



Ministry  
of Justice

# **Triennial Review**

**Criminal Cases Review Commission**

**Combined report on stages one and two**

June 2013 (version 2 updated)



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## Introduction – stage 1

The Criminal Cases Review Commission (CCRC) was established under the Criminal Appeal Act 1995 as the independent body to review possible miscarriages of justice in England, Wales and Northern Ireland and to refer appropriate cases to the appeal courts. The Commission may review convictions and sentences in cases dealt with on indictment (in the Crown Court) and summarily (in magistrates' courts), as well as those heard in the Court Martial and Service Civilian Court. Scotland has a separate body for cases under Scottish Law and is not a part of this review.

The CCRC's decision makers are publicly appointed Commissioners, and they are supported by senior managers, legal and investigations advisers, casework and administrative staff. Investigations are mainly carried out by CCRC staff but it can require others, such as the police, to carry out investigations on its behalf.

This is the first triennial review of the CCRC undertaken under the triennial review programme overseen by the Cabinet Office. This report sets out the purpose of the triennial review, describes the process and methodology used, analyses the functions of the CCRC and makes formal recommendations on the functions and appropriate forms.

As part of the review there was a public call for evidence and this report includes analysis of the 65 responses which the Ministry of Justice (MoJ) received from a range of groups including the senior judiciary, senior members of the criminal justice system, members of the legal profession, academics/researchers, human rights group/campaigners, a Member of Parliament and private individuals.

## Background and context

### The Royal Commission on Criminal Justice 1993

The Commission was created as a result of recommendations made by the Royal Commission on Criminal Justice ("the Royal Commission"). The Royal Commission, chaired by Viscount Runciman, was established on 14 March 1991 by the Home Secretary after a string of high profile miscarriages of justice came to light and shook public confidence in the criminal justice system: these included the Birmingham Six and the Guildford Four.

The Terms of Reference included looking into whether changes were needed in the arrangements for considering and investigating alleged miscarriages after all rights of appeal were exhausted.

The Royal Commission found that the Court of Appeal had no jurisdiction to re-hear a case if new evidence were found subsequent to the last available route of appeal; the process of the Home Secretary considering alleged miscarriages of justice as set out in the Criminal Appeal Act 1968 was limited to indictable offences only; and the only other alternative was for the Home Secretary to consider whether it was appropriate to recommend a pardon under the Royal Prerogative of Mercy. This last could be used on a conviction or all or part of a sentence but the conviction would still stand as only the courts of appeal can quash convictions.

The Runciman Report recommended the establishment of an independent body to consider allegations of alleged miscarriages of justice. The recommendations included the independence of the new body from both the Executive and the courts structure; that it should investigate as appropriate; that it should supervise police investigations and refer to the Court of Appeal in relevant cases; that it should submit findings and evidence to the Court of Appeal but not make recommendations.

### The Criminal Appeal Act 1995

Following the consideration of the Runciman Report the Criminal Appeal Act 1995 established the CCRC. It opened in 1997 with the authority to review convictions and/or sentences in indictable, triable either way and summary cases in England, Wales and Northern Ireland. It was also given

powers to obtain material from public and government bodies regardless of issues of confidentiality or secrecy and to appoint officers to investigate matters as appropriate. The Act also gave the Court of Appeal the right to require the CCRC to investigate matters on its behalf.

The Armed Forces Act 2006 extended all these powers to the Court Martial, the Service Civilian Court and the Court Martial Appeal Court.

### **Public Bodies Reform Agenda**

The Public Bodies Reform Agenda is led by the Cabinet Office, using HM Treasury rules and standards. In 2010, over 900 bodies were subject to a cross-government review undertaken by all departments. This included all Non-Departmental Public Bodies, along with a number of Non-Ministerial Departments and public corporations. The Secretary of State for Justice considered MoJ public bodies, applying the Coalition Government's test on whether the function should be carried out by the state. It was decided in June 2010 that the CCRC would be retained on the grounds of performing a function which requires independence and impartiality. The triennial review process was then established in 2011 to ensure that all NDPBs remaining in place following these reforms were regularly reviewed. The decisions taken in 2010 do not pre-determine the outcome of this triennial review, which is based on evidence, but is a relevant consideration.

### **Transforming Justice**

Transforming Justice is the MoJ's vision and strategy for major change aimed at achieving a better justice system, with long-term improvements across the department and the wider justice system, at less cost and more responsive to the public.

The MoJ will seek to deliver a system which punishes offenders and reduces reoffending; makes prison more cost effective; makes sure youth justice gives the right support to young offenders while being cost effective. The MoJ shall continue reforming courts and the wider criminal justice system to deliver a more efficient and effective service; and ensure legal aid is credible and targeted on those cases that require it.

The MoJ has initiated transforming rehabilitation, to transform the lives of offenders and make sure they do not return to a life of crime when they have finished their sentence. This has already made some progress on making prisons places of hard work and drug-free; this must now be built on to stop the revolving door of reoffending and make sure that when prisoners leave, they leave for good.

### **Scope and Purpose of Triennial Reviews – stage 1**

The Cabinet Office has identified two principal aims for triennial reviews:

- to provide robust challenge to the continuing need for individual NDPBs – both their functions and their form (stage one); and
- where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance (stage two).

This report covers stage one of the review of the CCRC.

All reviews are to be conducted in line with the following principles:

- i. **Proportionate:** not overly bureaucratic; appropriate for the size and nature of the NDPB.
- ii. **Timely:** completed quickly to minimise disruption and reduce uncertainty.
- iii. **Challenging:** robust and rigorous, evidencing the continuing need for functions and examining and evaluating a wide range of delivery options.

- iv. **Inclusive:** open and inclusive. Individual NDPBs must be engaged, key users and stakeholders should have the opportunity to contribute. Parliament should be informed about the commencement and conclusions.
- v. **Transparent:** all reviews should be announced and reports should be published.
- vi. **Value for Money:** conducted to ensure value for money for the taxpayer.

The programme of departmental triennial reviews is agreed on a rolling basis with the Cabinet Office.

## Process and Methodologies

### Cabinet Office guidance

This review has been completed in line with Cabinet Office guidance<sup>1</sup>.

According to the Cabinet Office guidance the first stage of the review should identify and examine the key functions of the NDPB. It should assess how the functions contribute to the core business of the NDPB and the sponsor department and consider whether the functions are still needed. Where the department concludes that a particular function is still needed, the review should then examine how this function might best be delivered.

When assessing how functions should be delivered, the review should examine a wide range of delivery options. This should include whether the function can be delivered by local government or the voluntary or private sectors. It should also include an examination of different central government delivery models, including whether the function can be delivered by the sponsoring department, by a new or existing Executive Agency or by another existing central government body. It is Government policy that NDPBs should only be set up, and remain in existence, where the NDPB model can be clearly evidenced as the most appropriate and cost-effective model for delivering the function in question. Reviews must evidence that functions have been assessed against a wide range of delivery options.

In many cases, some delivery options can be quickly rejected. However, for each function under consideration, the review should identify all viable delivery options and undertake a fuller assessment of these options. Where appropriate, this should include a cost and benefits analysis. If one of the delivery options is the NDPB option, this must also include an assessment against the government's 'three tests':

1. Is this a technical function (which needs external expertise to deliver)?
2. Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?
3. Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?

Based on these fuller assessments, the department can then make an informed decision on how the function should be delivered in the future:

- Abolish
- Move out of Central Government (e.g. to voluntary or private sector)
- Bring in-house (e.g. to an existing Executive Agency of the MoJ)

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<sup>1</sup> See also <http://www.cabinetoffice.gov.uk/sites/default/files/resources/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf>

- Merge with another body
- Delivery by a new Executive Agency
- Continued delivery by an NDPB

### **The Ministry of Justice approach**

To ensure consistency of approach to the programme of MoJ triennial reviews, guidance was issued for use by all the review teams to be set up for each NDPB. The guidance was based on that issued by the Cabinet Office and was developed to the particular needs of the Department. The MoJ programme of reviews is also overseen by a central Senior Responsible Officer.

This review is governed by a project board and supported by a Critical Friends Group:

- the project board is comprised of officials from the review team as well as representation from the legal, corporate and communications directorates and the arm's-length body governance division;
- the Critical Friends Group provides robust challenge to the review and includes representation from the MoJ's triennial review programme, the Cabinet Office and an official from the MoJ with previous experience of triennial reviews.

### *Call for Evidence*

The call for evidence on the triennial review was issued on 19 October 2012, the same day as the review was launched by Written Ministerial Statement in both Houses of Parliament. The review and the call for evidence was published on the MoJ website, the CCRC website and publicised directly to interested stakeholders with the deadline for responses set for 14 December 2012. The MoJ received 65 responses and a full list of respondents is included at the end of this report.

As part of the call for evidence, all the key stakeholders were invited to attend a roundtable meeting to explain the review, explore possibilities and begin to get some responses to the issues and a number of them took the opportunity to attend. One of the organisations requested a separate meeting which took place later. The Senior Responsible Officers of both the Programme and this particular review also attended a meeting of the CCRC Board, a meeting with CCRC staff and the senior executive management team in order to explain the review in detail and a further meeting with the executive team to update the CCRC of emerging themes from the call for evidence. In addition to this engagement the Review Team also considered previous letters sent to the MoJ and to the CCRC for comments on any issues which fell within the remit of this review.

Evidence from both the call for evidence and other stakeholder engagement has been incorporated into this report at the appropriate stage of the options analysis and in the concluding section where emerging themes are identified.

## Functions and Form

This section of the report will look at the functions and the form of the CCRC.

### Functions of the CCRC

The CCRC is the independent body set up to review possible miscarriages of justice in England, Wales and Northern Ireland and to refer appropriate cases to the appeal courts.

Once the Commission refers a case to an appeal court, the court **must** hear the substantive appeal. Established as an Executive Non-Departmental Body on 1st January 1997 by the Criminal Appeal Act 1995, the CCRC is responsible for functions that had previously rested with the Home Office and the Northern Ireland Office. The CCRC may review convictions and sentences in cases dealt with on indictment (in the Crown Court) and summarily (in magistrates' courts), as well as those heard in the Court Martial and Service Civilian Court. The CCRC has a budget of £5.3m for 2012/13

The statutory functions of the CCRC were set out in the survey questions which were available on the MoJ website (a copy of which is at Annex B) as well as sent directly to key stakeholders. The functions are:

- **review of conviction and/or sentence in cases dealt with on indictment in England and Wales;**
- **review of conviction and/or sentence in cases dealt with on indictment in Northern Ireland;**
- **review of conviction and/or sentence in cases dealt with summarily in England and Wales;**
- **review of conviction and/or sentence in cases dealt with summarily in Northern Ireland;**
- **investigation and reporting on matters on direction of the Court of Appeal;**
- **investigation and reporting on matters on direction of the Court Martial Appeal Court;**
- **review of conviction and/or sentence in cases dealt with by the Court Martial;**
- **review of conviction and/or sentence in cases dealt with by the Service Civilian Court;**
- **require the appointment of an investigating officer to carry out inquiries on behalf of the CCRC;**
- **provision of assistance to the Secretary of State on matters concerning recommendations for exercise of Her Majesty's prerogative of mercy.**

### Data

According to its records the CCRC has received a total of 15,476 applications from the date it was established (1 April 1997) to 31 October 2012. This includes the 279 cases it inherited from the Home Office as well as 112 cases in which it has received directions from the Court of Appeal to investigate and report on matters on behalf of the Court.

A more detailed breakdown of cases handled by the CCRC is in the table below. The CCRC provided data from 1 January 2004 and 31 October 2012 during which time 8,935 cases were received.



