



Jon Robins, LAG's communications and campaigns director, investigates the work of the Criminal Cases Review Commission (CCRC) and examines the likely impact of cuts to the CCRC's budget and in fees paid to criminal defence lawyers for miscarriages of justice work.

Is the Criminal Cases Review Commission losing its appeal?

'Joe's 19th birthday is coming up and his twin sister will have to spend it without him again. It is looking as though we are all going to have to spend Christmas without him as well,' says Maggie Stevenson, a mother of three from north London.¹ Her eldest son is serving a life sentence in Aylesbury Young Offenders' Institution in Buckinghamshire for murder with a nine-year minimum tariff. 'Every day he is away is heartbreaking for me,' she says. 'These places are breeding grounds and it worries me the kind of people who might have an influence on him.'

Joe has never denied killing a Somali man after an altercation on a north London street in June 2004. The then 14-year-old boy hit the man in his 20s over the head with a block of wood he had taken from a building site. Tragically, the man had an abnormally thin skull and died three weeks later in hospital. 'I am not making excuses for what Joe did. I would never do that,' says Maggie. However, what she is arguing is that his conviction should be quashed and replaced by one of manslaughter. Joe was convicted in April 2005 and there was a failed appeal in November that year.

'His original lawyers should have done a number of basic things from taking a proper statement from him and his parents at the time, to obtaining proper school and medical reports. It was shocking, for example, that they did not interview his parents, the school or his doctor,' says Jane Hickman, senior partner at the north London firm Hickman & Rose, who took on his case more than two years ago. Joe had no prior criminal record but clear psychological problems, the full extent of which was not made known at the trial. He was first diagnosed with

attention deficit hyperactivity disorder at the age of six years, and a diagnosis this year recorded that the condition was 'extreme'. 'Had the lawyers done what they should have done, they would have had a perfectly good defence of diminished responsibility leading them to a verdict of manslaughter,' reckons Jane Hickman.

'Frustration' at the CCRC

Joe's was one of 984 new applications to arrive at the Birmingham offices of the CCRC last year.² His application was made in September and the case allocated to a case worker in February this year, but since then progress has ground to a halt. The watchdog, which was set up to investigate miscarriages of justice in January 1997, surprised its critics over the summer by announcing 'dramatic improvements' to waiting times in its annual report. The backlog of cases has bedevilled an organisation without huge resources, which inherited a large and controversial historical caseload from the discredited Home Office C3 unit it replaced. As of March this year, category B 'in custody' cases (which are 'more involved and typically raise issues of some complexity', like Joe's) were taking five months to allocate (16 months for 'at liberty' cases). In 2006, waiting times had been running at about 20 months for 'in custody' and 28 months for 'at liberty' cases.

That queue might be down this year, but the CCRC's chairperson Professor Graham Zellick signed off the annual report on a bleak note. He reported that the commission's budget would be cut by about £300,000 a year, allowing for inflation, over the next three years. Professor Zellick, who steps down this month, reported that employees were 'frustrated ... angry and dispirited'. He

predicted his successor (yet to be announced) would face 'melancholic challenges ... which would be as damaging in practice as they are demoralising in prospect'.

It is frustrating news for Maggie. 'Every day I wait means another day I miss watching him grow,' she says, adding that she is all too aware that the prospects of a successful appeal are far from certain. In 2007/08, the CCRC 'closed' a total of 1,087 cases (compared with 990 the previous year); referring only 28 cases to the Court of Appeal. During that period, the appeal judges ruled on 46 individual cases, and of those 65 per cent resulted in a quashed conviction or a reduced sentence.

The CCRC's success rate, in terms of its referrals being overturned by the appeal judges, has hovered at around 70 per cent. According to its critics (including defence lawyers in the Criminal Appeal Lawyers Association (CALA) as well as campaigning groups such as Paddy Hill's Miscarriages of Justice Organisation) this is a figure which shows that the body is 'over-cautious' and 'sensitive' to the disapproval of appeal judges.

The first in-depth study of the CCRC is due for publication this month, written by the former CCRC commissioner Laurie Elks.³ He records how the seismic shocks to the judicial system delivered by the Birmingham Six, Guildford Four and other notorious miscarriages that led to the Runciman Commission, which then proposed an independent watchdog, failed to register with New Labour. Laurie Elks, who left the CCRC in 2006, argues that the commission had come to be regarded as 'an unnecessary evil' by the Home Office and regulated 'from a spirit of underlying hostility'. Tony Blair as Prime Minister made clear his intention to

'rebalance' the justice system away from the defendant and in favour of the victim of crime. 'It is perhaps the biggest miscarriage of justice in today's system when the guilty walk away unpunished,' he said in June 2002. It was a view that informed a consultation paper by the former Home Secretary John Reid in 2006.⁴ 'It may come as a surprise to some that the existing law empowers the Court of Appeal to quash a conviction on purely procedural grounds even where the judges of that court have no doubt the appellant is guilty,' John Reid wrote. Laurie Elks notes in his book that there is 'some room for debate' about whether the attempt to introduce provisions under the Criminal Justice and Immigration Bill, to amend the Criminal Appeal Act 1968 to prevent successful appeals on 'technicalities', was 'primarily' to 'clip the commission's wings'. The proposal was dropped.

