



FORMAL MEMORANDUM

REVIEW IN THE ABSENCE OF A FORMAL APPLICATION

Introduction

1. The majority of applications to the Commission come directly from the convicted person (or the person subject to the sentence, verdict or finding), or their legal representative. Most make use of the Commission's application form. A substantial minority of applications come from third parties who are acting with the full knowledge and approval of the convicted person. The Commission's policies and processes are chiefly geared to dealing with applications of those kinds.
2. The Criminal Appeal Act 1995 ('the Act') makes it clear that the Commission may review and refer a case even though no application has been by or on behalf of the person concerned (s.14 (1)). No form of application is prescribed by the Act.

Policy

3. The Commission will not decline to consider a matter simply because no application has been made, or an applicant has declined to make use of the Commission's application form.
4. Where a case currently under review is linked in fact or in law with a case in which no application has been made and the Commission believes that it would be in the interests of justice to review both cases, the Commission will take steps to initiate an application.
5. The Commission prefers to work with the knowledge and co-operation of the convicted person (or the person subject to the sentence, verdict or finding). It would only consider reviewing a case without an express request from that person if there were substantial grounds for believing that the person was incapable of understanding the nature and significance of the Commission's role, or that their failure to make an application was the result of duress. In exceptional cases the interests of justice may override the wishes of an individual.

6. The Commission will not routinely invite applications to be made unless it believes that the person concerned is unaware of circumstances that might afford grounds for making an application.

Procedure

7. During the course of a case review the Commission may identify another person, perhaps a co-accused, whose case is affected by the issues raised in the first case review. If the Commission considers that it would be in the interests of justice to do so, it may draw this fact to the attention of the person affected. This will usually result in a formal application being made. The Commission will then consider whether there are grounds for giving that application priority and dealing with it simultaneously with the case review that prompted the application. Generally, the Case Review Manager dealing with the first application will approach the person affected.
 8. When the Commission receives an application that has not been submitted by the convicted person (or the person subject to the sentence, verdict or finding) the Commission will establish whether that person is aware of the application and is prepared to cooperate with the review. In general, the Commission will not start a review unless this is the case. Generally, this approach will be made by a member of staff nominated by the Director of Casework and will be made at Stage 1 of the case review process.
 9. On occasions, the Commission's attention may be drawn to a case entirely without any direct contact by those involved; for example, by the publication of a book or by media reportage. The Commission may determine to contact the person concerned, or the person's legal representatives, or the originator of the reportage, with a view to establishing whether a formal application is to be made. Such an approach would generally be made after Commission discussion. If no application is forthcoming, the Commission will not normally start a review.
 10. In any case of doubt, the Commission will consider whether there is a real possibility that any appeal resulting from a reference would be pursued by the person concerned (or, in the case of a deceased person, by a person approved by the Court of Appeal under s.44A Criminal Appeal Act 1968). A review will not normally start unless the Commission concludes that such a possibility exists.
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