



Guidance for Applicants and
Representatives:

Submissions to the Commission

This paper provides guidance for those thinking of applying to the Commission. The guidance is relevant to *all* applications. Further information about the legal tests that the Commission applies may be found in the position paper entitled “The Commission’s Statutory Test”. Guidance specific to a number of the Commission’s most frequent grounds of review may be found in the relevant guidance documents and position papers.

Submissions to the Commission – in Brief

- Fill out and sign our form.
- Try to follow the guidance relevant to your ground(s) of review.
- If you have learning difficulties or problems with English, we can help.
- Tell us why there’s been a miscarriage of justice. Keep your points focused.
- If you think we don’t understand your points, let us know.
- Make all of your important points at the start of the review.
- If you have a solicitor, agree one set of submissions between you.

Get in Touch



We know it may seem hard to apply, particularly if you don’t have a lawyer. If you have questions about this guidance or any other part of our process, give us a phone. We’d be happy to discuss them with you.

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Terms Used Below

Miscarriage of justice: The first part of the Commission's test. Miscarriage of justice is any reason for which the High Court would allow an appeal against conviction or sentence

The Interests of Justice: The second part of the Commission's test. When we consider the interests of justice, we think about what is fair, reasonable and practical in the circumstances.

Ground (of review): An argument explaining why, for a specific reason, a conviction or sentence is a miscarriage of justice.

The Commission's Review Process: When the Commission receives a new application, it begins at **Stage 1**. At stage 1, we consider only whether or not it may be in the interests of justice to refer the case. We usually rely upon what you tell us in the application and papers we get from the court. If we accept a case for **Stage 2**, we will consider whether there may have been a miscarriage of justice as well as the interests of justice. We gather whatever material we think is necessary to do this.

Equality

We will make any reasonable adjustments necessary to help those with other disabilities. If you are disabled, please let us know by completing the relevant section of the application form.

We are a member of Happy to Translate. We will arrange an interpreter if needed.

We will make this guidance (and any other Commission document) available in alternative formats on request.

Example from Practice	What did we do?
An applicant told us on his application form that his English was too poor to explain his grounds of review to us properly.	The legal officer brought an interpreter with him to visit the applicant in prison. They worked out together what the grounds of review were.

Communication with the Commission

If you are in prison, all correspondence from the Commission should be passed to you in a sealed envelope. If our correspondence arrives opened, please let us know.

Phone calls to the Commission from prison should not be monitored or recorded. If you believe that your calls are being recorded, please let us know.

Application Form

All applicants must complete our application form. We will send an application pack with the form if you ask. The form is also online at www.sccrc.org.uk.

The grounds of review may be completed in the boxes in the form. Applicants may attach separate sheets of paper instead.

We will not accept an application for stage 2 review unless the applicant has signed our mandate. This may be found on the application form.

Example from Practice	What did we do?
An applicant did not sign the Commission's mandate.	The legal officer wrote to the applicant telling her that the Board would refuse the application if she didn't sign the mandate. The applicant returned a signed copy of the mandate. The review went forward.
An applicant ticked the boxes for review of his conviction and sentence. He set out grounds for review of conviction but did not provide any grounds for review of sentence.	The Commission didn't consider sentence in its review of his case.

Form of Submissions

We expect to receive submissions that are as clear and concise as possible.

The submissions should address why the conviction and/or sentence is a miscarriage of justice. The Commission's position papers may be useful. These are listed below. The position papers set out the information that the Commission is likely to need in each major ground of review.

The court has held that an applicant who presents us with an "incoherent or inspecific" complaint about their conviction cannot expect us to determine for ourselves what the grounds of review should be. We understand that engaging with legal process may be difficult for unrepresented applicants. We try to make allowances for this. However, it is important to keep grounds of review as tightly focused as possible.

If we can't understand your grounds of review, we may ask you to redraft them. If you don't do this, we're likely to refuse the application at stage 1.

If you consider that material is likely to help your case, it's best to try to obtain it yourself before applying to us. This will help you to make your submissions to us. If you want us to obtain particular material because you think it is or may be important to your case, you need to explain why you think that. If you don't explain, we're unlikely to obtain the material.

We can use our statutory powers to recover materials where we consider it necessary to resolve a case. The decision to do so is for us to take. We do not conduct enquires at the request of applicants unless we have a good reason to do so.

If the case is of a type that we would usually reject at stage 1, you should also explain why it is in the interests of justice for the Commission to conduct a stage 2 review. The types of cases we normally reject at stage 1 may be found in the position paper “Referrals to the High Court: the Commission’s Statutory Test”.

