscarriages of justice in England, Wales and Northern Ireland. If it assesses that there is a "real possibility" that a conviction or appeal will be quashed in a Court of Appeal, the CCRC may refer the case to the relevant Court where it must be heard.
- 3.2 The Chair and Commissioners are public appointees; there were 12 Commissioners and the Chair in post at the end of December 2017. The CCRC's staff are public servants with a headcount, at the end of December 2017, of 83 staff including three members of the Senior Management Team (SMT). The CCRC is entirely funded through Grant-in-Aid which amounted to £5.7m in 2016/17 and £5.8m in 2017/18.
- 3.3 At the end of December 2017, the CCRC Board had 19 members (11 female and eight male) made up of the Commission's Chair, 12 Commissioners, (including both lay and non-lay members), three SMT members and three Non-Executive Directors (NEDs) although one NED left her post on 31 December. The demographics of Commissioners and CCRC staff are shown in Figures 1 and 2 respectively.

### **Figure 1: Demographics of Commissioners (including the Chair) at 31 December 2017**

60% of Commissioners are female  
40% of Commissioners are male  
<10% of Commissioners are BAME

## Figure 2: Demographics of the CCRC at 31 December 2017

60% of employees are female

11% of employees identified as BAME

2% of employees identified as being of mixed race

2% of employees stated they had a disability

- 3.4 The CCRC recognises that it needs to do more to improve the diversity of its staff in terms ethnicity and disability across the organisation, and is taking steps to address this. The review team believe that to support this work, the CCRC should develop a diversity strategy and that the MoJ's Public Appointments Team should continue to focus on diversity as a key element in the recruitment of new Commissioners.

### Recommendation

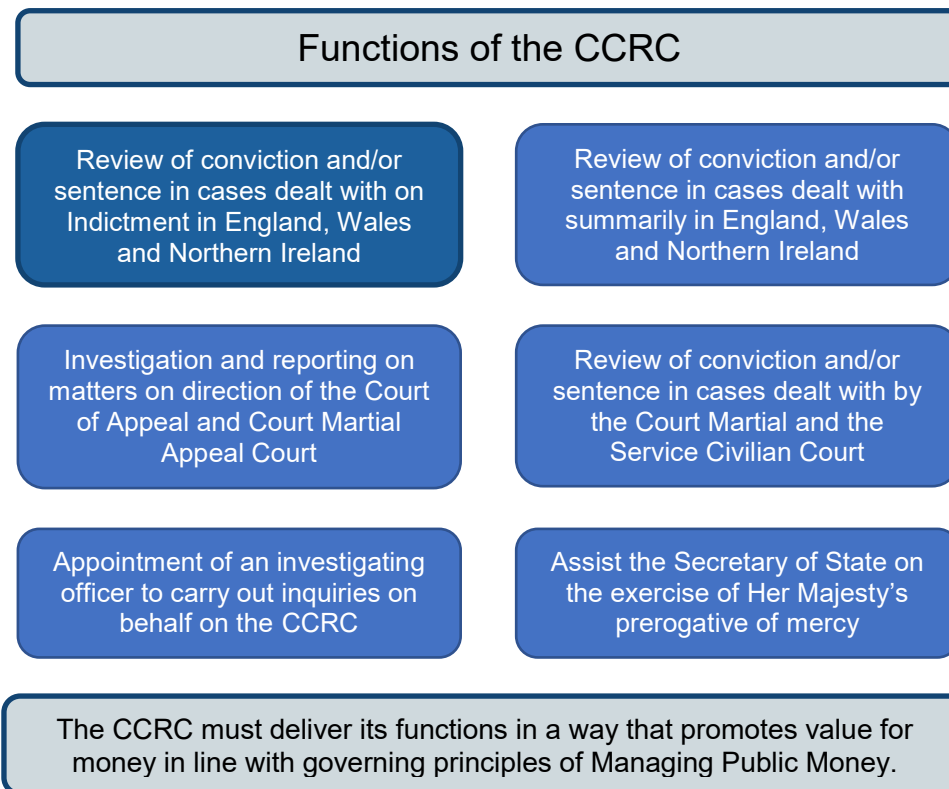
With a view to improving diversity:

- the CCRC should develop a strategy to increase diversity (particularly ethnicity and disability) across the organisation (including NEDs) in line with wider government strategy; and
- the MoJ Public Appointments Team should continue to focus on diversity as a key element in the recruitment of new Commissioners.

## Functions of the CCRC

- 4.1 The Criminal Appeal Act 1995 sets out six statutory functions to be undertaken by the CCRC as set out in Figure 3.

### Figure 3: Functions of the CCRC



### Does government still require the functions of the CCRC?

- 4.2 To determine the need for the CCRC's functions, the review team considered responses to the Call for Evidence questions (see **Annex A**), analysis of stakeholder views and recent reports. More

than half of respondents to the Call for Evidence are of the view that all the functions of the CCRC are still required. Less than 10% of respondents feel that some or all the functions are not needed.

- 4.3 The Justice Committee (JC) Inquiry in 2015 recommended that the CCRC be given discretion to refuse to investigate cases dealt with summarily,<sup>5</sup> if they deem it not to be in the public interest to investigate, and a discretion to refuse to investigate sentence only cases. This view was based on the “serious funding constraints” identified by the Committee at the time of their Inquiry. In their response to the Call for Evidence for this review, the Justice Committee has suggested that the review team may wish to consider giving the CCRC discretion along the lines they proposed earlier.<sup>6</sup>
- 4.4 In 2016/17, cases dealt with summarily made up 10% of applications and 5% of referrals, with sentence only cases making up 15% of applications and 17% of referrals. If the legislation was changed to remove the requirement, the CCRC’s caseload would decrease significantly.
- 4.5 The review team recognises that only a small percentage of respondents feel that some of the functions are not needed. Balancing this with the strong views of the JC it is the view of the review team that when there is scope for legislative change, the MoJ and the CCRC should discuss the possibility of removing the requirement for the CCRC to review cases dealt with summarily and sentence only. This would require primary legislation. Due to the wider political context, it is unlikely that parliamentary time will be available for this in the short to medium term.

<sup>5</sup> Less serious cases, such as motoring offences and minor assaults, where the defendant is not usually entitled to trial by jury. They are generally disposed of in magistrates’ courts.

<sup>6</sup> <https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/850/850.pdf>

### Recommendation

When there is scope for legislative change, the CCRC and the MoJ should discuss the possibility of removing the requirement for the CCRC to review cases dealt with summarily and sentence only.

## Form

### *Is an Executive NDPB the most appropriate delivery model for the CCRC?*

- 5.1 The review determines that an Executive NDPB is the most appropriate delivery model for the CCRC, as outlined in the findings below.
- 5.2 The CCRC must be, and be seen to be, independent of the government and Judiciary in order to instil public confidence in its work. As an Executive NDPB, the CCRC is independent of government in delivering its functions. It does however, need to operate within the financial constraints set by government and adhere, to best practice in terms of governance, as set out in the UK Corporate Governance Code.<sup>7</sup>
- 5.3 The Cabinet Office sets out three tests<sup>8</sup> to help ascertain whether functions should be delivered at arm’s length from government:
- Is this a technical function which needs external expertise to deliver?

<sup>7</sup> <https://www.frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf>

<sup>8</sup> <https://www.gov.uk/government/publications/tailored-reviews-of-public-bodies-guidance> p13

- Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality?
- Is this a function that needs to be delivered independently of ministers to establish facts and/or figures with integrity?

The Commission qualifies based on meeting the second and third bullet points, above.

5.4 The review considered several specific alternative delivery models, as set out in Cabinet Office guidance and shown in Figure 4. The team concludes that an Executive NDPB is the only appropriate delivery model for the CCRC.