2004 - 2012	England & Wales	Northern Ireland	All UK
Crown Court cases	6,798	208	
Magistrates' Courts cases (inc. triable either way cases)	718	12	
Court Martial cases			1
Service Civilian Court cases			0
Directions from Court of Appeal/Court Martial Appeal Court	112	0	0
Royal Prerogative of Mercy			1

## Analysis of CCRC functions

The vast majority (83%) of respondents directly answered the question of whether the role of the CCRC in reviewing cases for possible miscarriages of justice continued to be necessary. Of these, the overwhelming response (98%) was an emphatic “yes”.

### Examples of evidence received on the continuing need to review criminal cases

**Individual:** Most certainly. Miscarriages of justice do happen and they need to be addressed and referred back to the Court of Appeal.

**Individual (ex CCRC Commissioner):** I would have thought that such a need is clear...State provision for review promotes confidence in the criminal justice system and goes some way to eliminate grievances on the part of those unjustly, or who consider themselves to be unjustly, convicted or sentenced.

**The Law Society:** The Law Society is firmly of the view that the functions of the CCRC are still very much required.

**Senior Judiciary:** There is an ongoing need for the CCRC.

**The Law Commission:** The functions identified all appear to be essential functions for any effective criminal justice system. A functioning and developed criminal justice system needs an effective mechanism for the identification and review of potential errors. That mechanism is best performed by a body that is independent of the judicial and executive arms of government and is perceived to be independent.

**Individual:** The need to have an independent body to review suspected miscarriages of justice is fundamental to the integrity and confidence of our legal system. If the CCRC is scrapped a first instance appeal system should be implemented at the Court of Appeal to take over their role.

Less than half of respondents comment on the need for each of the individually listed functions. Of these, the strongest support is for the cases dealt with on indictment (over 96%) and cases dealt with summarily (92%). There is slightly less support for the review of sentences in these cases, with a minority (23% and 17% respectively) calling for reviews of sentences to be dropped by the CCRC.

There are fewer responses on the need for the review of cases dealt with by the Court Martial and the Service Civilian Court (less than 40% for each). Of those that have responded there is a strong support for there being a continuing need for these functions (88%) even when respondents acknowledged how rare such cases are. The CCRC's records show that there has been only one application to review a case heard in the Court Martial and there has been no cases from the Service Civilian Court since the amendments were added to the Criminal Appeal Act and commenced in 2009.

This is probably not surprising in light of the time lag between conviction and/or sentence and the CCRC receiving applications combined with the fact that the legislation does not operate retrospectively and is exercisable only in respect of conviction or sentence recorded on or after 31 October 2009.

A small number of respondents (less than 10%) express concerns that dealing with less serious offences, or issues of sentencing, places an increasing burden on the CCRC. Doubts are raised about the ability of the CCRC to continue to investigate cases at a high standard while there is little chance of increasing funding to address the rising numbers of applications. A few of these respondents call for difficult decisions to be made to disregard some categories of cases, or for the CCRC to give greater priority to the more serious indictable cases.

There is an opposite concern expressed that less serious offences can still have a large impact on individuals. Comments are made that offences in magistrates' courts are not always "less serious", not even those that are summary only, and that disregarding such cases can lead to vulnerable people being abandoned by the system. A majority of those who expressed a clear view on this issue (93%) said that there was a continuing need for the CCRC to consider cases dealt with summarily by the courts.

Of the total of respondents, 45% expressed a view on the continuing need for the function of the CCRC to provide assistance to the Secretary of State on matters concerning recommendations for exercise of Her Majesty's prerogative of mercy. The vast majority (96%) believe that this function should continue. There were a minority of respondents suggesting that this function should be dealt with by a body independent of the CCRC. It would appear that there has been a misunderstanding of this function amongst respondents. Consideration of applications for a pardon, and the decision on whether to make a recommendation under the Royal Prerogative of Mercy remains the responsibility of the Secretary of State for Justice. The role of the CCRC is set out in the Criminal Appeal Act 1995. Section 16 states that the CCRC will consider any matter referred by the Secretary of State for Justice who will treat the CCRC's response as "conclusive of the matter referred". The CCRC may also suggest a case for consideration by the Secretary of State.

The weight of the evidence does not support the small number of calls that were made to make legislative changes to restrict the cases the CCRC can deal with and so it remains appropriate that all those convicted in the criminal court should have this safeguard. Moreover, the data supplied by the CCRC does not support the assertions that restricting the cases it can deal with would have any significant effect on its workload and therefore the resources taken up to amend legislation would not be justified. Further, it is noted that the Commission has a discretion policy and in exercising that policy, matters such as the "benefit" there might be as a result of the referral, (either to the individual or systematically to the wider criminal justice system), and other factors such as the age or seriousness of the conviction can be taken into account in appropriate cases. The vast majority of the cases dealt with by the CCRC are those which were dealt with in the Crown Court in England and Wales. With regard to sentence, anecdotally, the CCRC is of the opinion that there are very few cases which come to them to review sentences only, with the majority of applications being for conviction only or conviction **and** sentence. Issues relating to volume data can be reviewed again in future triennial reviews.

A small number of respondents comment that it is a waste of the time of the CCRC to be dealing with sentence calculation issues. The CCRC reports it has dealt with a very small number of such cases and even these numbers are expected to fall further due to a mixture of practice and changes to legislation.

## Examples of evidence received on the continuing need for individual functions of CCRC

**Senior Judiciary:** Yes, a wrongful summary conviction is just as much an injustice.

(On function of investigating and reporting on matters on direction of the Court of Appeal): Undoubtedly, it has never been more important. It is essential for example in cases raising issues of possible jury irregularities, where sensitive and impartial questioning is required. (And of the Court Martial Appeal Court): Much rarer but when it does arise it is every bit as significant.

**The Law Commission:** The functions identified all appear to be essential functions for any effective criminal justice system. A functioning and developed criminal justice system needs an effective mechanism for the identification and review of potential errors. That mechanism is best performed by a body that is independent of the judicial and executive arms of government and is perceived to be independent.

**Individual:** We very much need the CCRC to not only ensure correct justice but to rectify errors in the system.

**Academic:** Given the problem of declining resources, growing caseload and resulting serious delays, should the CCRC's remit be limited by the exclusion of some categories of cases, for instance, sentence only cases (some 15% of applications), or cases heard by the magistrates' courts (roughly 10% of applications), or cases that did not result in a custodial penalty. I am on balance in favour of all three reforms. The discussion of the new body by the Runciman Commission was focussed solely on Crown Court conviction cases.

**Member of Parliament:** Is the CCRC keeping to its remit? The CCRC was set up to investigate major cases rejected by the Court of Appeal. But in the last several years much of its work has been around much minor offences including fraud, planning cases and issues concerning dangerous dogs. Is this detracting from investigations involving serious miscarriages of justice?

## Statutory powers of the CCRC

The call for evidence survey included questions on whether the CCRC has the powers it needs to carry out its functions.

The first focussed on the issue of the power to refer cases to the Court of Appeal under section 13 of the Criminal Appeal Act 1995, using the "real possibility test" (where the CCRC will refer a case only if it considers "that there is a real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made").

Just over a third of all respondents (37%) express a view on the issue of the power of referral under section 13 of the Criminal Appeal Act 1995. Of those, more than half (54%) believe that s.13 is the right test for referral of cases to the Court of Appeal.

There are a number of respondents who are critical of the CCRC believing it to have the right powers to refer cases but interpreting them too narrowly. Others are critical of the Court of Appeal itself which they say prevents the referral by the CCRC of cases where there is a lurking doubt about the person's guilt, but there is no new evidence or argument – as the Court of Appeal has made it clear that it will not consider such cases. The CCRC states that it has used its powers fully in all appropriate cases.

The statutory "real possibility test" is a cause of frustration amongst some individuals and groups and careful consideration has been given to this issue. There is no sufficient evidence to justify a change in legislation. Within the system of law in England, Wales and Northern Ireland it is for the courts to be the ultimate arbiters of the safety of convictions and the "real possibility test" used by the CCRC reflects this position. It would be inappropriate for the CCRC to refer cases to the Court of Appeal purely to express disagreement with conclusions which the courts had reasonably drawn on previous

occasions from evidence and argument fully and properly placed before them. The statute also provides the CCRC with the option to refer a case in exceptional circumstances if it considers it appropriate to do so.

### **Examples of evidence received on the power of referral – Section 13 CAA 1995**

**Senior Judiciary:** No test can be perfect, but given the relationship between the roles of the CCRC and the Court of Appeal Criminal Division it is difficult to think of any better test.

**Individual:** It would be exactly the right test to apply if only the CRCC would exercise it. After all, there is no point in referring cases that won't amount to an acquittal. But they don't.

**Individual:** There are many documented problems with the real possibility test - however when looking at the critics, the overwhelming majority are either academics who have taken a jurisprudential approach to this question, thinking theoretically as opposed to practically; or unsuccessful campaigners/applicants who have not understood the statement of reasons for case rejection issued by the CCRC. Although the test is problematic, in my opinion it should not be replaced. The problems with grounds for case referral largely pertain to the need for new evidence or legal argument, rather than the real possibility test.

**Academic:** Should there be a different test? It is suggested by some that the Commission should refer a case if it thinks the applicant is or at least might be innocent. I am strongly against that. If that were the sole ground of referral the Commission would make hardly any referrals. Innocence is extraordinarily difficult to establish. If it were added to the existing grounds it would imply that others referred were not innocent. We would have first and second class referrals. And the appeal would be heard by a Court of Appeal required to consider only whether the conviction was safe.

**Human Rights Groups/campaigners:** The "real possibility test" has drastically shaped the function of the CCRC. It has rendered the CCRC a gatekeeper of the Court of Appeal, where its decision making process is underpinned by the question of whether the Court of Appeal will overturn the verdict. A consequence of this is that the CCRC may be unable to refer convictions of those who might be innocent if it is felt to be unlikely that the Court of Appeal will quash them. Overall, the 'real possibility' test under s.13 of the Criminal Appeal Act 1995 needs to be replaced with a different test that allows the CCRC more independence from the Court of Appeal.

The second matter the survey asked concerned the absence of a power enabling the CCRC to require disclosure of information and material from non public bodies. The CCRC has the power under section 17 of the Criminal Appeal Act 1995 to obtain documents or material from public bodies which may assist it in undertaking any of its functions, but this has never extended to private bodies or individuals.

The majority of respondents make no comment on whether there should be a power to order non public bodies to disclose information to the CCRC but all those that did (almost 31%) supported the introduction of a statutory power. The Scottish CCRC has had wider powers of recovery of materials since it was established under the Criminal Procedure (Scotland) Act 1995, enabling it to require any person or public body within Scotland to provide it with material or documentation within their control which might assist the Commission in its investigation and review. The term "any person" covers and includes partnerships and private companies in Scotland. Where a request is made but not fulfilled, the Commission may seek a court order.

The CCRC has reported that disclosure from private bodies and individuals has been the cause of some difficulty and the situation has been, and is likely to be further exacerbated by the increasing number of former public bodies that the CCRC has now to interact with in the course of its investigations. Taking into account the degree of support from respondents, the MoJ agree this should be explored further and will look at legislative options for extending the CCRC's powers.

### **Examples of evidence received on the issue of third party disclosure**

**Academic:** Yes - this power should be extended so that companies and private individuals are forced to comply with the CCRC.

**Individual:** The Commission should be give wider powers to obtain material from any person or body in order to fulfil its objectives.

**Prison Reform Trust:** Firstly, it cannot require the production of documents from private bodies, such as material held by the media, or formerly public, but now privatised, bodies such as care homes, or forensic organisations. This is going to be more of a difficulty as more organisations are contracted out and move into the private sector and will significantly impede the progress of investigations.