So, is the CCRC in danger of extinction? 'I think that the politicians would be a threat if it was not for the fact that, were we to get rid of the CCRC, responsibility for miscarriages of justice would presumably bounce back to them,' Laurie Elks replies. 'The politicians' unwillingness to take that responsibility guarantees the safety of the commission although not necessarily the level of funding.' His book also documents what he refers to as the 'judicial impatience' with the CCRC. 'There is almost certainly a view within the judiciary that if they referred fewer gilt-edged, old-fashioned miscarriages of justice, then they would be happier,' he says.

Miscarriages set to rise?

Unsurprisingly, those lawyers willing to take on this poorly-remunerated area of the law are concerned about cuts. 'The whole reason why the CCRC was set up was to investigate potential miscarriages of justice and any reduction in funding would mean that they would be in less of a position to investigate,' comments Jeremy Moore of Carter Moore solicitors, the lawyer who represented Barry George, recently found not guilty of murdering BBC television presenter Jill Dando outside her London home in 1999. Jeremy Moore pays tribute to the work of the CCRC in one of its highest profile successes. 'A case like Barry George needed a hell of a lot of resources putting into it and whether they would be able to do that in the future is a great concern,' Jeremy Moore says.

The small number of defence lawyers

who specialise in criminal appeals and CCRC applications are quick to make the point that it is not just the commission that is reeling from cuts. 'We are doing fewer and fewer of these cases because you just cannot make ends meet,' acknowledges Jeremy Moore. Appeals work is poorly remunerated (£49.70 an hour in London unless there is a representation order); however, there is huge unmet demand for decent legal representation. 'The first hurdle for those wishing to challenge a conviction is finding someone who is interested in doing it,' comments Steve Bird, a criminal law specialist in London who has had around 35 appeal cases on his books. 'Most lawyers would be interested on private rates. But if you are looking to do this work under the [Criminal Defence Service (CDS)] 1 and 2 there is absolutely no financial incentive.' Steve Bird has now 'closed the books' on new cases unless they are existing clients. 'I feel with all the cutbacks to legal aid – the introduction of fixed fees in police station work and now Crown Court – it is an incentive for solicitors to cut corners and not prepare cases as thoroughly as they used to under hourly rates,' he argues. 'We can expect the number of miscarriages of justice to increase. There will be more people looking for solicitors to do this work and less solicitors willing to do it.'

The CALA, which has its annual meeting this month, was set up to raise standards of representation. 'There are lots of pressures on criminal practices to find ways of increasing their fees,' reckons Campbell Malone, CALA's chairperson and a consultant at Bolton firm Stephenson's. 'We have seen over the last few years an increase in the number of firms doing prison law which are also looking to do appeals and a lot of that work has been done by inexperienced fee earners. It is a real worry.' His group has been lobbying the Legal Services Commission to set up an accredited panel of appeal lawyers as well as working on best practice agreements with the CCRC.

For the CCRC's critics, its perceived inbuilt conservatism, as evidenced by the 70 per cent success rate, is a big problem. Campbell Malone has 'no problem with the "real possibility"' test (in other words, that there has to be 'a real possibility' of the conviction being quashed). 'But I do think that the CCRC is too conservative,' he argues. 'If the success rate was 55 per cent then it would more accurately reflect the test. But I also think that they could refer more cases without necessarily

reducing the success rate because there are cases they refer with no obvious merit.'

Glyn Maddocks, another lawyer who specialises in miscarriages of justice work based at the South Wales firm Gabb & Co, represented Anthony Stock. His case made CCRC history this year, when it became the first case the commission referred back to the appeal judges for a second time. Anthony Stock once again failed to clear his name of a brutal robbery at a supermarket in Leeds which took place 38 years ago. 'This is the fourth time that the case has been back to the Court of Appeal,' comments Glyn Maddocks. 'You do not get cases stronger than this.' The solicitor gave a statement to the court recording his own interview with one of the 'Thursday' gang, who allegedly committed the robbery, earlier this year. In that interview, the man repeated his own confession and claimed that Anthony Stock had nothing to do with the crime or the gang.

Glyn Maddocks described the Stock case as 'a virility test' for the CCRC before its referral and now commends its 'fantastic work' in securing the case another appeal. But he argues that an applicant's fate 'depends entirely upon their case review manager. If you have a good case review manager as I did in Anthony Stock's case – enthusiastic, bright and willing to work as a team – and a good case, then you are going to get somewhere. If not, then it is hopeless. An underfunded CCRC means that the commission will lose, not preserve, its talent pool and some staff have already left. Justice will suffer.'

What Joe Stevenson did was 'terrible', acknowledges Jane Hickman. 'But he is a young man who has spent his formative years in institutions like Feltham and Aylesbury, incredibly damaging places.' The CCRC's budget problems will mean 'growing waiting times and more damage caused to young people like Joe,' she adds.

- 1 Names have been changed in the account to 'Joe' and 'Maggie Stevenson'.
- 2 *Criminal Cases Review Commission annual report and accounts 2007/08*, available at: www.ccr.gov.uk/CCRC_Uploads/Annual%20Report%202007%20-%202008.pdf.
- 3 Laurie Elks, *Righting miscarriages of justice? Ten years of the Criminal Cases Review Commission*, JUSTICE, October 2008, £29.95. See also page 49 of this issue.
- 4 *Quashing convictions: report of a review by the Home Secretary, Lord Chancellor and Attorney General*, September 2006, available at: www.homeoffice.gov.uk/documents/cons-2006-quashing/cons-2006-quashing-convictions2?view=Binary.