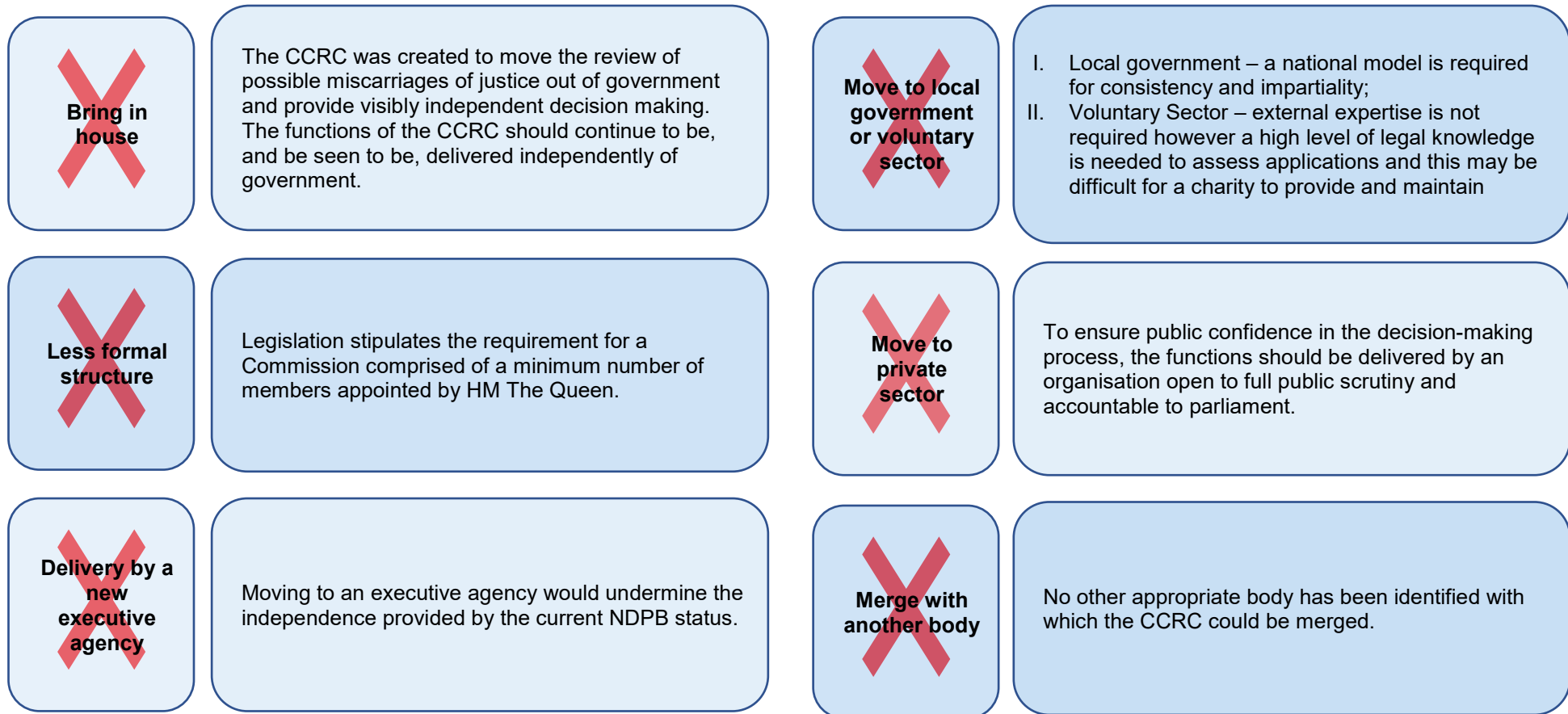
5.5 The CCRC noted, in its response to the Call for Evidence, that an NDPB is the best delivery model:

*“for a number of reasons and not least because it is not clear any entity other than a statutory public body could ever be given the far-reaching powers necessary to perform the functions of the CCRC (i.e. to obtain virtually any information, to instruct police forces to act, to refer cases to appeal, and to investigate on behalf of the court of appeal.”*

### **Recommendation**

In order to ensure independence of decision making, the CCRC should continue to operate in its current form as an Executive Non-Departmental Public Body at arm’s length from government and comply with government guidance on managing public money and ensuring good governance.

Figure 4. Analysis of alternative delivery models



## Internal Governance Assessment

- 6.1 The Criminal Appeal Act 1995 states that the Commission must consist of a minimum of 11 members (Commissioners). The Act makes clear that no set number of Commissioners is required to perform any given function (apart from those functions within Criminal Appeal Act para 6(3)<sup>9</sup> which requires three Commissioners).
- 6.2 The Internal Governance structure of the CCRC is shown in Figure 5.

**Figure 5. CCRC governance structure**



- 6.3 The review team carried out a robust assessment of the CCRC's internal governance arrangements against the principles of good governance set out in Cabinet Office guidance.<sup>10</sup> The CCRC either complied or provided adequate explanation for non-compliance with the principles and policies listed below:
- Accountability for public money
  - Effective financial management
  - Ministerial accountability
  - Role of the Board
  - Role of the Chair
  - Role of the Chief Executive and Accounting Officer
  - Role of the Non-Executive Directors
  - Role of the sponsoring department
  - Statutory accountability
  - Conduct and propriety
- 6.4 The review identified the following areas where improvements are needed:
- Ministerial Accountability
  - Role of the Board
  - Role of the Chair
  - Role of the Chief Executive and Accounting Officer
  - Role of the Non-Executive Directors
  - Conduct and propriety

<sup>9</sup> The functions referred to in the Criminal Appeal Act (<http://www.legislation.gov.uk/ukpga/1995/35/schedule/1>) para 6(3) - (a) making a reference to a court under any of sections 9 to 12, (b) reporting to the Court of Appeal under section 15(4), (c) giving to the Secretary of State a statement under section 16(1)(b),

(ca) giving to the Minister in charge of the Department of Justice in Northern Ireland a statement under section 16(2A)(b), and]

(d) requiring the appointment of an investigating officer under section 19.

<sup>10</sup> Cabinet Office Tailored Reviews: Guidance on Reviews of Public Bodies

## Results of the internal governance assessment

### Ministerial Accountability

6.5 The CCRC is compliant with the requirements relating to ministerial accountability; however, whilst invitations have been extended to Ministers to visit the CCRC and/or meet with the Chair, meetings between the Chair and Ministers do not occur regularly. The review team recommends that policy sponsors and the CCRC agree an appropriate level of Ministerial engagement at the beginning of each year.

### Role of the Board

6.6 The CCRC Board is not compliant with the principles set out in the UK Corporate Governance Code<sup>11</sup> in terms of its size and balance. Cabinet Office guidance on reviews of public bodies<sup>12</sup> notes that the size of the Board should be proportionate, with an appropriate balance of skills, experience, independence and knowledge. The UK Corporate Governance Code notes that the Board should not be so large as to be unwieldy, with a balance of executive and non-executive directors such that no individual, or small group of individuals, can dominate the Board's decision making.

6.7 Board meetings take place once a month and last approximately two to two and a half hours. They follow agenda items closely, covering topics including declarations of interest, minutes and matters arising from the previous month's meeting. Meetings focus more on areas for the Board to note rather than items requiring a decision. In the period from October 2016 until November 2017 the minutes note fifteen actions for individuals or the SMT but no Board wide actions (nineteen occasions are noted when the Board agreed or approved actions to be taken). Most of the minutes record items that the Board noted, rather than actioned. A smaller Board holding bi-monthly meetings with a more focused agenda will improve the Board's effectiveness and make more efficient use of

Commissioners' time which will benefit the Commission as it moves towards fee-based Commissioners working less days per week.