The overarching message from the call for evidence is that, in the view of respondents, the functions of the CCRC are still required. The MoJ agrees with this conclusion, as it is clear that whilst there have been, and continue to be, major improvements to the criminal justice system the basic reason for setting up the CCRC has not disappeared; while there is a possibility that a case may suffer a miscarriage of justice the need for the functions of the CCRC still remain.

Whilst it is appreciated that respondents are not always happy with the way in which the CCRC carries out its functions, the MoJ has not been persuaded by the calls for reforms of the statutory functions or powers, with the exception of the issue relating to the CCRC's position in requiring disclosure of information from non public bodies.

# Delivery options

## Current structure

Under the current model the CCRC is an Executive Non-Departmental Public Body, independent of Government and funded by the MoJ. The MoJ has a sponsorship relationship with the CCRC on behalf of the Justice Secretary and the arms length relationship is set out in statute.

Having determined that the functions of the CCRC are still required, there are several options which need to be considered for the type of delivery model used.

The table below sets out an overview of the different possibilities for provision of the functions of the CCRC, and whether they are appropriate. The different models are those set out in the Cabinet Office guidance on triennial reviews.

Delivery model	Appropriate?	Comments
Maintain the status quo (NDPB – using the three tests)	Yes	<ul style="list-style-type: none"> <li>Maintaining the CCRC as an NDPB retains the level of independence appropriate for the investigation and consideration of cases looking for possible miscarriages of justice.</li> <li>The majority of evidence received has supported this option, and this is therefore explored in more detail below.</li> </ul>
Bring inside Government department (MoJ)	No	<ul style="list-style-type: none"> <li>The review of criminal cases for possible miscarriages of justice was moved out of Government to provide, and to be seen to provide, political independence in dealing with these cases in line with the recommendations made in the Royal Commission on Criminal Justice. It is apparent from the evidence that the independence of the CCRC continues to be important.</li> <li>MoJ would not have the resource to take forward this delivery model. It would require investment in staff, training, accommodation and other related costs which would have to be bid for in a difficult financial climate.</li> <li>The then Government Department (the Home Office) was criticised before the establishment of the CCRC for the length of time taken to review cases and on the standards of investigations, which might taint future cases.</li> <li>Evidence has been received through oral and written responses that this would be an inappropriate option.</li> </ul>
Move to the local or voluntary or private sector	No	<ul style="list-style-type: none"> <li>To maintain consistency and the proper impartiality in decision making a national and non-partisan model is necessary.</li> <li>No evidence has been received to suggest that this is a viable option. This is however explored in more detail below.</li> </ul>

Delivery model	Appropriate?	
Establish new NDPB	No	<ul style="list-style-type: none"> <li>The NDPB model is appropriate for the CCRC because it maintains the required level of independence from Government.</li> <li>There were no calls for establishing a new NDPB. There were a small number of suggestions that certain aspects of the CCRC functions should be transferred out to another (unspecified) place to alleviate pressures from the CCRC. This would almost certainly mean establishing a new body or bodies, which cannot be justified at this stage as it would not deliver value for money. There is no strong evidence to support the need for any such changes</li> <li>No evidence has been received to suggest that this is a viable option for the body as a whole.</li> </ul>
Move to an executive agency	No	<ul style="list-style-type: none"> <li>A move to an executive agency would have a similar negative impact upon the perception of the CCRC's independence as to a move inside a Government department. The link to the Executive would be too strong and would give rise to allegations of political interference.</li> <li>No evidence has been received to suggest that this is a viable option.</li> </ul>
Merge with another body	No	<ul style="list-style-type: none"> <li>No other appropriate body with which the CCRC could merge has been identified.</li> <li>No evidence has been suggested that this is a viable option but this is explored in more detail below.</li> </ul>

## Maintain the CCRC as an NDPB

Just over half of the respondents made any direct comment on the future structure of the CCRC (51%), all of whom make it clear that the CCRC should be independent and it is not appropriate for the executive to have direct input into the investigation of, or consideration of, individual cases of alleged miscarriages of justice. There are no disadvantages, raised by respondents, to the CCRC continuing as an NDPB. The NDPB model, it is argued, provides the level of independence required by Parliament and observers, including users of the CCRC as a service.

Amongst the responses are some suggestions (28%) that the CCRC Commissioners should be picked from a wider range of backgrounds to supplement those with a legal background, such as science, forensics and chemistry, investigation skills and experience, as well as other disciplines which would have a beneficial impact on particular cases, such as forensic accounting.

The legislation currently allows for such recruitment and steps are taken in the process to encourage diversity. Commissioners are appointed by Her Majesty the Queen on recommendation of the Prime Minister. The Criminal Appeal Act prescribes that at least one third shall be legally qualified and that at least two thirds shall be persons who appear to the Prime Minister to have knowledge or experience of any aspect of the criminal justice system. Generally, the Commissioner roles are advertised widely and the recent recruitment material for Commissioners made it clear that applicants' did not need to be a lawyer, and that applications were welcome from people of all backgrounds and from all walks of life. Two of the five successful candidates from the last recruitment exercise were not lawyers.

In the analysis of the call for evidence responses set out above there are some suggestions that the CCRC should prioritise its workload to deal with the more serious custodial offences more quickly than it currently achieves. It is not for this review to impinge on matters which are for the CCRC to

determine in line with sponsorship arrangements set out in the Framework Document between the MoJ and the CCRC, although the CCRC may wish to consider these matters further when conducting its own internal reviews of practice.

### **Evidence supporting the maintenance of the CCRC as an NDPB**

**Senior Judiciary:** In order to fulfil its functions it must remain independent of Government.

**Academic:** The current structure of the Commission is in line with the recommendations of the Royal Commission on Criminal Justice. The reasons for keeping the Commission independent of both the executive and the judiciary remain valid. I consider that any change to the Commission's current status would be a retrograde step. I think that there may be merit in the Commission, perhaps under the guidance of its non-executive directors, specifically targeting required skills. I would not favour any statutory change to the structure or membership.

**Individual:** In order to maintain public confidence in the ability of the Justice system to correct alleged miscarriages of justice it is important that the CCRC remains an independent "arms length" body, separate both from central Government and any other executive agency.

**ACPO:** The structure of the Commission is considered to be suitable in its existing format. The prevalence of legal qualified individuals in the make up of the Commission and the lack of individuals with investigative experience are commented on. However, it is recognised that this does not require a change to the CCRC regulations but rather reflects the current reality. There is nothing in the current requirements to prevent this being addressed. ACPO is supportive of the manner in which the CCRC currently operates and interacts with policing and is keen to maintain the current structure and independence which is viewed in a very positive light.

**Human Rights Group/campaigner:** This would appear to be top heavy with the legal profession and would possibly benefit from an injection of other professionals, such as criminologists, psychologists, forensic scientists (especially in the area of statement analysis)

**Human Rights Group/campaigner:** The membership of the CCRC should include adequate investigative skills both from a police background and journalistic background as well as forensic science experience, and representation from people with a track record in human rights policy work.

**Academics:** The independence of the CCRC from all aspects of government and the judiciary is vital.

### **Move to local/voluntary/private sector**

Only five responses directly addressed this option. One respondent suggested that the body could move to be a charity. Four respondents rejected this option (a move to local/voluntary/private sector) as inappropriate. However, the option is briefly explored below to establish if moving the functions of the CCRC into any of these structures might realise benefits.

The functions of the CCRC do not lend themselves to being transferred to local levels. The relatively small number of cases, which are not evenly spread across England, Wales and Northern Ireland, and the high level of expertise to undertake the work required mean that a central body is an efficient delivery mechanism that supports a consistent approach and a high quality service.

Moving the functions of the CCRC to a private or voluntary sector body, potentially via a commissioning model, would require very detailed development and extensive legislative changes. No evidence has been gathered that demonstrates that a change to the delivery model in this way would garner any support from stakeholders or deliver realisable benefits that would justify the likely costs of such a change. The CCRC has continually delivered efficiency savings over recent years and whilst process improvements and efficiency work are ongoing no evidence has been received that other delivery models might deliver the functions for less.



The very strong message in the call for evidence was that the organisation reviewing cases for possible miscarriages of justice must be, and be perceived to be, impartial and independent of both the Executive and the judiciary for it to gain the confidence of those persons for whom it was established. It would be impossible for any organisation to have complete confidence of all its stakeholders but any body run in the private or voluntary sectors are much more unlikely to be perceived as impartial and thorough by all the different types of stakeholders involved. The current delivery model ensures that external pressures can be resisted. A body in the private or voluntary sector would run a greater risk of being perceived as being more vulnerable to either political interference, judicial influence or to public pressure from campaigning groups.

### **Examples of evidence received on moving the functions of the CCRC into local/private/voluntary sectors**

**The Law Society:** As to the structure of the Commission, we suggest that it needs to be as independent from Government, and the prosecution agencies, as possible. We would query whether changing its structure would be a sensible thing to do given the inevitable cost and disruption involved in doing so. While we are aware that there have been some criticisms made of the CCRC from some quarters, which probably arise from the level of resources and staffing available, we do not see any obvious structural alternative that would be more effective.

**Individual:** It should not be moved into local government and certainly not to the voluntary/private sectors. Nor should it be part of a Government Department nor merged with another body. I can see no benefits in creating a new Agency. It should remain independent but it should be better resourced with more case managers to deal with the more complex and time consuming cases which require review and referral.

**Legal Professional:** Should it be moved out of central Government (e.g. into local government or voluntary/private sectors)? Absolutely Not.

**Human Rights Group/campaigner:** It should remain where it is.

**Human Rights Group/campaigner:** It is appropriate that the CCRC remains in central government and does not go to local government or voluntary or private sectors. The CCRC does need to be an arms length body. It has to stand apart from the State, because it has a reviewing function, to be robust in challenging judicial decisions and referring decisions back to court.

**Individual:** It should be turned into a charity, because the incentives for doing it need to be right.

## Merge with another body

This delivery option was directly addressed by 15% of the respondents to the call for evidence, none were supportive. No suitable bodies for a merger were identified. Unless a merger took place with a body which had similar aims and background it was felt that the work of the CCRC would be disadvantaged or compromised. Other bodies mentioned in the responses include the Independent Police Complaints Commission, Criminal Injuries Compensation Authority, the Victims Commissioner and the police but none were deemed appropriate or compatible enough with the CCRC for there to be any benefits in a merger.

### Examples of evidence received on merging the CCRC with another body

**Individual:** It would not be useful to merge with any other body as there could be a conflict of interest and the CCRC's functions MUST remain impartial and objective, however, employing solicitors (or even law graduates) could increase the CCRC's review turnover and assist in ensuring the deliverance of the service outlined by the Commissions.

**Human Rights Group/campaigner:** There are no agencies sponsored by the MoJ that fulfil similar functions, so we cannot see a merger as an option. To be effective, mergers need to be of organisations providing complementary functions. Merging with another MoJ sponsored organisation (for instance the Victims Commissioner or the Criminal Injuries Compensation Authority) could create a conflict of interest.

**Legal professional:** Is there any scope to merge the functions with any other body? This is unlikely. The only potential candidate would be the IPCC which currently has its own difficulties and whilst superficially attractive it is only likely to diminish the functions of both bodies. There is however a benefit of greater working together between Independent Investigative Bodies.

**Human Rights Group/campaigner:** The CCRC draws much of its strength as an organisation from development of a considerable body of expertise through dedicated Commissioners and employees possessing specific experience and interest in miscarriage of justice issues. This advantage would be lost if the CCRC's functions were merged with another body.

## Preferred option for delivery

The overwhelming weight of the evidence supports the functions of the CCRC continuing to be delivered through the form of an NDPB.

Finally, a small number of responses made comments that were out of scope of the review but are noted here for completeness. They included suggestions that the MoJ should increase the funding provided to the CCRC to enable it to undertake its work more completely and to reduce the length of time it can take to deal with individual cases. This is more relevant to the business planning cycle and discussions which take place and is not considered here.

