

## **Response to the Triennial Review of the Criminal Cases Review Commission**

**December 2012**

The Prison Reform Trust is an independent UK charity working to create a decent, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. Our advice and information service responds to around 6,000 requests for help a year.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families

### **Overview**

The function of the Commission is still required and unfortunately may be more so in future. Mistakes can sometimes be made in criminal justice and there needs to be an efficient, accessible system for responding to these. The current resource pressures on the entire criminal justice system, including police, cps, defence lawyers, courts and sentences may make mistakes more likely. We are particularly concerned about the impact of legal aid cuts on the criminal defence process. Understanding the vulnerability of defendants is fundamental to understanding why miscarriages of justice happen. Many defendants have insufficient information and a lack of comprehension of the judicial process. This can lead to insufficient understanding of the implications of decisions about pleading.

Seven per cent of adult prisoners have an IQ of less than 70 and a further 25% have an IQ between 70-79, it is generally acknowledged that between 5 and 10% of the adult offender population has a learning disability. This report, *Fair Access to Justice?* [www.prisonreformtrust.org.uk/Portals/0/.../FairAccessToJustice.pdf](http://www.prisonreformtrust.org.uk/Portals/0/.../FairAccessToJustice.pdf) details the support needed to ensure support for vulnerable defendants in the criminal courts.

### **Please state whether or not there is a continuing need for the functions of the Commission.**

There is a need for all the current functions of the Commission apart from Her Majesty's Prerogative of Mercy recommendations. These applications are almost obsolete. As they need Ministerial approval they are not compatible with the independent process of the CCRC so this function could be dealt with centrally by the MoJ.

## **Does the Commission have the right powers to fulfil its function?**

No. We believe that the Commission does not currently have the right powers necessary to fulfil its function. 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. Secondly, the CCRC cannot currently interview people under caution. This means that the CCRC has to call on police resources to do this and negotiate an investigating officer through the police. The cuts to the police budget mean this will be even more of a challenge. Both of these powers are currently available to the Scottish CCRC. We believe that these powers should also be given to the CCRC.

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

- a) It is appropriate that the CCRC remains in central government and does not go to local government or voluntary or private sectors.
- b) 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.
- c) The function could not be delivered independently as part of a government department. We note that in 2008 the High Court found the Parole Board to be insufficiently independent of government. Moving the CCRC inside a government department could lead to similar challenges and concerns about ministerial interference. In addition, although this is may not be the primary consideration, the CCRC needs to have credibility with claimants and with stakeholders.
- d) There would be no benefit to creating a new Executive Agency to fulfil this function and significant change or restructure would likely to be very costly, cause problems with continuity of service and lead to increased delays in processing applications.
- e) 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.
- f) We would propose one change to the membership of the Commission. We note that although the statute provides that one third of Commissioners should be lawyers, in reality all Commissioners are. We suggest that proactively recruiting people from other disciplines, such as forensic scientists, investigative journalists, police officers, psychiatrists or other experts in criminal investigations and miscarriages of justice might add value to the Commission's work, broaden its outlook and increase expertise.

## **Do you have any further comments?**

### **Workload and resources**

We are aware that the Commission workload is increasing following its work to make the application process more accessible. This further pressure on resources is unlikely to be met in foreseeable future. Any reallocation of resources needs to be carefully considered in the light of access to justice. However, it may be possible to develop a more streamlined process for some applications.

- Sentence calculation cases – although these are already dealt with administratively by the Court of Appeal we believe there are further options regarding fast track processing of these cases where a judge may have miscalculated a sentence. These cases could be dealt with swiftly.
- Persistent applicants -we are aware that new evidence may be discovered at any time. However, people that submit numerous applications on one conviction could meet a proportional response bearing in mind resource implications.

### **Learning Lessons**

We welcome the steps that the CCRC are taking to ensure more accessibility by producing the easy read form. We also welcome the work on raising awareness of applications that could go to appeal because an offence has been committed as a result of trafficking or seeking asylum. We would welcome further work on children and other vulnerable defendants.

Alongside investigating applications for individuals the CCRC has a role in helping to safeguard the integrity of the trial process more generally. However, the CCRC does not produce research, good practice reports or recommendations for change in the criminal justice system. Currently, there is a lack of transparency around reasons for miscarriages of justice. This could be mitigated by independent analysis of successful referrals that could lead to improvements in the system in the long-term.