- 6.8 At the time of the review, the Board comprised 19 members:
- the Chair (who is a Commissioner);
  - 12 Commissioners;
  - three Senior Executive Directors; and
  - three NEDs.
- 6.9 During the review the CCRC has begun to move away from substantive part or full-time Commissioners to appointing new Commissioners on a fee-paid basis; this may lead to the Commission recruiting a significant number of new Commissioners. The review team is concerned that this would result in an increase in the size of an already large Board and exacerbate existing issues around Board governance. The team is concerned that a disproportionate amount of Commissioner time is spent on governance, rather than on casework and that the current Board size is not desirable, manageable or in line with good practice.
- 6.10 It is evident from Board meeting agendas, minutes and Terms of Reference for the Board that the same topics are regularly revisited. The review team are concerned at the amount of time spent discussing areas of direct interest to Commissioners, for example, Commissioner terms and conditions and reappointment of Commissioners. Such discussions could be perceived to reflect a lack of understanding of the role of the Board and the role of Board members.
- 6.11 Board meeting minutes also appear to exhibit a lack of understanding of the role of the Accounting Officer who has a

<sup>11</sup> <https://www.frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf>

<sup>12</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/633573/Tailored\\_Review\\_Guidance\\_on\\_public\\_bodies\\_V1.2\\_July\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/633573/Tailored_Review_Guidance_on_public_bodies_V1.2_July_2017.pdf)

statutory responsibility, as set out in Managing Public Money<sup>13</sup>, in decision-making and financial management.

- 6.12 Finally, the review team noted, from meeting minutes, Board papers and talking to staff and Commissioners, that it was difficult to have discussions at the Board about changes to casework that might impact on Commissioners. These include a reluctance to move decision-making on no appeal cases to staff and to change its policy in respect of Commissioners being able to work simultaneously in the criminal justice system as they do in Scotland. Whilst the review team accepts that such decisions are taken with the very best interest of the CCRC in mind, given that all Commissioners sit on the Board, there is a perception that decisions may be made in the best interests of Commissioners rather than the best interest of the organisation.
- 6.13 The review team considers that the Board is not currently effective as a decision-making entity and that a smaller Board holding meetings every two months, with a more focused agenda (covering items including formulating the CCRC's overall strategy, approving business and corporate plans, ensuring compliance with the Framework Document and ensuring effective oversight of performance) will make it a more efficient use of Commissioners' time. The review team considers the Board should comprise:
- the Chief Executive;
  - two Senior Executives;
  - three Commissioners (the Chair plus two Commissioners) selected on a rotational basis; and
  - three Non-Executive Directors.
- 6.14 The Board and the Audit and Risk Assurance Committee (ARAC) undertake an annual self-evaluation process using tools published by the National Audit Office. The Long-Running Cases Committee

produces an annual report to the Board. The Chair, Commissioners, Non-Executive Directors and SMT members are appraised regularly and information on senior staff remuneration is set out in the Annual Report and Accounts.

- 6.15 The CCRC is not compliant with requirements regarding the composition of its Remuneration Committee, as this comprises members other than Non-Executive Directors. However, the CCRC itself recognises this non-compliance, as stated in its 2016/17 Annual Report<sup>14</sup>, and is working towards fulfilling this requirement.
- 6.16 Additionally, the review team considered updates on the recommendations from the 2013 Triennial Review which are set out in **Annex G**. The review team are of the strong opinion that a formal evaluation of the CCRC having trialled a smaller more balanced Board, prior to the decision to revert back to a Board on which all Commissioners sit, should have been conducted.
- 6.17 The review team are of the view that there is scope for the ARAC to undertake deep dives into any performance concerns raised by reviewing internal monthly Management Information packs. Concerns would be reported to the Board and actioned for a response by the next ARAC meeting. To support the ARAC in this role, the review team recommend that the CCRC strengthen the ARAC's Terms of Reference to explicitly include this within its remit.

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<sup>13</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/742188/Managing\\_Public\\_Money\\_\\_MPM\\_\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742188/Managing_Public_Money__MPM__2018.pdf)

<sup>14</sup> [https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1/uploads/2015/01/1096\\_WLT\\_Criminal-Cases-Review-AR\\_WebAccessibleM-1.pdf](https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1/uploads/2015/01/1096_WLT_Criminal-Cases-Review-AR_WebAccessibleM-1.pdf)



### Recommendation

To support Ministerial accountability, the CCRC should liaise with policy sponsors to agree an appropriate level of Ministerial engagement at the beginning of each year.

### Recommendation

To improve the effectiveness of the Board and compliance with the UK Corporate Governance Code, by creating a smaller and balanced Board comprising:

- three Senior Executives (Chief Executive plus two Senior Management Team (SMT) members);
- three Commissioners (the Chair, plus two Commissioners selected on a rotational basis); and
- three Non-Executive Directors.

### Recommendation

The CCRC should clarify the role and effectiveness of the Board by focussing on:

- formulating the CCRC's overall strategy;
- approving the yearly Business Plans, three yearly Corporate Plan, Annual Report and Annual Accounts;
- ensuring the CCRC is compliant with its Framework Document with the MoJ;
- considering and responding to reports and points raised by the Assurance Risk and Audit Committee (ARAC);
- holding Board meetings every other month; and
- ensuring effective oversight of performance.

### Recommendation

The CCRC should clarify the role and effectiveness of the Board by commissioning the ARAC to review monthly Management Information packs, undertaking deep dives into performance concerns as required. Any concerns should be reported to the Board and actioned for a response by the next ARAC. CCRC should strengthen the ARAC Terms of Reference to explicitly include this within its remit.

### Role of the Chair

6.18 The CCRC Board is led by a Chair (who is also a Commissioner), an appointment by Her Majesty The Queen, on the recommendation of the Prime Minister. The appointment process is led by the MoJ and is compliant with the Cabinet Office's Governance Code on Public Appointments. The Chair participates in the recruitment of Commissioners and Non-Executive Directors.

6.19 The Chair undergoes an annual appraisal with the relevant Director General/Director within the MoJ and their terms are set out in writing. The Chair's role and responsibilities are set out in the Job Description and will be reflected in an updated Framework Document.

### Role of the Chief Executive (CE) and Accounting Officer (AO)

6.20 While the CCRC complies with requirements in this area the review team believes there is scope for much greater understanding, at all levels of the Commission, of the function and importance of the Accounting Officer role. The CE leads the CCRC and was appointed in compliance with good practice and in consultation with the partnership/sponsor team. The CE is responsible for the day to day running of the business and accountable for the operations and

the finances. The CE is also the designated Accounting Officer (AO). Cabinet Office and Managing Public Money<sup>15</sup> guidance requires a formally designated AO which is usually an organisation's most senior official (normally the CE). The Accounting Officer of a public body is personally responsible and accountable to Parliament for the use of public money and the stewardship of assets. Cabinet Office guidance notes that the role, responsibilities and accountability of the AO should be clearly defined and understood. The review team are concerned that the role and responsibilities of the AO are not sufficiently understood by the majority of the Board or that there is reluctance from the Board to acknowledge the AO's responsibilities. The review team believe there is an opportunity for further clarification in the CCRC's governance documentation, in particular the Framework Document, around the role of the AO in relation to the CE and the Board's responsibilities, given that the AO role places significant accountabilities and responsibilities on the CE.

### **Role of the Non-Executive Directors**

- 6.21 The CCRC is mostly compliant in this area. Where the CCRC has deviated from requirements in relation to appointments, satisfactory explanations have been provided.
- 6.22 Non-Executive Directors are Board appointments while Commissioners are Royal appointments, made in accordance with Cabinet Office guidance. Board members allocate sufficient time to the role and details of their attendance at meetings are included in Annual Reports. Non-Executive Directors have annual appraisals with the Chair (as do Commissioners).
- 6.23 NEDs are appointed for their expertise in governance and to provide independent challenge to the Board. One third of Commissioners must be legally qualified and one third must have knowledge or experience of any aspect of the criminal justice system. Current

Commissioner recruitment campaigns are looking to further increase the diversity of applicants.

### **Framework Document**

- 6.24 The Cabinet Office's Code of Good Practice on Partnerships between Departments and ALBs sets out the need for the purpose, objectives, accountabilities and roles of an ALB to be mutually understood and clearly defined in relevant documentation including a Framework Document.<sup>16</sup>
- 6.25 To ensure compliance with the Code of Good Practice the CCRC should ensure that its Framework Document is reviewed and updated regularly (every three years), clearly setting out the roles of the Chair, CE, AO, NEDs and the Board's constitution. At the time of this review, the Framework Document was not available online and had not been updated for four years. However, the review team understand that the current version is now online and is being updated.