However, it is worth noting here that funding requirements for all parts of MoJ, including its ALBs, need to be carefully considered and prioritised. Alongside this, there is also a responsibility to ensure that all parts of MoJ are using their allocated resources as efficiently and effectively as possible. This may require considering different, more flexible ways of working and greater use of shared corporate services so that scarce resources can be focused on core activities, and the CCRC will be included in this. The steps taken by the Commission to live within its means (including introducing new ways of working; a recruitment freeze and redundancy programmes) is noted as is the fact that for the last year, the success of the Commission's work to ensure equality of access to its services for all convicted persons has resulted in a very significant increase in the number of applications made to the Commission since January 2012. This increase is expected to be sustained into the next few years.

The call for evidence also prompted responses relating to legal aid funding which are also out of scope. Equally, responses which relate to the performance of the CCRC or decisions taken in individual cases are outside the remit of the review and this report, and it is not for this review to comment on the performance (good or bad) of the CCRC. It is only to look at the functions of the CCRC and determine if they are still required and anything else would be an infringement of its position of independence. The comments made about the position and attitude of the Court of Appeal to re-hearing cases for alleged miscarriages of justice are similarly not a matter for recommendations within this report.

# Summary and Recommendations

## Functions

There is exceptionally strong support for the functions of the CCRC to continue. It is made clear that the functions are still required and for those functions to be carried out independently of Ministers.

### Stage 1 Recommendation: Functions

Having considered all of the current functions of the CCRC, the recommendation is to retain them unchanged.

## Form

The call for evidence produced very few calls for a change of form and although there were calls from a minority for some functions to be carried out by another agency there is no strong evidence to support the need for any changes. The triennial review also looks at the functions of the bodies according to the ‘three tests’:

Test	
Is this a technical function (which needs external expertise to deliver)?	No
Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?	Yes – it is important for the credibility of the criminal justice system that the review of criminal cases for possible miscarriages of justice has impartiality and independence from Government.
Is this a function which needs to be delivered independently of ministers to establish facts and/or figures with integrity?	Yes – the body that investigates or initiates investigations into these cases must be independent of ministers to ensure that decisions are politically impartial.

The delivery options analysis set out above highlight the difficulties involved in making any changes to the current structure of the CCRC. Even minor changes to function and form would require financial resource and legislative change and the associated resources and have not, on initial review, been identified as delivering benefits that would justify the change.

### Stage 1 Recommendation: Form

Taking all of this into account, the recommendation is to retain the CCRC as an NDPB.

## Conclusion

The recommendations above require stage 2 of the triennial review to commence.

## Introduction – stage 2

This report covers stage 2 of the triennial review of the Criminal Cases Review Commission (CCRC). It follows on from the Ministry of Justice (“MoJ”) report on stage 1 which recommended that the CCRC should continue to carry out its current functions in its present form.

### Scope and Purpose of Triennial Reviews – stage 2

In line with Cabinet Office principal aims for triennial reviews, stage 1 was a robust challenge to the continuing need for the CCRC, and stage 2 has been a review of the control and governance arrangements of the CCRC to ensure that as a public body it is complying with recognised principles of good corporate governance. It is noted at the outset that the independence of the Commissioners in determining applications for miscarriages of justice is, quite properly, **not** an issue for this review.

#### Cabinet Office guidance

As the outcome of the first stage of the review was that the CCRC should remain in its present form, the MoJ and the Chief Executive Officer (“the CEO”) completed a joint review of the control and governance arrangements in place for the CCRC in accordance with the information below which is taken from the Cabinet Office guidance<sup>2</sup>. This included requirements in relation to openness, transparency and accountability.

Good corporate governance is central to the effective operation of all public bodies. As part of the review process, therefore, the governance arrangements in place should be reviewed. This should be led by the sponsoring Department, working closely with the Chair and CEO who have a key responsibility for ensuring that strong and robust corporate governance arrangements are in place. As a minimum, the controls, processes and safeguards in place should be assessed against the principles and policies set out below. These reflect best practice in the public and private sectors and, in particular, draw from the principles and approach set out in the draft *Corporate Governance in Central Government Departments: Code of Good Practice*<sup>3</sup> and as set out in Annex B of *Guidance on reviews of Non Departmental Public Bodies*<sup>4</sup>.

The Department and NDPB will need to identify as part of the review any areas of non-compliance with the principles and explain why an alternative approach has been adopted and how this approach contributes to good corporate governance – this is known as the “comply or explain” approach, the standard approach to corporate governance in the UK. Reasons for non-compliance might include the need for structures and systems to remain proportionate, commercial considerations or concerns about cost and value for money.

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<sup>2</sup> See also <http://www.cabinetoffice.gov.uk/sites/default/files/resources/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf>

<sup>3</sup> See [http://www.hm-treasury.gov.uk/d/corporate\\_governance\\_good\\_practice\\_july2011.pdf](http://www.hm-treasury.gov.uk/d/corporate_governance_good_practice_july2011.pdf) for the full code of practice.

<sup>4</sup> See *Guidance on reviews of non-departmental public bodies* (pdf, 272kb)

## The principles of good corporate governance

Principle <sup>5</sup>		Descriptor
<b>Accountability</b>	Statutory Accountability	The public body complies with all applicable statutes and regulations, and other relevant statements of best practice.
	Accountability for Public Money	The Accounting Officer of the public body is personally responsible and accountable to Parliament for the use of public money by the body and for the stewardship of assets.
	Ministerial Accountability	The Minister is ultimately accountable to Parliament and the public for the overall performance of the public body.
<b>Roles and Responsibilities</b>	Role of the Sponsoring Department	The departmental board ensures that there are robust governance arrangements with the board of each arm's length body. These arrangements set out the terms of their relationships and explain how they will be put in place to promote high performance and safeguard propriety and regularity. There is a sponsor team within the department that provides appropriate oversight and scrutiny of, and support and assistance to, the public body.
	Role of the Board	The public body is led by an effective board which has collective responsibility for the overall performance and success of the body. The board provides strategic leadership, direction, support and guidance. The board – and its committees – have an appropriate balance of skills, experience, independence and knowledge. There is a clear division of roles and responsibilities between non-executive and executives. No one individual has unchallenged decision-making powers.
	Role of the Chair	The Chair is responsible for leadership of the board and for ensuring its overall effectiveness.
	Role of Non-Executive Board Members and Commissioners	As part of their role, non-executive board members and Commissioners provide independent and constructive challenge.
<b>Effective Financial Management</b>	Annual reporting	The public body has taken appropriate steps to ensure that effective systems of financial management and internal control are in place.
	Internal Controls	
	Audit Committee	
	External Auditors	

<sup>5</sup> The principles and supporting provisions are set out in full in the Cabinet Office guidance.

Principle <sup>5</sup>		Descriptor
Communications	Communications with Stakeholders	The public body is open, transparent, accountable and responsive.
	Communications with the Public	
	Marketing and PR	
Conduct and Behaviour	Conduct	The board and staff of the public body work to the highest personal and professional standards. They promote the values of the public body and of good governance through their conduct and behaviour.
	Leadership	

## The Ministry of Justice approach

### *Questionnaire*

The MoJ devised a questionnaire for stage 2 to be used for all triennial reviews in the Department's programme, which follows the Cabinet Office guidance and incorporates the comply/explain format for each principle. The CCRC completed the questionnaire with input from the MoJ sponsor and submitted evidence to support its responses

The questionnaire also required the CCRC to rate itself on a four point RAG rating (Red, Amber/Red, Amber/Green, Green) for compliance with the principles set out above.

### *Peer reviewer and critical friends*

A peer reviewer was appointed for stage 2 to look at the evidence gathered about governance and accountability and challenge it as necessary. This is a person independent of the subject area who has experience and expertise in running an organisation with knowledge of the principles of good governance, among other things.

Eddie Bloomfield, Head of the Office of Accountant General and Public Trustee, agreed to act as the Peer Reviewer for the triennial review of the CCRC. The Peer Reviewer attended meetings with the Project Board and the senior management team of the CCRC. Following his review of the completed questionnaire he visited the CCRC and conducted interviews with the Chair, Commissioners, members of the senior management team and other members of staff. In addition to this he met separately with a Non Executive Director. He also contributed to this report and his recommendations were agreed by the MoJ.

This role is in addition to the critical friends group, which was set up in stage 1 to provide robust challenge to the overall review.

The evidence from the questionnaire and follow up visit forms the basis for this report.

## Compliance with principles of good governance

The CCRC provided the completed questionnaire along with clearly set out and comprehensive supporting documentation. These included policies available to the public on its web pages and internal documents where relevant to governance and accountability issues.

### Accountability

#### *Statutory Accountability*

The CCRC complies with all the relevant statutory and regulatory requirements. Most of the policies which apply in this area, such as maintaining a comprehensive publication scheme and providing information on making freedom of information or data protection requests, are available online<sup>6</sup>.

#### *Accountability for Public Money*

The CCRC complies with all the relevant requirements including maintaining the designated Accounting Officer role and complying with the requirements set out in *Managing Public Money*<sup>7</sup>. The Annual Report and accounts are laid before Parliament each year before it rises for the summer recess. The latest certificate issued by the Comptroller and Auditor General for 2011-12 can be found on the 2011/12 Annual Report and Accounts document<sup>8</sup>.

#### *Ministerial Accountability*

The CCRC complies with the majority of requirements in this area. The Minister meets the Chair annually and the last meeting was held in November 2012. The MoJ sponsor team consults the Minister on the CCRC's business and corporate plans.

Where the CCRC deviates from the requirements in this area an explanation is given. The Criminal Appeal Act 1995 provides that the Chair and Commissioners are appointed by Her Majesty the Queen. The public appointments process is led by the MoJ in line with the Code of Practice issued by the Office of the Commissioner for Public Appointments. The Chief Executive and Non-Executive Directors are appointed by the Commission which is also in line with the 1995 Act. These are appropriate explanations of non-compliance.

### Roles and Responsibilities

#### *Role of the Sponsoring Department*

There is a properly identified sponsorship team in place which maintains a good and effective relationship with the CCRC. There is a Framework Document which sets out the roles and responsibilities of the MoJ and the CCRC in respect of controls and safeguards. The Framework Document will be reviewed, following this triennial review, to take account of any issues arising from evidence in stages one and two.

The CCRC submits monthly performance information to the MoJ sponsor team in the form of a management information pack. A template of this format was disseminated as good practice to sponsors of other MoJ arms length bodies.

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<sup>6</sup> The website is available at <http://www.justice.gov.uk/about/criminal-cases-review-commission>.

<sup>7</sup> *Managing Public Money* is available on the HM Treasury website – see [http://www.hm-treasury.gov.uk/psr\\_mpm\\_index.htm](http://www.hm-treasury.gov.uk/psr_mpm_index.htm).

<sup>8</sup> The Annual Report and Account 2011/12 can be found on <http://www.justice.gov.uk/publications/corporate-reports/criminal-cases-review-commission>. The certificate is pages 44 and 45 of the document



### *Role of the Board*

The CCRC Board complies with the majority of the requirements set out in this area. The Board meets quarterly and has defined Terms of Reference and sets out “Matters Reserved for the Board”. There are three standing committees; the Finance and Executive Scrutiny Committee which meets during the months that the Board doesn’t meet, the Policy and Casework committee and the Audit and Risk Committee. The two latter committees meet quarterly.

The constitution of the Board does not accord with the optimal balance as recommended by the Corporate Governance Code and this issue has been reported in the Annual Report and Accounts 2011/12.