### **Conduct and propriety**

- 6.26 The CCRC are mostly compliant in this area, but there are currently no rules in place regarding employment after resignation or retirement of Commissioners, although there is an obligation not to disclose information obtained during employment with the CCRC in any subsequent employment. The review team recommend that the CCRC should consider putting appropriate rules in place to address any subsequent employment.

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<sup>15</sup> <https://www.gov.uk/government/publications/managing-public-money>

<sup>16</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594345/Partnerships\\_between\\_departments\\_and\\_arm\\_s\\_length\\_bodies-code\\_of\\_good\\_practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594345/Partnerships_between_departments_and_arm_s_length_bodies-code_of_good_practice.pdf)

### **Recommendation**

The CCRC should put in place conduct and propriety rules in relation to the future employment of Commissioners.

### **Recommendation**

The CCRC should regularly review, update and publish its Framework Document, clearly defining:

- the role and responsibilities of the Chair (including conducting and keeping records of Commissioner appraisals in personnel files);
- the role and responsibilities of the Accounting Officer;
- the role and responsibilities of the Chief Executive;
- the role and responsibilities of the Non-Executive Directors;
- the role and responsibilities of Commissioners on the Board;
- and,
- the Board's constitution.

## Is the CCRC efficient and effective?

7.1 To assess the efficiency and effectiveness of the CCRC, the review team analysed performance against the Key Performance Indicators (KPIs) over the three full financial years (2014/15, 2015/16, 2016/17). Figure 6 lists the CCRC's KPIs for 2016/17 with the review team's assessment of performance. The CCRC has demonstrated, through various initiatives, that it has taken steps to improve performance against all of its KPIs and drive change within the organisation. Where the review team found room for improvement, further explanation and recommendations are provided.

**Figure 6: Overall performance against KPIs for 2014/15, 2015/16 and 2016/17**

	Key Performance Indicator	Target Met
1	<b>Waiting times</b> - the average time taken for an application to be allocated to a Case Review Manager for review from the date the application is received Target for custody cases: <26 weeks in 2014/15 and 2015/16, reduced to <22 weeks in 2016/17. Target for at liberty cases: <78 weeks in 2014/15 and 2015/16, reduced to <48 weeks in 2016/17.	✓
2	<b>Duration of review</b> (a) the average time from the date a case is allocated to a CRM for review to the issue of an initial decision; and Target: 40 weeks in 2014/15, reduced to 28 weeks in 2015/16 and 2016/17 (b) the percentage of cases closed within 12 months of the CCRC receiving the application Target: 70%	✓ ✓
3	<b>Long-running cases (LRC)</b> - the number of applicants whose cases were allocated for review over two years ago (recorded for each month) Target: <30 cases	✗
4	<b>Quality</b> (a) Judicial Reviews - the number of cases re-opened as a proportion of complaints and pre-action protocol letters resolved and judicial reviews heard; and Target: <7 cases per year (b) Complaints - the number of complaints otherwise upheld as a proportion of those resolved; Target: <3 cases per year (c) Quality Assurance - the percentage of cases examined by quality assurance systems for which additional work is undertaken Target: <4%	✓ ✓ ✓
5	<b>Time to notification</b> – time taken to notify the Court of Appeal of a referral Target: <than 2 months in 90% of cases	✗
6	<b>Expenditure</b> - the alignment of the CCRC's expenditure to the delegated budget (measured separately for resource and capital expenditure) Target for Resource Expenditure: <0% - >-2.5% Target for Capital Expenditure: <0% - >-12.5%	✓
7	<b>Staff absence</b> - the average number of days staff sickness absence taken by employees and Commissioners Target: <7.5 days average staff sickness absence per employee per year	✗

1. **Waiting times KPI** - the average time taken for an application to be allocated to a Case Review Manager for review from the date the application is received. Recorded for each month and a rolling 12-month period, and calculated separately for custody and at liberty cases (does not include reallocations).



7.2 The CCRC has met the target for this KPI with waiting times at 18 weeks for custody cases and 39 weeks for at liberty cases in 2016/17. However, responses to the Call for Evidence raised concerns with current waiting times, with one respondent commenting:

*“Although the Commission has made good progress on reducing delays in getting a case to the review stage there is still further room for improvement” (Academic).*

7.3 Reducing waiting times has been a key corporate aim and a focus of the Whole System Review. At the start of the TR, the CCRC was part way through implementing its 2015-18 corporate plan objectives, with reducing queues to a minimum being a leading casework objective. By March 2018, the CCRC had met the target of a maximum 13 weeks wait to allocation for all applicants. However, moving resources to reduce waiting times is likely to have increased the duration of reviews (see page 23). The review team recognises the progress made on waiting times and is of the view that the CCRC should continue to remain focused on maintaining both the length of waiting times and the number of cases awaiting allocation. The review notes that having met the corporate objective on waiting times by March 2018, this KPI will now only be monitored internally.

### **Triage process**

7.4 Only 20% of respondents to the Call for Evidence are of the view that the allocation of resources to cases is proportionate, but without additional data the review team cannot determine whether this perception is accurate. The CCRC does not hold Management Information (MI) relating to the spend per case or the number of hours spent per case. It is the view of the review team, that to improve transparency and demonstrate proportionate allocation of resources to cases, the CCRC should monitor spend per case (or hours spent) and report this information for the four categories of cases so that it is evident if there is a proportionate allocation of resources to cases.

7.5 The review team also found that while the following data is recorded and shared with the Board as Management Information, publishing it in Annual Reports would improve transparency. This includes:

- number of cases awaiting allocation every month;
- number of cases awaiting allocation at the end of the financial year;
- number of cases awaiting allocation for longer than three months;
- number of cases allocated for review;
- number of reapplications and no appeal cases received and the percentage of these taken through to the review stage.

7.6 A quarter of the Call for Evidence respondents commented that data on the number of cases taken through to review, including reapplications and no appeal cases, should be published to increase transparency in the screening process. A small number of respondents were concerned that too many cases were screened out, or alternatively that not enough were.

- 7.7 The review team notes that the number of applications made to the CCRC has increased in recent years. This can be attributed to the introduction of an Easy Read application form in 2012, making it easier for applicants to apply. The review team has noted the CCRC's outreach work, targeting youths and the BAME community, using social media where appropriate, and considers that this may have had a positive impact on the number of applications received.

### **Recommendation**

With a view to improving transparency in the reporting of its performance to the public, the CCRC should:

- monitor spend per case (or hours spent) and report this information for the four categories of case;
- publicly report on the number of cases awaiting allocation every month and at the end of the year, and the number of cases awaiting allocation longer than three months, as part of the waiting times KPI; and
- publish the number of cases processed through to the review stage, the number of re-applications and no appeal cases received, and the percentage of these taken through to the review stage, per year, in Annual Reports.

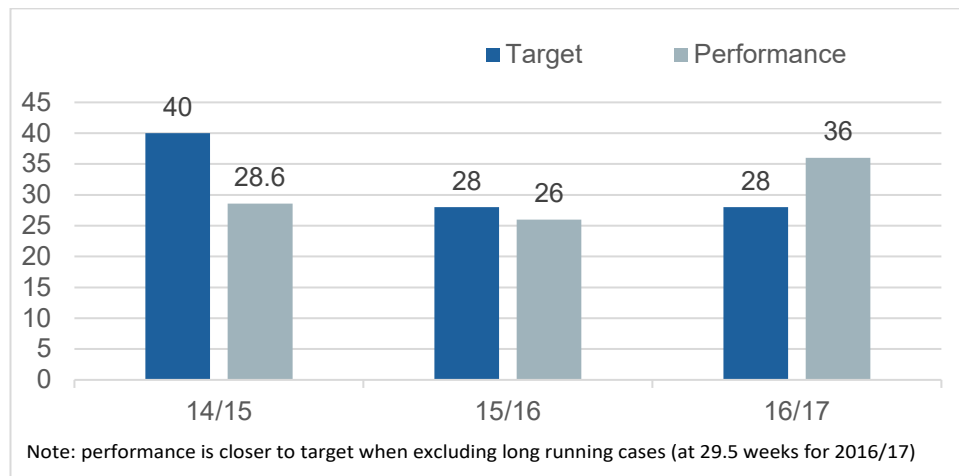
2. **Duration of review KPI** - there are currently two measures, each with its own targets, recorded both for each month and for the rolling 12-month period:

- the average time from the date a case is allocated to a CRM for review to the issue of an initial decision; and
- the percentage of cases closed within 12 months of the CCRC receiving the application.



7.8 Analysis of performance on this measure found that the average time from the date a case is allocated to a CRM for review to the issue of an initial decision has mostly been met, with only the 2016/17 target being missed (by eight weeks). Figure 7 shows the rolling 12-month average for the three financial years 2014/15, 2015/16 and 2016/17.

**Figure 7: Average time (in weeks) from allocation to initial decision (rolling 12 month average)**



7.9 The review team notes that there appears to be a link between the reduction in waiting times and the size of CRM portfolios; as allocations increased and CRM numbers remained constant (though

at a reduced level) CCRC missed its targets in respect of duration of review.

7.10 The review team was unable to identify any trends in whether custody cases or at liberty cases were taking longer to review, or whether the complexity of cases had an impact on the length of the review due to the data not being available. The review team recommends that to improve transparency in the reporting of its performance to the public, the CCRC should distinguish between custody cases and at liberty cases, and by the four categories of case (Type 1 to 2 being the least complex and Type 3 to 4 being the most complex), when reporting on both measures that make up the duration of review KPI in Annual Reports.

7.11 60% of respondents to the Call for Evidence and 76% of prisoners who responded to the prisoner survey are of the view that the CCRC does not provide a timely service.

7.12 The CCRC, in its response to the Call for Evidence, noted:

*‘Although we met our KPI target, we are very aware that too many of our cases are taking too long to resolve...there is more that we could do to avoid delay and guard against cases taking longer than is absolutely necessary.’ (CCRC)*

7.13 The review team found that a single Commissioner or a committee of Commissioners make decisions on *non-referrals*, despite legislation<sup>17</sup> stating that non-referrals may be decided “by any

<sup>17</sup> <http://www.legislation.gov.uk/ukpga/1995/35/contents>

*committee of, or by one or more of the members or employees of, the Commission” (Criminal Appeal Act).*

- 7.14 It is the view of the review team that the final decision on non-referrals for Type 1 and Type 2 (less complex) cases should be delegated to CRMs. This is likely to free up more time for Commissioners to focus on cases identified as being potential referrals and/or more complex cases. Feedback from staff workshops suggested that this approach should help to reduce the duration of reviews and focus Commissioner resource more appropriately.
- 7.15 The CCRC has established a ‘specialist team’ to work on asylum cases. This good practice could be replicated for other cases that fall into particular themes – providing consistency in the decision-making process and developing a pool of experts for each theme.
- 7.16 Type 1 and 2 (less complex) cases make up approximately 88% of CCRC’s workload. It would be in the organisation’s interest to find a way to review these quickly, without foregoing the quality of case reviews. The review team suggests establishing a small team of CRMs to focus and make decisions on Type 1 and Type 2 cases to ensure work is being done at the right level within the organisation.

#### **Recommendation**

With a view to improving transparency in the reporting of its performance to the public, the CCRC should distinguish between custody cases and at liberty cases, and by the four categories of case (Type 1 to 4), when reporting on both measures that make up the duration of review KPI in Annual Reports.

#### **Recommendation**

With a view to improving the performance of the organisation the CCRC should:

- move responsibility for the final decision on non-referrals in Type 1 and 2 cases from Commissioners to Case Review Managers (CRMs); and
- consider establishing a small team of CRMs to review and decide on Type 1 and 2 cases and introduce other ‘specialist teams’ working on cases that fall into a particular theme (as with asylum cases) to promote more efficient working.



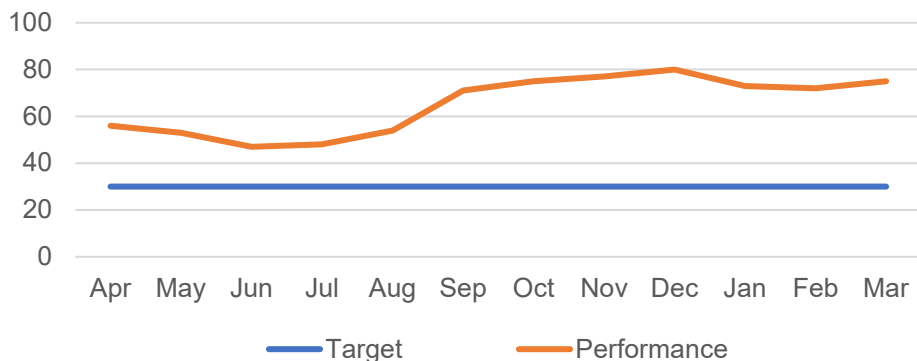
**3. Long-running cases (LRC) KPI** - the number of applicants whose cases were allocated for review over two years ago (recorded for each month).



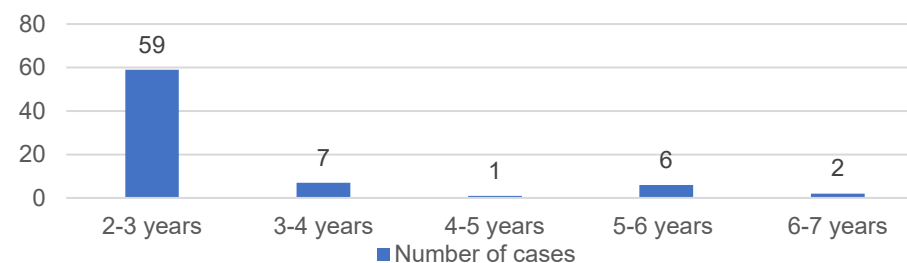
7.17 Analysis of this KPI shows that the **target is consistently being missed**. Figure 8 shows performance against this indicator from April 2016 to March 2017 (this indicator was introduced in 2016/17 and therefore yearly comparisons are not possible). The number of long-running cases has increased over this time and the target of 30 cases has been missed every month. However, it is worth noting that some cases make up a batch of cases and are progressed together, for example, the Post Office Horizon Computer case is made up of 23 cases, and are expected to close at the same time. The timeliness of service provided by the CCRC has been expressed as a concern by Call for Evidence respondents (see para 7.10).

This data is currently not published, however, the review’s Challenge Panel suggested that it should be.

**Figure 8: Number of applicants whose cases were allocated for review over two years ago (2016/2017)**



**Figure 9: Length of long-running cases (2016/17)**



7.18 Figure 9 gives a breakdown of long-running cases in 2016/17. The oldest case was allocated for review six to seven years ago. The majority of long-running cases are between two to three years old.

7.19 The data is also not broken down into custody cases and at liberty cases, or by the four categories of cases (Type 1 to 4), therefore, the review team were unable to identify whether certain types of cases take longer to review. The review team recommends that this data is published in Annual Reports.

7.20 The CCRC is aware of the need to reduce the number of long-running cases, demonstrated through various measures including the introduction of this new long-running cases KPI and the

establishment of a Long-Running Cases subcommittee<sup>18</sup> chaired by a NED. Evidence obtained from Board minutes indicates that a fall in CRM capacity prior to the period under review had an impact on the CCRC's ability to meet this target.

### **Recommendation**

With a view to improving transparency in the reporting of its performance to the public, the CCRC should:

- publish a breakdown of the number of years each long-running case has been under review as part of the long-running Cases KPI;
- distinguish between custody cases and at liberty cases, and by the four categories of case (Type 1 to 4), when reporting on long-running cases in Annual Reports.

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<sup>18</sup> The objective of this committee is '*to support the Board and the Chief Executive in their responsibilities for ensuring the timely management and conclusion of long-running cases*'. The Committee is Chaired by a Non-Executive Director.