This issue was identified for further exploration by the Peer Reviewer who has identified that the size and membership of the Board, the timing of the meetings and the standing committees along with the extensive list of “Matters Reserved for the Board”, may not be the most efficient or cost effective model of governance. This is explored further in the Peer Reviewer’s report set out in Annex C.

### *Role of the Chair*

The CCRC Board is led by a non-executive Chair, Richard Foster CBE. The Chair is a Commissioner and it is a royal appointment. The recruitment of the Chair is led by MoJ and is compliant with the Code of Practice issued by OCPA.

The job description and the personal responsibilities of this post are set out in the Framework Document with the MoJ. A recruitment process will be carried out for the Chair’s position this year, 2013. The Peer Reviewer’s report highlights the opportunity for a more defined leadership role for the Chair in relation to Board decision making and the line management of Commissioners in support of strengthened governance arrangements.

The Chair has an annual appraisal interview with the Director General of the Justice Policy Group in the MoJ.

### *Role of the Chief Executive Officer (CEO)*

The CCRC is led by Karen Kneller as the CEO. This position is appointed by the Commission in accordance with the founding legislation. The CEO is also the CCRC’s Accounting Officer, appointed by the Permanent Secretary. The role and responsibilities of the CEO/AO are set out in the job description and in the Framework Document with the MoJ.

In reviewing the documentation as part of stage 2 of the review it has been identified that there is an opportunity for further clarification in the CCRC’s governance documentation of the role of the Accounting Officer in relation to the Chair’s role in leading the Board and the Board’s overall responsibilities. The Accounting Officer role is described in the Framework Document on the basis of the role as set out in “*Managing Public Money*” and places significant responsibilities on the CEO. Essentially, Accounting Officers must be able to assure Parliament and the public of high standards of probity in the management of public funds. There are sensitivities about the role of the Accounting Officer in an ALB which is governed by an independent board, such as the CCRC. The guidance sets out the expectation that the Accounting Officer should be a member of the Board, and must take care that his or her AO role’s responsibilities do not conflict with the duties of a Board member. In the case of the CCRC the CEO, as Accounting Officer, is a full member of the Board.

### *Role of Commissioners and Non-Executive Board Members*

The CCRC complies with many of the requirements of this section. The 1995 Act provides that the CCRC should have 11 Commissioners with one third having a legal background and two thirds having knowledge of the criminal justice system. One of these should have knowledge of the criminal justice system in Northern Ireland. The Commissioners are appointed by Her Majesty on the recommendation of the Prime Minister. Each recruitment process, led by the MoJ’s public appointments team, takes the opportunity to address any gaps in skills and experience as well as seeking to expand diversity.

There are 2 non-executive directors (NEDs) which is below the optimal number set out in the Code of Practice. The NEDs are recruited by the Commission and are given informal induction on appointment. Commissioners are put through a thorough induction process which covers casework, the role of the Board, the NEDs and the executive.

The Chair is responsible for appraisals of Commissioners and NEDs. The Chair currently appraises Commissioners about every 18 months. The CEO is refining this process and this will include ensuring that there is an annual appraisal system in place.

Given the variances in the Board structure to the Code this area was identified for further consideration by the Peer Reviewer and the Project Board. The reviewer proposes a smaller Board with a greater balance between Commissioners, Executives and NEDs and between lay and legally qualified Commissioners to support efficient, effective and timely decision making and ensure strong independent challenge and oversight. This is explored further by the Peer Reviewer in his full report at Annex C.

### **Effective Financial Management**

The CCRC complies with the requirements. The Annual Report is laid before both Houses of Parliament and the Northern Ireland Assembly each year and is then published on the CCRC's web pages.

There are effective risk management systems set up as part of its internal controls and this is reviewed by the Audit and Risk Committee on a quarterly basis. The CCRC's internal audit function is undertaken by Capita Business Solutions Limited. There is a Fraud Policy and Fraud Response Plan in place. All staff and Commissioners are required to complete a gifts and hospitality form which is reviewed by the Accounting Officer.

### **Communication and Engagement**

The CCRC complies with most of the requirements in this section. It publishes information extensively about policies and procedures on the CCRC's web pages along with the corporate documents such as the Framework Document and other corporate and business plans. The complaints handling procedure is due to be reviewed in 2013.

The CCRC has explained that it does not hold open board meetings due to the sensitive nature of its business. The CCRC can be the target of demonstrations and an open board meeting would run the risk of disruptions to business continuity as well as posing a risk to staff safety. It does engage in various ways with stakeholders and the general public. There are bi-annual stakeholder conferences hosted by the CCRC and Commissioners and staff make visits to organisations and lecture around the country.

The CCRC has plans for future engagement by introducing a training session for lawyers and by producing an information film about the work of the CCRC.

Details of any spending over £2,500 and over £500 on a Government Procurement Card are published monthly on the Justice website in accordance with the MoJ policy on transparency.

### **Conduct and Propriety**

The CCRC has a code of conduct for Commissioners and for staff on behaviour and has procedures in place to deal with conflicts of interest. CCRC staff are not civil servants but the Code of Conduct and general terms and conditions of employment broadly follow the Cabinet Office model. These Codes were last reviewed in 2012.

All Board members are required to be politically impartial and Commissioners and staff are reminded of this at any times of politically sensitive events.

## Agreed rating assessment

A joint assessment concluded that compliance with each principle was green, except for the roles and responsibilities of Non-Executive Board Members/Commissioners which is rated as amber/green (relating to the fact that the Board's constitution does not reflect the optimal balance recommended by the Corporate Governance Code particularly in terms of the number of NEDs which is below the recommended number of 4). The evidence set out by the CCRC supports these assessed ratings, which the MoJ agrees with one exception, as set out in the table below. In line with the guidance from the Peer Reviewer the rating for the role of the Board is also amber/green, as the issues set out in the NEDs/Commissioners section are closely linked to the role of the Board.

Principle	Theme (where relevant)	Theme Rating	Principle Rating	Overall assessment
Accountability	- Statutory	Green	Green	Green
	- Public money	Green		
	- Ministerial	Green		
Roles and responsibilities	- Sponsor Department	Green	Green	
	- Board	Amber/Green		
	- Chair	Green		
	- Chief Executive Officer	Green		
	- Non-Executive Board Members/ Commissioners	Amber/Green		
Effective financial management			Green	
Communication			Green	
Conduct and propriety			Green	

## Conclusions and Recommendations

The CCRC has demonstrated strong evidence that it complies with the vast majority of governance and accountability requirements which are placed on it by statute, regulation, the MoJ and governmental guidelines or best practice. It has achieved a green rating for the triennial review stage 2. The CCRC appears as a well structured organisation with strong governance in all the key areas.

In particular, the MoJ has identified some areas of good practice which could be shared more widely with other ALBs:

### *Publication Scheme*

The CCRC has posted on its web pages a comprehensive publication scheme in its “Guide to Information”<sup>9</sup>. This Guide is based on the Information Commissioner’s Office model publication scheme and is a useful introduction to the work of the CCRC for new comers to the subject.

### *Management Information Pack*

The CCRC produces a pack of key management information which is updated monthly and is the basis of the CCRC’s regular performance report to the MoJ. The format produced by the CCRC was disseminated as a good practice template to sponsors of other MoJ Arm’s Length Bodies.

### *Easy Read Form*

In order to make the CCRC accessible to anyone regardless of levels of ability an Easy Read Application Form was produced and made available to all prisons in England, Wales and Northern Ireland, as well as being available on the CCRC’s web pages. This form clearly explains how a potential applicant may make an application to the CCRC and sets out what information should be submitted, so that applicants may decide to apply for a review of their case without the need of a solicitor even when there is a minimum level of literacy. This has raised the profile of the organisation with its key stakeholders.

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<sup>9</sup> This can be found at [www.justice.gov.uk/downloads/publications/corporate-reports/ccrc/ccrc-publication-scheme-guide-2013.pdf](http://www.justice.gov.uk/downloads/publications/corporate-reports/ccrc/ccrc-publication-scheme-guide-2013.pdf)

## Recommendations

Although the CCRC complies with the majority of requirements from the assessment for stage 2 of the triennial review, there are some areas where some action should be taken to improve compliance further. These are set out below.

### **Recommendation: Restructure the membership of the Board**

The Board's size, structure and way of operating are not fully in line with Cabinet Office guidance and do not appear to represent the most effective and efficient model for the CCRC. The Board currently has 16 members, the majority of which are legally qualified Commissioners. It reserves a substantial list of items to itself for decision and reviews these items on a quarterly basis. The sub-committees meet on a more regular basis but they cannot make any key decisions on matters which are reserved to the Board.

To bring it in line with Cabinet Office guidance and within good practice and value for money principles the CCRC should make the following changes in its Board structure:

a) Develop a more defined leadership role for the Chair. A defined role should include arrangements for a casting vote for the Chair on the Board and the introduction of a formal line management process for Commissioners. These changes would enable the CCRC to make improvements in governance matters and would bring the management appraisal process for Commissioners in line with accepted practice.

b) Reduce the size of the Board. Create a smaller Board with a more appropriate balance between Commissioners, Executives and NEDs in keeping with the Corporate Governance Code. A Senior Management Team of 3 should be retained and the continued inclusion of the Director of Finance on the Board would be an important element of effective Corporate Governance. The Board should meet monthly. In his report attached at Annex C the Peer Reviewer has set out an option for achieving this reduction which the Ministry of Justice recommends to the Commission to consider further, as well as other models that would achieve the principal of a smaller Board with a more appropriate balance.

An update on progress against this recommendation should be made to the Ministry of Justice in October 2013.

## Next steps

In addition to these recommendations, the CCRC will explore some of the issues coming from stage 1 of the triennial review, as well as any evidence which was received which fell outside the scope that is considered appropriate.

One issue which was highlighted in stage 1 of the review and again by the Peer Reviewer at stage 2 of the report and needs to be addressed is the importance of increasing the diversity of the Commissioners. The legislation requires at least one third of Commissioners should be legally qualified and as it currently stands two thirds are so qualified. The balance between lay and legal membership of the CCRC should be continually considered in any Commissioner recruitment processes. The MoJ will continue to make efforts to have regard to the issue of increasing lay membership of Commissioners in the current and future recruitment campaigns.

A meeting will be arranged to between the MoJ's Review Team and the CCRC to learn lessons on the process of this triennial review and to discuss the recommendations in more detail.