#### 4. Quality KPIs

- **Judicial Reviews** - the number of cases re-opened as a proportion of complaints and pre-action protocol letters resolved and judicial reviews heard;
- **Complaints** - the number of complaints otherwise upheld as a proportion of those resolved. Both give an indication of the quality of service provided by the Commission; and
- **Quality assurance** - the percentage of cases examined by quality assurance systems for which additional work is undertaken.



7.21 On the whole, performance on this target is being met.<sup>19</sup> The Quality Assurance sample is comprised of Type 1 and 2 cases and no appeal cases. The Quality Assurance process ensures that CCRC policies have been applied and provides a third pair of eyes on the review, the review decision and the decision-making process. Type 3 and 4 cases are not included due to their complexity and because they are large reviews and generally scrutinised by a number of people throughout the process. It is the view of the review team that it is necessary to include Type 3 and 4 cases in the Quality Assurance process to ensure effective oversight of quality, particularly since these cases are the ones that are most likely to lead to a referral.

7.22 Several respondents to the Call for Evidence feel that the quality of case review could be improved, supporting the need to quality assure the more complex cases:

*“The performance measures seem to be limited to meeting processing targets rather than actually looking at the quality of investigations.”* (Service User)

*“The measures and any relevant KPI's focus on delivery of cases, but there should be an equal range of measures aimed at successful delivery of investigations and decisions.”* (Solicitor)

7.23 The review team notes that one of the challenges for the CCRC is conveying complex reasoning in decision documents and statement of reasons in a way which is easy for applicants to grasp. This culminated in the introduction of an approach to keep these documents short using direct language.

7.24 Evidence collected from staff focus groups suggests that Commissioners sometimes ask for extra work to be carried out and/or did a lot of extra drafting themselves making documents more detailed and comprehensive. However, it is not clear whether the additional work added value. The Whole System Review introduced a move away from detailed documents on the more straightforward cases combined with the use of an approach which is easier for applicants to comprehend. The review team notes that this inconsistent approach between Commissioners and CRMs may have an impact on Group Leaders trying to performance manage staff.

7.25 The review team found inconsistency in the approach in respect of decision documents and in particular, the statement of reasons. It is recommended that the CCRC establish ways to improve consistency throughout the casework process and consider that moving work from Commissioners to CRMs would help achieve this,

<sup>19</sup> In 2014/15 the number and percentage of cases re-opened was not within the target of less than three cases (four were reopened). However, performance exceeded the targets in the following two years, with two and three being reopened respectively.

as well as ensuring managerial oversight to promote consistency whilst maintaining and improving quality.

- 7.26 More than half of prisoners who responded to the prisoner survey would like to receive more frequent and detailed updates on their applications. Respondents to the Call for Evidence also cited detailed engagement with applicants as an area for improvement. The CCRC should ensure that updates to all applicants are sufficiently detailed, in a way that is easy to comprehend, and that the frequency of updates are appropriate.
- 7.27 The CCRC is well placed to provide valuable feedback to a range of stakeholders. The review supports the CCRC's work to improve the feedback it provides, and recommends it looks for opportunities to increase feedback on emerging themes to the wider criminal justice system.

#### **Recommendation**

With a view to ensuring the robust monitoring of quality, the CCRC should:

- include type 3 and 4 cases, along with type 1, 2 and no appeal cases in quality assurance sampling. The Chief Executive should continue to have responsibility for Quality Assurance and issues identified should be dealt with expeditiously;
- feedback cases of good or poor practice to Commissioners as part of Commissioner development and appraisal.
- look for opportunities to increase feedback on emerging themes to the wider criminal justice system.

#### **Recommendation**

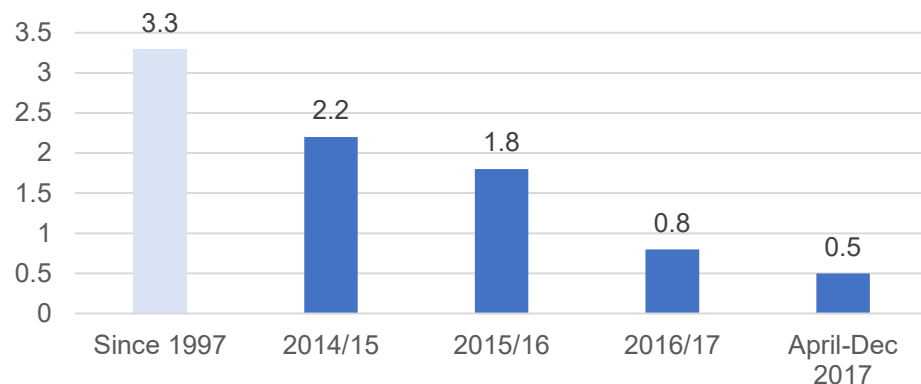
With a view to improving the performance of the organisation, the CCRC should:

- establish ways to improve consistency throughout the casework process, in particular in the approach to decision documents and statement of reasons; and
- ensure updates to all applicants are sufficiently detailed, in a way that is easy to comprehend, and that the frequency of updates is appropriate.



7.28 Referrals to the Court of Appeal are an area of significant interest. Figure 10 shows the average annual percentage of referrals since the CCRC was established in 1997 and the percentage of cases referred to the Court of Appeal annually from 2014/15 to 2016/17. The number of referrals decreased significantly in 2016/17 to 0.8% of applications with this downward trend continuing in the first three quarters of 2017/18 at 0.5% of applications. The average long-term percentage of referrals since the CCRC was established is at 3.3%. This is lower than the 5.7% referred by the Scottish CCRC but is based on a different test. The CCRC is of the view that their referral rate would be similar if they did not count applications outside their remit, for example, no appeals and reapplications.

**Figure 10: Percentage of all applications received that are referred to the Court of Appeal**



7.29 The overall number of referrals and referral conclusions are published in Annual Reports; however, the data is not broken down into custody and at liberty cases. The review team is of the view that to improve transparency in the reporting of its performance, a breakdown of these figures should be published in Annual Reports.

7.30 A number of respondents to the Call for Evidence expressed concerns at the low referral rate. It was suggested that this could be due to the CCRC’s cautious approach to the application of the real possibility test.<sup>20</sup>

*“It’s referral rate is quickly moving towards the point of vanishing.”*  
(Solicitor)

7.31 Many witnesses to the 2015 Justice Committee inquiry also commented that the CCRC’s referral rate is too low. The Justice Committee considered whether this was due to the real possibility test, CCRC’s application of it, or the Court of Appeal’s approach to appeals. It found no conclusive evidence of the CCRC failing to apply the test correctly, but noted that it should be less cautious.

7.32 In early 2018, the CCRC conducted an internal review<sup>21</sup> into the declining referral rate which identified several potential contributory factors, for example:

- an increase in the number of applications lacking legal representation (legal representation can be significant in filtering out unmeritorious cases);
- a lack of ‘batch’ referrals which have a theme; and
- the impact of internal work pressures with an increased focus on timeliness could impact negatively, either consciously or

<sup>20</sup> The test applied by the CCRC in deciding whether or not to refer a case to the Court of Appeal.

<sup>21</sup> [https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1/uploads/2018/06/CCRC\\_REFERRAL\\_RATE\\_-\\_ANALYSIS.pdf](https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1/uploads/2018/06/CCRC_REFERRAL_RATE_-_ANALYSIS.pdf)

unconsciously, on whether to do further work on borderline decisions.

- 7.33 As a result, a series of measures have been put in place in an effort to ensure wrongful convictions are not being missed. To address concerns about identifying contemporary miscarriages of justice, the CCRC may wish to consider appointing a small number of Commissioners who work concurrently in the criminal justice system; this would provide relevant knowledge and experience of existing and emerging themes and avoid the risk of concentrating on traditional areas of miscarriages of justice.

#### **Recommendation**

With a view to improving transparency in the reporting of its performance to the public, the CCRC should publish the number of referrals to the Court of Appeal by custody and at liberty cases.