# Annex A

## Responses to Call for Evidence

Type of Stakeholder	Organisation
Senior Judiciary	Rt Hon Lord Judge Lord Chief Justice
	Lord Harry Woolf
	Master Egan QC Registrar Court of Appeal Criminal Division
Criminal Justice System	Association of Chief Police Officers
	Director of Public Prosecutions for Northern Ireland
	Criminal Cases Review Commission
Legal Professionals	Mark Newby Solicitor
	Richard Atkinson The Law Society
	Gerard Sinclair Scottish CCRC
	David Ormerod The Law Commission
Human Rights Groups/Campaigners	Paul May Campaigner
	Clare McGourlay Innocence Project University of Sheffield
	INNOCENT
	Emily Bolton Joe Hingston Glynn Maddocks for Centre for Criminal Appeals
	Ros Burnett FACT (Falsely Accused Carers Teachers and other professionals)
	Dennis Eady & Julie Price Innocence Project University of Cardiff
	Francesca Cooney Prison Reform Trust
	George Jensen FACT
	Michael Naughton Gabe Tan Innocence Network UK University of Bristol
	Bruce Kent Progressing Prisoners Maintaining Innocence
Academics	Natasha Chubbock
	Steve Heaton
	Nicola Padfield
	Professor Michael Zander QC
	Jackie Hodgson & Juliet Horne

Type of Stakeholder	Organisation
Private Individuals	Amjid Ali
	Rashid Amin
	A Bootland
	Meral Brown
	Michael Bunting
	William Crittenden
	Laurie Elks
	Jason Eugene
	Luke Firth
	Peter Freeman
	Bel Grant
	Stephen Green
	Glenroy Griffiths
	Rupert Grist
	John Hall
	Peter Haughton
	Colin Hoggard
	Ali Hussain
	David Jessel
	Leonard Leigh
	Rosalind L.L. "Jane" Mair
	Kevin Nunn
	John Pulford
	Ronald Roth
	Simone
	Naomi-Ellen Speechley
	Nicholas Guy Tucker
	Stanley Welsh
	Anon Serving Sentence
	Anon Serving Sentence
	Anon Serving Sentence
	Anon Serving Sentence
Anon Serving Sentence	
Anon Serving Sentence	
Anon Serving Sentence	
Anon Serving Sentence	
Anon Serving Sentence	
Anon Serving Sentence	
Anon Serving Sentence	
Other	Michael Meacher MP
	Des Thomas Forensic Policing Consultant

## Participants in Roundtable Event

Type of Stakeholder	Organisation
Legal Professionals	Janet Arkinstall The Law Society
	Richard Atkinson The Law Society
	Parosha Chandran Barrister
Academics	Michael Zander QC
	Juliet Horne
	Steve Heaton University of East Anglia
	Hannah Quirk University of Manchester
Human Rights Groups/Campaigners	Francesca Cooney Prison Reform Trust
	Deborah Cowley Action for Prisoners' Families
Others	Steve Powell ACPO
	Laurie Elks Former Commissioner
	David Jessel Former Commissioner
CCRC (Observers)	Karen Kneller, Chief Executive
	Alastair Macgregor, Deputy Chair



# Annex B

## Survey Questions

1. Do you think we need to continue providing the functions of the CCRC to assess cases for evidence of wrongful conviction or sentence?
2. Please state whether or not there is a continuing need for each of the following functions of the Criminal Cases Review Commission:
  - (a) review of conviction and/or sentence in cases dealt with on indictment in England and Wales;
  - (b) review of conviction and/or sentence in cases dealt with on indictment in Northern Ireland;
  - (c) review of conviction and/or sentence in cases dealt with summarily in England and Wales;
  - (d) review of conviction and/or sentence in cases dealt with summarily in Northern Ireland;
  - (e) investigation and reporting on matters on direction of the Court of Appeal;
  - (f) investigation and reporting on matters on direction of the Court Martial Appeal Court;
  - (g) review of conviction and/or sentence in cases dealt with by the Court Martial;
  - (h) review of conviction and/or sentence in cases dealt with by the Service Civilian Court;
  - (i) require the appointment of an investigating officer to carry out inquiries on behalf of the CCRC;
  - (j) provision of assistance to the Secretary of State on matters concerning recommendations for exercise of Her Majesty's prerogative of mercy.

3. Does the Commission have the right powers to fulfil its functions?

The statutory test the Commission is required to apply when deciding whether or not to refer a particular case for appeal is the “real possibility test” (set out in section 13 of the Criminal Appeal Act 1995).

**(a) Is this the right test for the Commission to apply? If not, what would be better?**

Currently, Section 17 of the Criminal Appeal Act 1995 empowers the CCRC to obtain documents or other material from a *public body* which may assist the Commission in the exercise of any of their functions. However, the Act does not empower the CCRC to obtain such material from a *private company or an individual*<sup>10</sup>. This power is available to the Scottish CCRC

**(b) Do the current powers of the Commission need to be extended?**

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<sup>10</sup> This limits the ability of the CCRC to obtain information from private sector bodies and can cause delay in the CCRC's reviews. This has become more difficult as previously public bodies, such as the Forensic Science Service, are privatised.

#### **4. What should be the future structure of the Commission?**

You may wish to consider the following questions which are in line with Cabinet Office guidance on triennial reviews:

- (a) Should it be moved out of central Government? (e.g. into local government or voluntary/private sectors)?
- (b) Does it need to be an Arms Length Body?
- (c) Could the function be delivered as part of a Government Department?
- (d) Could the function be delivered by a new Executive Agency and what would be the benefits of creating a new Agency?
- (e) Is there any scope to merge the functions with any other body?
- (f) If it should remain an Arms Length Body, should there be changes to the structure and membership of the Commission?

#### **5. Do you have any further comment on the functions or form of the Criminal Cases Review Commission?**

# Annex C

## Peer Reviewer Summary

### Triennial Review of Criminal Cases Review Commission (CCRC): Stage 2 Report

#### Introduction

The triennial review Stage 2 process commenced with a desk assessment of Corporate Governance and Control conducted jointly by the Chief Executive of CCRC and the Sponsor Division. The initial assessment was that all elements of the Cabinet Office checklist were assessed as green with the exception of Section 8 *'the role of the Non-Executive Board Members and Commissioners'*, where the overall assessment was amber/green.

The basis of this assessment was the constitution of the Board. The Commission currently has a Board of 16 members comprising 11 Commissioners, one of whom also acts as Chair, the Chief Executive, two Directors and two NEDs. This constitution does not meet the optimal balance recommended by the Cabinet Office code, particularly in terms of the number of Non Executive Directors (NEDs) which is below the recommended minimum of four. This has been addressed in the Governance Statement published as part of the CCRC 2011 – 12 annual report and accounts as follows:

*"The Commissions founding legislation stipulates a minimum number of Commissioners (11, who are all Board members); It is considered that increasing the number of NEDs to the recommended level would render the Board too big to allow effective discussion and decision making"*.

The desk assessment was reviewed by the independent Peer Reviewer, Eddie Bloomfield. The Peer Reviewer agreed all the assessments except Section 5 the *'Role of the Board'*. The Peer Reviewer queried whether the Board was appropriate in its size and whether its members were drawn from a sufficiently wide range of diverse backgrounds. The Peer Reviewer was also interested in the arrangements for Corporate Governance between the Board and its Sub-Committees, particularly the Finance and Executive Security Committee (FESC).

The Peer Reviewer invited the Project Board to endorse his preliminary findings and discuss whether the size, scope, membership structure and operation of the Board were worthy of further examination. The Project Board agreed. The next stage of the Review Process, i.e. a visit to the Organisation, was therefore arranged.

#### Visit and Findings

The Peer Reviewer visited CCRC on 5 March 2013. Individual interviews were conducted on a one-to-one basis with the Chair, Deputy Chair, a recently appointed Commissioner, the Chief Executive and the Director of Casework. In addition 6 middle level managers were seen together as a group. Separately from the visit, interviews were conducted with one of the NEDs and the Director of Finance.

Overall the Peer Reviewer considers the CCRC has demonstrated strong evidence of its compliance with the Governance and Control assessment documentation and guidance issued by the Cabinet Office.

It is clear that the CCRC has a good performance record, reputation and high levels of staff engagement as measured by the staff survey results. On one interpretation, this could be taken as an indicator that the current Board structure, membership, and way of operating, is delivering what the organisation, its staff and its stakeholders need.

However, the Peer Reviewer's view is that the current size, structure and way of operating may not be the most effective model for CCRC. Certainly, when tested against the Cabinet Office guidance, a number of points are worth considering as follows.

- **Size and Membership**

The Board currently has 16 members. Eleven, including the Chair are Commissioners. Of the 11, 8 are legally qualified. The Board meets quarterly and has reserved a substantial list of items for decision by itself ("matters reserved for the Board"). The Board is supported by 3 Sub-Committees: The Finance and Executive Scrutiny Committee (FESC), The Audit and Risk Committee and the Policy and Casework Committee. Much of the day-to-day governance of the Organisation is carried out by the Senior Management Team supported on a monthly basis by FESC. However because there is an extensive list of issues reserved for the full Board, any key decision can only be taken when it meets on a quarterly basis.

Although the CCRC annual report offers the argument that extending the number of NEDs would make the Board too big for effective decision making, the Peer Reviewers experience is that it may already be too big in this respect.

It is worth noting that Commissioners are recruited for their independence of mind, decision making ability and experience of the Criminal Justice System. In any group of 11 such people there is likely to be a considerable range of strongly held opinions on any subject offered for discussion. This could suggest that decision making within CCRC maybe difficult at times. This might be exacerbated by the fact that the Chair is a Commissioner himself. Although he appraises the other Commissioners he is not in a position to exercise 'a casting vote' or provide the final decision when a consensus cannot be reached. This too suggests that decision making is at risk of being prolonged within CCRC. It creates a risk that where consensus cannot be reached the de facto position is that the status quo would be maintained.

- **Delay**

While the structure operates with a significant number of matters reserved for the full Board there is a risk of delay in the system. This is because the full Board only meets quarterly. For example, the FESC Committee may decide a particular way forward at its January meeting but then needs to wait for final approval until the next quarterly Board i.e. March/April. If Commissioners cannot reach a full agreement at that meeting, and or ask for further work or a particular issue/topic, the next opportunity for a formal decision is then a further three months distant.

- **Independent Challenge**

The Commissioners are the key leaders and drivers of the casework work process in the Commission. As the majority of members on the existing Board are Commissioners it must be open to question whether they can challenge the operation of the Board and CCRC in the way that best practice for corporate governance would advocate. One argument is that the strength of independence amongst the individual Commissioners already provides such a challenge, particularly when combined with the two NEDS. The Peer Reviewer would question, however, whether this represents independent holding to account of the Board in the way good the corporate governance practice envisages.

- **Value for money**

The current arrangements could be perceived as expensive to maintain. There is a risk that the business carried out by the monthly FESC sub-committee is open to both repetition and/or requests for additional work at the Quarterly Full Board. The cost of involving all eleven Commissioners in corporate governance is relevant both in terms of actual cost and opportunity cost. Clearly while their attention is devoted to corporate governance matters it will be at the expense of their Caseworkers duties. Reducing the number of Commissioners involved in the former would free up resource for the

latter. Given an environment of reducing resources and rising workloads, this is a relevant consideration.

- **Role of Chair**

The Chair is also a Commissioner. It appears that although he chairs the Board he does not in practice have the casting vote. He can lead change and decision making through his chairing skills but not through any formal hierarchical position. In practice where consensus cannot be achieved it appears that a strong minority of dissents amongst Commissioners will lead to the status quo being maintained. Although he now appraises the performance of the other Commissioners, this appears to be on the basis of collegiate peer reviews rather than through formal Line Management authority. The Chair's post is shortly due for reappointment and this issue may be worth considering in that context. **A more defined leadership role for the Chair would, in the Peer Reviewers opinion, be of benefit to CCRC and its corporate governance.**

- **Role of Chief Executive**

Inevitably the roles of Chair and Chief Executive are moulded by the personalities, skills and experience of the existing post holders. The Framework Document defines the separate roles in some detail. In practical terms the post holders work alongside each other to provide joint leadership to the Organisation, with the balance of most internal matters being lead by the Chief Executive. The Peer Reviewer noted that the Chief Executive is also the Accounting Officer. In day to day governance terms this would appear to be a satisfactory arrangement. However should the Board embark on a course of activity which the Chief Executive felt was unwise in Accounting Officer terms, this would appear to offer the potential for a very difficult governance situation. In the Peer Reviewer's opinion, it is correct and appropriate for the Chief Executive to be the Accounting officer. Strengthening the role of the Chair of the Board to a '*first amongst equals*' position would be likely to reduce the risk for governance difficulties over Accounting Officer matters between the Chief Executive and the Board. At present such issues would be a collective matter to the Commissioners. Enhancing the Chairs status would reduce the scope for disagreement to just that officer holder and the Chief Executive.