7.34 Performance against this indicator is significant because it affects the productivity of the Commission and its ability to meet its casework targets and because of the detrimental effect on staff wellbeing. The target of less than 7.5 days staff sickness absence per annum was missed in all three years (2014/15, 2015/16 and 2016/17).

7.35 There are several factors that may have contributed to high levels of sickness absence:

- historically, there have been issues with a small number of long term sickness absences which have had a disproportionately high impact on absence figures;
- issues with the previous Occupational Healthcare provider (provided by MoJ) making it difficult to refer cases along with a lack of support to managers in managing absence combined with a lack of stability within the manager group; and
- Concern over significant organisational change.

7.36 The CCRC is taking positive steps to reduce sickness absence, including:

- a more proactive approach adopted by HR to manage absence, including coaching managers on addressing sickness absence resulting in better management of sickness absence cases;
- developing a closer working relationship with the MoJ HR Business Partner to support them on areas of concern; and
- listening to the views of staff - the 2016 staff survey engagement index was 83%. An internal team has been set up to implement the actions arising from the results of the survey.

7.37 To produce their staff surveys the CCRC has used ORC international, a global research and consultancy firm (which is part of Opinion Research Corporation) since 2009.

## No appeal cases

- 7.38 No appeal cases are cases that have not yet been appealed and thus should not usually be considered by the Commission. However, legislation states that the Commission can refer such cases in 'exceptional circumstances'.<sup>22</sup> On average these cases make up approximately 40% of applications received each year and therefore a considerable amount of resource goes into dealing with them. Each case is assessed on its own merit, as exceptional circumstances are not defined by legislation. CRMs have responsibility for assessing whether a case demonstrates exceptional circumstances based on CCRC policy and guidance. If exceptional circumstances are found, the case follows the usual review process; if not, the case goes to a single Commissioner (nominated on a rotational basis) to confirm the CRMs decision and sign a standard decision notice letter to the applicant directing them to the most appropriate route of appeal. Applicants can reapply to the CCRC once they have followed the appropriate appeal route.
- 7.39 Since 2014, the CCRC has been taking a more robust approach to no appeal cases, including the creation of a no appeals team with scheduled decision meetings and the faster informing of applicants of their most appropriate route to appeal. However, these cases remain a concern, with the Commission noting in its 2016/17 Annual Report and Accounts:
- 'Although we have taken steps to try to minimise the number of inappropriate no appeal applications to us, the continued high proportion of no appeal cases remains a concern as it detracts from our ability to deal more quickly with those who have no other route to appeal.'*
- 7.40 In 2016/17, 20% of no appeal cases received were found to have exceptional circumstances and went on to be reviewed. The remaining 80% went to a Commissioner to confirm the decision and

to sign a final decision notice letter. It is the view of the review team that perhaps such a small proportion indicates that too wide a perspective is taken by applicants with regards to seeking exceptional circumstances. Additionally, the need for a Commissioner to confirm the recommendation of a CRM is time consuming.

- 7.41 Only very rarely is a CRM's decision as to whether a no appeal case raises exceptional circumstances overturned by a Commissioner. Of a sample of 371 cases taken during the currency of the TR, only two decisions were overturned. One of these cases was reviewed and then closed without referral, and the other case went on to be reviewed and is yet to conclude. Both CCRC staff (expressed during the staff workshops) and the review team believe that redirecting the final decision on whether no appeal cases raise exceptional circumstances from Commissioners to CRMs, would ensure decisions are being made at the right level within the organisation and allow Commissioner time and expertise to be freed up to focus on more complex decisions.
- 7.42 With a higher proportion of applications coming from people in custody than people at liberty, the CCRC should consider offering these people the possibility of applying via video-link where available. This would not only support them in composing a more comprehensive application, but may also help to reduce the number of no appeal applications received.

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<sup>22</sup> Criminal Appeal Act 1995  
<http://www.legislation.gov.uk/ukpga/1995/35/contents>



### Recommendation

With a view to improving the performance of the organisation, the CCRC should:

- allocate resources more proportionately by redirecting the final decision as to whether no appeal cases raise exceptional circumstances from Commissioners to CRMs. This should be supported by guidance based on the experience of Commissioners; and
- consider the possibility of using video-link applications where available to reduce the number of no appeal applications and to address the issue that many applicants are unable to compose a cogent written application.

## EU Exit

- 8.1 The CCRC is accountable to the UK Parliament for the delivery of its statutory remit set out in the Criminal Appeal Act 1995 and therefore this review has identified no direct impact on the Commission or its work following the UK's exit from the European Union.

## Devolution

- 9.1 The CCRC investigates suspected miscarriages of justice in England, Wales and Northern Ireland referring cases back to the relevant court where appropriate. There is no impact on the Commission's work from the perspective of devolved administrations in Wales and Northern Ireland.

## Conclusion

- 10.1 The review concludes that there is still a clear need for the functions of the CCRC and has made a number of recommendations (see Table 1) that will have a significant impact on the way the CCRC is governed and the way in which it operates.
- 10.2 The review notes that the CCRC continues to be an effective and efficient organisation and that the recommendations contained in this report will enhance its work. Strong leadership of the Board will be required to successfully implement these recommendations and bring about the changes required to build on the CCRC's current position. The Chair of the CCRC will be held accountable for producing an implementation plan and regularly reporting on progress to the Partnership Team in the MoJ ALB Centre of Expertise. Furthermore, to promote transparency, the recommendations should be factored into published Business Plans and progress reported on in Annual Reports.
- 10.3 There has unfortunately been a delay between the launch of the Tailored Review and publication of the final report. The review team acknowledges that the CCRC has been through periods of significant change over the last few years. Under the leadership of the Chief Executive the CCRC has delivered improved performance, and the review team notes that there are still benefits to be seen as a result of those changes. Those changes, combined with implementing the recommendations of the Tailored Review, are likely to result in continued further improvements in 2018/19 and beyond.

## Annex A: CCRC Call for Evidence questions

- 1a. Have you had contact with the CCRC? Yes/No
- 1b. In what capacity? (users of the service, CCRC staff/Commissioners/NEDs, solicitors, academics, police, CPS, other)
2. In your opinion, are the functions of the CCRC still required? Please give the reasons for your answer.
- 3a. In your opinion, should the statutory functions of the CCRC (as outlined in the Criminal Appeal Act 1995 <http://www.legislation.gov.uk/ukpga/1995/35/contents>) be carried out by a public body? Please give the reasons for your answer. (A public body is an organisation whose work is part of the process of government but which operates at an 'arm's length' from Ministers)
- 3b. If the answer to Q3a is no, which delivery model do you think might be better placed to carry out these functions? Please give the reasons for your answer.
- 4a. In your view, how effectively does the CCRC perform its statutory functions (on a scale of 1 to 5, where 1 = very poor and 5 = very well)? Please give the reasons for your answer.
- 4b. How could the delivery of any of the functions performed by the CCRC be improved?
- 4c. Do you think the CCRC delivers its functions in line with value for money? Please give the reasons for your answer.
5. In your opinion, does the CCRC have a well-defined and appropriate range of performance measures? Please give the reasons for your answer. (See page 81-83 [https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1l/uploads/2015/01/1096\\_WLT\\_Criminal-Cases-Review-AR\\_WebAccessibleM-1.pdf](https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1l/uploads/2015/01/1096_WLT_Criminal-Cases-Review-AR_WebAccessibleM-1.pdf))
- 6a. Do you consider that the CCRC provides a good service to applicants? Please give the reasons for your answer.
- 6b. Do you consider that the CCRC provides a timely service to applicants? Please give the reasons for your answer.
7. Is the purpose of the CCRC clear to you and correct for the future?
8. Do you think the current governance structure and arrangements of the Commission are effective? Please give the reasons for your answer.
- 9a. Do you think the CCRC is making the best use of continually changing technology? Please give the reasons for your answer.
- 9b. Do you consider that the CCRC is making the best use of social media to promote their services? Please give the reasons for your answer.
- 9c. Do you consider that the CCRC is making the best use of the internet to deliver its services? Please give the reasons for your answer.

## Annex B: Call for Evidence Respondents

Organisation
Carmelite Chambers
CCRC
Court of Appeal (Criminal Division)
Department of Justice Northern Ireland
LSE
Factori
Fair Trials
False Allegations Support Organisation (UK)
Forensic Science Regulator
House of Lords
Howard League for Penal Reform
Inside Justice
JENGBA
Jeremy Bamber Campaign
Mail on Sunday
Prison Link, Age Concern, Carers UK, DISC, Deaf Society, Birmingham Resilience Group/Forum
Private Individuals x16
Quality Solicitors Jordans
RCJ Advice – Miscarriages of Justice Support Service
SAFARI
Solent University and De Montfort University
Swansea University
The Law Society of England and Wales

Organisation
University of Bristol
University of East Anglia
University of Manchester
University of Oxford and University of Reading
University of Warwick
Various
West Midlands Against Injustice
Yorkshire and Humberside Against Injustice

## Annex C: Prisoner Questionnaire

The review received over 300 completed questionnaires from prisoners in response to the following questions:

1. How did you hear about the CCRC?
2. Do you understand what the CCRC does?
3. Were you able to get hold of the application form easily?
4. Is or did the CCRC keep you updated on your application?
5. Do you think you received a good service from the CCRC? Please say why you think this is.
6. Do you think the time the CCRC took, or is taking, to look at your application is reasonable? Please say why you think this is.
7. Is there anything else the CCRC could have done to help you with your application? Please say how they could have helped.

## **Annex D: Challenge Panel Members**

The Challenge Panel was made up of the following four members:

**Martin Jones**

Chief Executive of the Parole Board

**Nicola Hewer**

Director, Family and Criminal Justice Policy, MoJ

**Andrew Neilson**

Director of Campaigns, The Howard League for Penal Reform

**Alison Wedge**

Senior Responsible Officer and Head of the ALB Centre of Expertise, MoJ

## Annex E: Scope and Purpose of Tailored Reviews

A non-departmental public body (NDPB) should only exist where there is clear evidence that this model is the most efficient and cost-effective way for the organisation to fulfil its statutory functions and only where these functions are still required. In February 2016, the Cabinet Office announced the Government's ALB Review Strategy 2016-2020 which states that all arm's length bodies will undergo a substantive review during the lifetime of each Parliament.

Tailored Reviews have the following aims:

1. To provide a robust challenge to, and assurance of, the continuing need for individual organisations as well as assessing their function and form, and;
2. where it is agreed that an organisation is required, it is then necessary to consider its capacity for delivering more effectively and efficiently, and to evaluate the control and governance arrangements in place to ensure compliance with recognised principles of good corporate governance.

As the name suggests, the reviews are tailored to the organisation being looked at. The review team will consider how best to structure and carry out these reviews following discussions with sponsors, investigative work to understand the organisation's operating environment and mapping of the organisation's key stakeholders. The review requires early engagement with senior leaders in the relevant organisation to facilitate a collegiate approach and to agree the process the review will follow.

These reviews are carried out in line with the Cabinet Office principles outlined in "*Tailored Reviews: Guidance on Reviews of Public Bodies*":

- I. Proportionality: Reviews should not be overly bureaucratic and should be appropriate for the size and nature of the organisation being reviewed
- II. Challenge: Reviews should be challenging and take a first principles approach to whether each function is required, is being delivered effectively and still contributes to the core business of the organisation

- III. Being Strategic: All NDPBs must be subject to a tailored review at least once in the lifetime of a Parliament. Departments should define the scope of the review depending on any wider policy or strategic reviews that are being conducted, and also consider combining the requirements of a tailored review within the scope of any other planned review or evaluation of the department's public bodies.
- IV. Pace: Reviews should be completed quickly to minimise the disruption to the organisation's business and should normally take no longer than 6 months, keeping in mind the principle of proportionality
- V. Inclusivity: Reviews should be open and inclusive. The organisation under review should be engaged and consulted throughout the review and have the opportunity to comment on emerging conclusions and recommendations
- VI. Transparency: The final report should set out any recommendations, including any that address areas of non-compliance with corporate governance. Any such issues of non-compliance should be considered by the sponsor. An implementation plan for the agreed recommendations should be agreed between the public body and the sponsor.

### Process and Methodologies

Cabinet Office guidance states that the Review should first identify the main functions of the NDPB. It should evaluate how these functions contribute to the core business of both the NDPB and the sponsor department and consider whether these functions are still required. Where the Review finds clear evidence that a particular function is needed, it should then explore how best to deliver this function.

When considering potential delivery models, the Review should explore a wide range of options, including;

- whether the function can be better delivered by local Government or the voluntary sector
- Whether the function should move to the private sector.
- If it would be beneficial to merge with another existing body
- Whether the function can be delivered by the sponsoring department,

- If a less formal structure would deliver better results, or
- Whether the function should transfer to a new Executive Agency or Government body.

Part Two looks to identify efficiencies, evaluate control and governance arrangements and assess the overall performance of the organisation under review.

## **Annex F: Approach to the review**

### ***Call for Evidence***

A Call for Evidence was issued on 11 December 2017 and was published on gov.uk. It was open to people and organisations with an involvement or interest in the CCRC. The Call for Evidence closed on 14 January 2018. We received 46 responses which were analysed by Ministry of justice (MoJ) officials. A list of respondents can be found in Annex B, with the Call for Evidence questions in at Annex A.

A questionnaire was also circulated to prisons in England and Wales seeking the views of serving prisoners who had applied to the CCRC regarding their understanding of the role of the CCRC, ease of applying, regularity of updates on applications and whether they received a good and timely service from the CCRC. This questionnaire can be found at Annex F.

### ***Stakeholder engagement***

MoJ officials met with CCRC staff members, Commissioners and MoJ Partnership and Assurance Team members to gather evidence for the review. This evidence was used to build up an accurate picture of the CCRC, its work, performance, governance and potential areas for improvement.

### ***Governance Assessment***

Internal governance arrangements including statutory responsibilities and accountabilities were identified as an area of particular interest in this review. The review team carried out a robust assessment of the governance arrangements of the CCRC.

### ***Reports and plans***

The review team made use of several reports including annual reports, corporate plans and business plans.

### ***Challenge Panel***

A Challenge Panel was established to robustly assess and challenge the review's findings and recommendations. The Panel sat on two occasions to examine the initial findings (6 December 2017) and to consider the more detailed findings and recommendations (19 February 2018). Members of the Challenge Panel can be found at Annex C.



## Annex G: Update on the 2013 Triennial Review Recommendations

2013 TR recommendation	2017 updates on implementation
<p>Develop a more defined leadership role for the Chair including arrangements for a casting vote for the Chair on the Board and the introduction of a formal line management process for Commissioners</p>	<p>Appraisal arrangements were formalised and the Chair regularly carries out performance reviews of Commissioners based on feedback and data. The Chair also receives quarterly data in respect of Commissioner casework performance.</p> <p>At the Board, a simple majority carries the decision. The Chair casts a vote as an ordinary Board member. If the Board is unable to reach a majority the Chair will have a second vote as the casting vote.</p>
<p>Reduce the size of the Board and create a more appropriate balance between Commissioners, Executives and NEDs in keeping with the Corporate Governance Code. A SMT of three should continue to be included on the Board. The Board should meet monthly.</p>	<p>A smaller Board was trialled but the CCRC considered this was not appropriate in a Commission. The Board reverted to a full Board comprising all the Commissioners, three NEDs and the three Senior Management Team (SMT) members (there has been no change in the number or make-up of SMT members).</p> <p>The Board continues to meet monthly.</p>
<p>Increase the diversity of the Commissioners by increasing lay membership in line with 1995 Act.</p>	<p>Opportunities to increase diversity are limited because of the frequency of Public Appointment posts becoming vacant however the number of Commissioners who are not lawyers has increased; as of December 2017, there are six non-lawyers and seven lawyer commissioners including the Chair.</p>