### **Skills and Experience of the Board**

As mentioned above, eight of the existing members are legally qualified. The legislation requires at least one third of the Board to be so qualified, so it would be sufficient for the Board to have only four legally qualified members. Although the Peer Reviewer did not examine the Commissioners' casework duties and responsibilities in any way, the fact that there are lay Commissioners suggests that it has been accepted that a Commissioner does not need to be legally qualified. **In terms of better balanced corporate governance it might be appropriate for further consideration to be given to increasing the lay membership of the Commissioner structure.**

The Peer Reviewer noted that the need for a third Senior Executive post (the Director of Finance) has been reviewed. Although this was not considered in great detail **the Peer Reviewer would recommend that a Senior Management team of three is probably the minimum that would be appropriate for CCRC.** In addition, the inclusion of the Director of Finance on the full Board (even if reduced) would, in the Reviewer's opinion, be an important element of effective Corporate Governance.

### **Possible Options**

#### **(i) Maintaining existing arrangements**

As reported above, the CCRC is already a well managed organisation which on the whole complies very well with the Cabinet Office code for governance and control. The current arrangements could, therefore, arguably be maintained, although some of the potential weaknesses regarding delay extended decision making and a lack of independence as described above would remain as risks to governance in the system.

## **(ii) Maintaining existing arrangements but reduce the matters reserved to the Board**

The Peer Reviewer considered whether there would be advantage in maintaining the current arrangements, but reducing the list of matters reserved to the Board. In other words the FESC's powers in particular could be extended in order to reduce the risks of both delay and extended decision making. The Peer Reviewer does not favour this option. Retaining the existing full Board of 16 would be likely to mean that all the key issues would continue to be considered on a quarterly basis. It would seem unlikely that further delegation would be seen as either appropriate or welcome while the 16 person Board remains in place.

## **(iii) A smaller Board**

### **The Peer Reviewer favours the option of a smaller Board with a greater balance between Commissioners, Executives and NEDs and between lay and legally qualified Commissioners.**

One such model could comprise the Chair, Deputy Chair and two Commissioners together with the Chief Executive, 2 Directors and 2 NEDs. This would equate to a membership of 9. It would meet on a monthly basis and in effect replace the existing FESC but have all the powers currently associated with the full 16 person Board. In other words the matters reserved for the Board would remain unchanged. The decision making would however be exercised by a smaller group, and on a more regular basis.

This model would reduce the risk for delay and extended decision making. It would also offer the opportunity, should CCRC wish to take it, to extend the number of NEDs. A further three NEDs, bringing the Board up to 12, could probably be reasonably accommodated. This would then provide a level of independent challenge and holding to account that the current structure, in the Peer Reviewer's opinion, does not. Such a model would also be likely to accommodate a better balance between lay and legally qualified members.

Most members of this Board would be appointed according to their job roles (i.e. Chair, Deputy, Chief Executive etc.). The Peer Reviewer would suggest that the two Commissioner members be Commissioners who were at different stages in their experience in the organisation. For example it might be helpful to have one Commissioner with about 4 years experience and one with about 18 months/2 years. The expectation would be that Commissioners with less than 18 months experience would not be considered for membership of the Board and that Commissioners in their final year would not serve on the Board. Commissioner membership could be changed every twelve months in this model. Such an approach would offer an opportunity to refresh the Board membership at regular intervals and to give every Commissioner an opportunity to serve on it at some point during their 5 year tenure.

## **Implementation**

Under Schedule 1, paragraph 6 (1) to the Criminal Appeal Act 1995, *'The arrangements for the procedure of the Commission (including the quorum for meetings) shall be such as the Commission may determine'*).

The current Board therefore has the power to make a change should it be persuaded that it is to the benefit of CCRC. The Peer Reviewer would recommend the Board give consideration to making a change in its constitution for the reasons set out above.

## **Summary of recommendations**

The Peer Reviewer recommends:

- (i) A more defined role for the Chair would be of benefit to CCRC and its Corporate Governance (para 15);
- (ii) In terms of better balance Corporate Governance further consideration should be given to increasing the lay membership of the Commissioner Structure (para 17);

- (iii) A Senior Management team of three Executive Board members is the minimum requirement for CCRC (para 18);
- (iv) A smaller Board with a greater balance between Commissioners, Executives and NEDs, and between lay and qualified Commissioners should be considered (para 21 – 23).

### **Conclusion**

The Peer Reviewer would like to take this opportunity to record his thanks to the Chair, Chief Executive, Commissioners and staff of the CCRC, and to the MoJ Sponsor Division for their cooperation and assistance during this review.

**EA Bloomfield**  
**Public Trustee and Deputy Accountant General**  
**March 2013**

## Annex D

### Governance Compliance Summary

The table below sets out whether the CCRC “comply or explain” against each of the governance statements in the questionnaire which the CCRC was asked to complete. The questionnaire was drawn up in accordance with Cabinet Office guidance and adapted as required by the MoJ. Whether explanations were accepted is set out in the narrative of the main report. Documentation and evidence was submitted by the CCRC to support its compliance statements.

<b>Compliance Statement</b>	
<b>Statutory accountability</b>	
The ALB complies with all statutory and administrative requirements on the use of public funds (inc. Treasury Managing Public Money, and Cabinet Office/Treasury spending controls)	Comply – The CEO takes responsibility for this as Accounting Officer and is supported by a Finance Director
The ALB operates within the limits of its statutory authority and in accordance with delegated authorities agreed with MoJ	Comply – Operates within the limits of its statutory authority and in accordance with annual delegations
The ALB operates in line with statutory requirements for the Freedom of Information Act	Comply – Operates in line with the FOI Act, providing online guidance
The ALB has a comprehensive publication scheme	Comply – Publishes Guide to information scheme online
The ALB proactively releases information that is of legitimate public interest	Comply – Publishes a wide range of information relating to casework, policy and corporate news
The ALB complies with data protection legislation	Comply – It is registered as a data processor with the Information Commissioner and publishes an information charter
The ALB complies with Public Records Acts 1958 and 1967	Comply – It has an archiving policy in place.
<b>Accountability for public money</b>	
There is a formally designated Accounting Officer (AO) who in particular has a responsibility to provide evidence-based assurances required by the Principal Accounting Officer (PAO)	Comply – The CEO is designated as the AO
The role, responsibilities and accountability of the AO should be clearly defined and understood and the AO should have received appropriate training	Comply – The AO received training on appointment and this is ongoing; responsibilities are in <i>Managing Public Money</i>
The NDPB should be compliant with requirements set out in Managing Public Money, relevant Dear Accounting Officer letters and other directions	Comply – Complies with requirements and receives support from the CCRC’s Finance Director
Accounting Officer to give evidence-level assurances required by the Principal Accounting Officer	Comply – The AO would be able to give such assurances but this has not been required to date



The NDPB should establish appropriate arrangements to ensure that public funds: <ul style="list-style-type: none"> <li>are properly safeguarded;</li> <li>are used economically, efficiently and effectively;</li> <li>are used in accordance with the statutory or other authorities that govern their use;</li> <li>deliver value for money for the Exchequer as a whole</li> </ul>	Comply – The CCRC has established controls to safeguard public funds which are assessed annually by Internal Audit. The CCRC's Audit & Risk Committee has oversight.
The annual accounts are laid before Parliament after certification by the Comptroller and Auditor General	Comply – The annual accounts are laid before Parliament each year as part of the Annual Report and Accounts
<b>Ministerial accountability</b>	
The Minister and Sponsor should exercise appropriate scrutiny and oversight of the ALB	Comply – Chair and CEO meets senior MoJ officials regularly, at least quarterly.
Appointments to the board should be made in line with any statutory requirements and, where appropriate, with the <i>Code of Practice</i> issued by Office of the Commissioner for Public Appointments (OCPA)	Comply – Appointments made in line with OCPA and statutory requirements
The Minister will normally appoint the Chair and all non-executive board members of the ALB and be able to remove individuals whose performance or conduct is unsatisfactory	Explain – Statutory provisions require that the Chair and Commissioners are public appointments made by Her Majesty the Queen
The Minister should be consulted on the appointment of the Chief Executive and will normally approve the terms and conditions of employment	Explain – Appointed in accordance with the statute, which enables the Commission to appoint CEO
The Minister should meet the Chair and/or Chief Executive on a regular basis (at least annually)	Comply – Minister meets Chair annually
A power to require the production of information from the public body which is needed to answer satisfactorily for the body's affairs	Comply – Set out in Framework Document <sup>11</sup>
Parliament should be informed of the activities of the ALB through publication of an annual report	Comply – Annual Report and Accounts are laid before Parliament and are published
A range of appropriate controls and safeguards should be in place to ensure that the Minister is consulted on key issues and can be properly held to account (e.g. consult on Business Plan, requirement for the exercise of particular functions to be subject to guidance or approval from the Minister, power to require information, a general or specific power of Ministerial direction over the ALB, a power for the Minister to be consulted on key financial decisions.)	Comply – Appropriate controls and safeguards are set out in the Framework Document and the CCRC has implemented a risk management strategy overseen by the Audit & Risk Committee
<b>Role of the sponsoring department</b>	
The Department should scrutinise the performance of the NDPB. There should be appropriate systems and processes to ensure effective governance, risk management and internal control in the NDPB	Comply – Monthly performance data submitted, annual risk analysis carried out by MoJ

<sup>11</sup> A copy of the Framework Document can be viewed here [www.justice.gov.uk/downloads/publications/corporate-reports/ccrc/ccrc-framework-doc.pdf](http://www.justice.gov.uk/downloads/publications/corporate-reports/ccrc/ccrc-framework-doc.pdf)

<p>There should be a Framework Document in place which should be published, accessible and understood by the sponsoring department. It should set out clearly the aims, objectives and functions of the NDPB and the respective roles and responsibilities of the Minister, the sponsoring department and the NDPB. It should be regularly reviewed and updated and follow relevant Cabinet Office and Treasury guidance. The Framework Document might include a Financial Memorandum as an appendix. A review of the Framework Document should be carried out every three years and in line with the triennial review</p>	<p>Comply – Framework Document is in place and published online</p>
<p>A sponsor should be identified, their role defined and there should be regular and ongoing dialogue between the sponsoring department and the NDPB. Senior officials from the sponsoring department may as appropriate attend board and/or committee meetings</p>	<p>Comply – Sponsorship team is in place and there is regular and ongoing dialogue between the sponsor and the CCRC</p>
<p><b>Role of the Board</b></p>	
<p>The Board of the NDPB should meet regularly, retain effective control over the NDPB, and monitor the SMT, holding the CEO accountable for the performance and management of the NDPB</p>	<p>Comply – The CCRC Board meets quarterly and the Finance and Executive Scrutiny Committee meets more regularly</p>
<p>The Board of the NDPB should be appropriate in size and its members should be drawn from a wide range of diverse backgrounds</p>	<p>Explain – The constitution of the Board does not reflect the optimal balance recommended by the Corporate Governance Code and this was reported by the CCRC in the Annual Report and Accounts 2011/12 This issue forms part of the recommendation for change at page 10 of the report</p>
<p>The Board of the NDPB should establish a framework of strategic control (or scheme of delegated or reserved powers), understood by all board members and the senior management team, specifying what matters are reserved for the collective decision of the board</p>	<p>Comply – The Board has a framework of matters reserved for the Board which specifies those matters which are for the Board and those that may be delegated to one of the Committees or the SMT</p>
<p>The Board of the NDPB should establish arrangements to ensure it has access to relevant information, advice and recourses as is necessary to carry out its role effectively</p>	<p>Comply – The Board is provided with performance information on core activities and on objectives in the business plan at each meeting</p>
<p>The Board of the NDPB should establish formal procedural and financial regulations to govern the conduct of its business</p>	<p>Comply – Formal procedural and financial regulations are set out in the Framework Document and other specific documents such as the Terms of reference for the Board, Code of Conduct and finance manuals</p>
<p>The Board of the NDPB should make a senior executive responsible for ensuring appropriate advice is given on financial matters, procedures are followed, and that all applicable statutes and regulations and other relevant statements of best practice are complied with</p>	<p>Comply – A Director of Finance is appointed reporting to the CEO as the Accounting Officer</p>
<p>The Board of the NDPB should establish a remuneration committee to make recommendations on</p>	<p>Comply – The Finance &amp; Executive Scrutiny Committee provides the</p>

the remuneration of top executives. Information on senior salaries should be published in line with Cabinet Office requirements around transparency. Rules for recruitment and management of staff provide for appointment and advancement on merit	Remuneration Committee to determine the remuneration of the CEO and senior staff
There should be an annual evaluation of the performance of the board and its committees, and of the Chair and individual board members	Explain – There is an annual self evaluation process using tools published by the NAO on one of the standing committees, which has recently been extended to the Board. The Chair, NEDs, CEO and Directors are appraised annually. The Commissioners are appraised at approximately 18 month intervals.
<b>Role of the Chair</b>	
The Board should be led by a non-executive Chair	Comply – The Chair is a non-executive member
There should be a formal, rigorous and transparent process for the appointment of the Chair, which is compliant with the Code of Practice issued by OCPA. The Chair should have a role in the appointment of non executives and Commissioners if applicable, and in some instances, the CEO	Comply – Appointment is compliant with OCPA and has a chairman’s role in appointment of NEDs and the CEO
The duties, roles and responsibilities, terms of office and remuneration should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and any statutory requirement. The responsibilities of the Chair can include: <ul style="list-style-type: none"> <li>• representing the ALB in discussions with Ministers</li> <li>• advising the sponsor department/Ministers about board appointments and performance of non-executive members and Commissioners.</li> <li>• ensuring non executives understand their responsibilities; are trained appropriately and undergo annual assessments.</li> <li>• ensure the board takes account of guidance provided by Ministers; carries out its business efficiently and effectively, has its views represented to the public.</li> <li>• develops effective working relationships with the CEO (role of Chair and CEO must be held by different individuals.)</li> <li>• subject to an annual appraisal</li> <li>• appraises other board members ensuring they are performing to standard, following disciplinary procedures if necessary and ensuring they are committing the appropriate time to the work.</li> </ul>	Comply – Terms are set out in writing and referred to in Framework Document. The Chair has an annual appraisal with the Director General in MoJ
<b>Role of the Chief Executive Officer (CEO)</b>	
The NDPB should be led by a CEO	Comply – CEO leads the CCRC
There should be a formal, rigorous and transparent process for the appointment of the CEO	Comply – The CEO was appointed in compliance with good practice and in

	consultation with the sponsor team
<p>The duties, roles and responsibilities, terms of office and remuneration should be set out clearly and formally defined in writing. Terms and conditions must be in line with CO guidance and any statutory requirement. The responsibilities of the CEO can include the responsibilities of the Accounting Officer, the Consolidation Officer and Principal Officer for Ombudsman which involve:</p> <ul style="list-style-type: none"> <li>• Overall responsibility for the NDPB's performance, accounting for any disbursements of grant to the NDPB</li> <li>• establish the NDPB's corporate and business plans reflecting and supporting delivery of the Ministry of Justice's Strategic Objectives and departmental targets</li> <li>• inform the Ministry of Justice of any complaints about the NDPB accepted by the Ombudsman for investigation if applicable.</li> <li>• management of senior staff within the NDPB ensuring they are meeting objectives and following disciplinary procedures if necessary</li> <li>• maintains accounting records that provide the necessary information for the consolidation if applicable (details of accounting officer covered under 9: Effective Financial Management.)</li> </ul>	Comply – Terms are set out in writing in the job description and referred to in Framework Document
<b>Role of the Non-Executive Board Members and Commissioners</b>	
Non-executive members/Commissioners should form the majority of the board, (where appropriate there should be a lay majority.)	Explain – The Board has identified it is not constituted in accordance with recommendations for optimal balance by the Code. Statute stipulates the minimum number of Commissioners and that one third must be legally qualified and the remainder must have knowledge or experience of any aspect of criminal justice system. In line with Government advice recruitment campaigns have a focus on expanding diversity
Non-executive members/Commissioners should be appointed under a formal, rigorous and transparent process compliant with the code of practice issued by OCPA	Comply – Board members appointed in accordance with OCPA. Commissioners are royal appointments and NEDs and Senior Management Team members are Board appointments
Non-executive members/Commissioners should be properly independent of management (as set out in the UK Corporate Governance Code.)	Comply – NEDs and Commissioners are properly independent of management
Non-executive members/Commissioners should allocate sufficient time to the board with details of their attendance published	Comply – Board members allocate sufficient time and details of attendance is now included in annual reports
Non-executive members/Commissioners should undergo proper induction and appraisals	Comply – NEDs have an informal induction and Commissioners undergo thorough

	induction process. NEDs have annual appraisals with the Chair and Commissioners currently have regular appraisals and the CEO is refining this process towards annual appraisals
<p>Non-executive members/Commissioners should have their duties, roles and responsibilities, terms of office and remuneration set out clearly and formally defined in writing. Their terms and conditions must be in line with Cabinet Office guidance and any statutory requirement. The corporate responsibilities of non-executive board members will normally include:</p> <ul style="list-style-type: none"> <li>• establishing strategic direction of the ALB and oversee development and implementation of strategies, plans, priorities and performance/financial targets.</li> <li>• ensuring the ALB complies with statutory and administrative requirements on the use of public funds and operates within its statutory and delegated authority.</li> <li>• that high standards of corporate governance are observed.</li> <li>• Representing the board at meetings and events as required.</li> </ul>	Comply – Terms are set out in writing and referred to in Framework Document
<b>Effective financial management</b>	
Publish on time an objective, balanced and understandable annual report which complies with Treasury guidance, and includes an Annual Governance Statement (formerly a statement on internal control)	Comply – The CCRC lays its annual report with governance statement before both Houses of Parliament and before the Northern Ireland Assembly
Comply with NAO requirements relating to the production and certification of their annual accounts	Comply – The CCRC reports are prepared annually in accordance with the applicable accounts direction and in compliance with the Finance Reporting Manual
Have effective systems of risk management as part of their systems of internal control and the annual report should include a statement on the effectiveness of the body's systems of internal control	Comply – Has a risk management strategy and makes annual statement on risk assessment in the Annual Report and Accounts
Ensure an effective internal audit function is established which operates to Government Internal Audit Standards in accordance with Cabinet Office guidance	Comply – Internal audit is effective and provided by Capita Business Solutions Limited
Have appropriate financial delegations in place understood by the sponsoring department, by board members, by the senior management team and by relevant staff across the public body. Effective systems must be in place to ensure compliance with these delegations and the systems are regularly reviewed	Comply – Delegations are in place and are published as part of the Payment Manual which is reviewed and revised on a regular basis
Have anti-fraud and anti-corruption measures in place, and clear published rules governing claiming of expenses	Comply – The CCRC has a Fraud Policy and Fraud Response Plan in place along with a Whistle blowing Policy. It undertakes an annual assessment of fraud risk. Internal

	controls are in place to minimise likelihood of fraud or corruption
Have systems in place to ensure compliance (e.g. hospitality logs.) Information on expenses claimed by board members and senior staff should be published	Comply – A Gifts and hospitality log is established which is reviewed by the Accounting Officer and Chair/CEO expenses are published online
Establish an audit (or audit and risk) committee with responsibility for independent review of the systems of internal control and external audit process	Comply – Audit and Risk Committee in place with appropriate terms of reference
Take steps to ensure objective and professional relationship is maintained with external auditors	Comply – Has a good objective and professional relationship with National Audit Office
Comply with MoJ guidance with regard to any department restrictions on spending	Comply – The CCRC complies with all spending controls including Cabinet Office freezes and MoJ discretionary controls
Report to Corporate Finance with management accounts and Grant In Aid authorities	Comply – Reports to MoJ Corporate Finance team meeting its reporting obligations
<b>Communication and engagement</b>	
The NDPB should establish clear and effective channels of communication with stakeholders	Comply – Engages with wide range of stakeholders. Holds bi-annual conferences, Board members and staff make visits and lectures. It hosts visits from interested parties including from overseas. Full stakeholder activity is reported in Annual Report
The NDPB should make an explicit commitment to openness in all activities. Engage and consult with public on issues of public interest or concern and publish details of senior staff and board members with contact details	Comply – The CCRC has statutory disclosure restrictions to comply with but otherwise has a commitment to openness. Includes publishing extensive policy information and providing details on board members
The NDPB should hold open board meetings or an annual open meeting	Explain – Need confidential meetings for reasons of security
The NDPB should proactively publish agendas, minutes of board meetings and performance data	Comply/Explain – Confidential nature of much of Board activities precludes publication. Publishes detailed performance data in Annual Report and Accounts and web pages also include running totals on information such as numbers of applications received and outcome of referrals to the appeal courts
The NDPB should establish and publish effective correspondence handling and complaint procedures, and make it simple for members of the public to contact them/make complaints. Complaints should be investigated thoroughly and be subject to investigation by the Parliamentary and Health Service Ombudsman. Performance in handling correspondence should be monitored and reported on	Comply – Communications with applicants is governed by principles set out in the Formal Memorandum published on CCRC web pages. Complaints procedure has been established and is published online

The NDPB should comply with any Government restrictions on publicity and advertising, with appropriate rules in place to limit use of marketing and PR consultants. Have robust and effective systems in place to ensure the NDPB is not engaged in political lobbying (includes restriction on board members attending Party Conferences professionally)	Comply – Complies with spending restrictions on advertising and has not made use of consultants since 2004. Does not engage in lobbying and conduct of Board members and staff in this respect is covered in the Code of Conduct
The NDPB should engage the Sponsor Department appropriately especially in instances where events may have reputational implications on the department	Comply – Monthly reports to MoJ sponsor to provide important media, stakeholder and other communication issues. Frequent contact with MoJ press officer
The NDPB should In line with transparency best practice, consider publishing spend data over £500	Comply – Spend data over £2,500 and Government Procurement Card spends over £500 are published monthly online as part of MoJ transparency disclosure policy
<b>Conduct and propriety</b>	
A Code of Conduct must be in place setting out the standards of personal and professional behaviour and propriety expected of all board members which follows the Cabinet Office Code and forms part of the terms and conditions of appointment	Comply – Code of Conduct established and was reviewed in 2012 in light of the Cabinet Office Code of Conduct for Board Members of Public Bodies
The NDPB has adopted a Code of Conduct for staff based on the Cabinet Office model Code and form part of the terms and conditions of employment	Comply – Terms and conditions reflect the Cabinet Office model Code and in 2012 was merged with the Code of Conduct for Board Members
There are clear rules and procedures in place for managing conflicts of interest. There is a publicly available Register of Interests for board members and senior staff which is regularly updated	Comply – The Code of Conduct sets out the policy on conflicts of interests
There are clear rules and guidelines in place on political activity for board members and staff with effective systems in place to ensure compliance with any restrictions	Comply – Code of Conduct sets out requirements that board members should be politically impartial. Board and staff are reminded of need to take particular care in maintaining political impartiality during times of politically sensitive events
There are rules in place for board members and senior staff on the acceptance of appointments or employment after resignation or retirement which are effectively enforced	Comply – There are no rules in place regarding employment after resignation or retirement but the obligation to not disclose information obtained by the CCRC in the exercise of any of functions continues after employment has ceased in the CCRC and is set out in the Code
Board members and senior staff should show leadership by conducting themselves in accordance with the highest standards of personal and professional behaviour and in line with the principles set out in respective Codes of Conduct	Comply – Board members and senior staff are expected to operate to the highest standards of probity and act in accordance with the Code of Conduct and the Nolan Principles

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