Example from Practice	What did we do?
An applicant’s current lawyer sent us another lawyer’s defence file. They asked us to consider whether or not the representation at trial was defective.	We refused the application at stage 1 as having “no stateable grounds”. The grounds were unstateable because the representatives hadn’t told us why they thought that the applicant’s defence was not presented. (In other words, they hadn’t set out an argument that suggested that there had been a miscarriage of justice.) We returned the file when we refused the case.
An applicant’s lawyers sent us a copy of a note of appeal that the court had rejected at sift. They didn’t explain why they thought the court had got the decision wrong	We refused this at stage 1 as a “repeat of appeal grounds”. The applicant’s lawyers hadn’t explained why it was in the interests of justice to accept the case.
An applicant told us that he had abandoned his appeal because he had been advised that his grounds were unarguable. The fresh evidence in his case had come to light many years later. He argued that it was in the interests of justice to accept his case for review.	Normally, we would refuse a case where an applicant has abandoned a previous appeal. In this case though, we agreed that the applicant had a good reason for abandoning. We accepted the case for stage 2 review.

If we need more information, we will usually write to the applicant or, if applicable, their representatives.

Volume of submissions is an increasing problem, particularly from unrepresented applicants. We do not believe that it is ever necessary to use hundreds of pages to explain grounds of review. Such submissions are unhelpful. They increase the risk that we will miss a good point. If the submissions are too long, we may require an applicant to make them shorter and more focused.

We may, if we consider it necessary, meet unrepresented applicants at stage 1 if we want to know more about their grounds.

Example from Practice	What did we do?
An applicant sent us a large volume of unfocused submissions.	We asked the applicant to summarise his position. This helped us to understand his grounds of review.

Use of Generative AI/Large Language Models/“Chat GPT”

Some people find that generative AI models (such as *Chat GPT*, *Claude* and *Gemini*) can assist with tasks such as summarisation of complex materials. If used carefully, they may be a useful tool. When used to try to put together legal arguments, the models are prone to inaccuracy and repetition. Extensive “legal” submissions from AI models are not generally helpful. They are usually neither clear nor concise. If the submissions are incomprehensible due to AI use (or any other reason) we will ask the applicant to reformulate them.

Grounds of Review Letter

About two weeks before the case calls at the Board, we will send the applicant (and any representatives) a letter summarising the grounds of review as we understand them. If our understanding is wrong, you must tell us as soon as possible.

Example from Practice	What did we do?
An applicant phoned us to tell us that he was unhappy with the wording of our summary of one of his grounds of review.	The legal officer agreed an acceptable wording with him during the telephone conversation. The legal officer then sent the new wording to the applicant and forwarded it to the Board.

Submissions While the Stage 2 Review is Ongoing

It is important to try to put all of the main arguments in the application form. If you don’t do this it can be much more difficult to plan the review. It is likely to delay the case.

Sometimes, applicants continue to add submissions during the stage 2 review. If we think that the applicant’s late submissions are causing problems for the review, we may choose to set a deadline beyond which we will not consider any further submissions during the present review.

Further Submissions

If the Commission decides not to refer a case at stage 2, we will give the applicant 28 days in which to make any further submissions. This is a chance to explain to the Commission why it

has reached the wrong decision. The further submissions should relate to the grounds of review that the Commission has already considered.

If the further submissions raise new matters, the Commission generally will not consider them as part of the ongoing review. It is open to the applicant in such circumstances to submit a new application for review if the existing application is unsuccessful. If the Commission does consider a new matter submitted at the further submissions stage, then the applicant will have no chance to make further submissions on that point.

Example from Practice	What did we do?
An applicant sent us a long further submission. This covered a legal point that he had not brought up at the earlier stage.	We informed the applicant that he would need to make a new application raising the point if his existing application was unsuccessful.

The Commission has experienced increasing problems with multiple, and sometimes conflicting, sets of further submissions from the applicant, their solicitors and counsel and other representatives. This can make it difficult to work out what the applicant's position is. We do not think this is acceptable. If an applicant is represented, we require a single set of further submissions. If the applicant and their representatives send multiple sets, we will ask them to produce a single, coherent set. If they don't do this, we may choose not to consider secondary sets. Sometimes, lawyers produce submissions and send with them the applicant's comments or an annotated copy of the statement of reasons. If this happens, we will usually consider the lawyers' document to be the primary submission.

Additional Guidance/Resources

The Commission has a library of guidance documents and/or position papers relating to the more common grounds of review. These are available on the Commission's website. They can be requested from the Links Centre of any prison in Scotland as the materials are now held electronically.

We can supply copies on to anyone imprisoned outside of Scotland if you ask us to do so.

If you think that one of these papers relates to your case, you should read through it. Try to follow any guidance as best you can. If the guidance suggests that information will be required, try to provide that information with your application. If you don't understand the guidance, our legal team would be pleased to explain it to you.

The available papers are:

- **The Commission's Statutory Test**

A general document explaining the Commission's understanding of the terms "miscarriage of justice" and "the interests of justice"

- **Sentencing**

A document covering the main areas of sentencing law that come up in the Commission's caseload.

- **Guilty Pleas**

A document explaining the test applied where someone wishes to challenge their conviction even though they pled guilty.

- **Disclosure**

Miscarriages of justice caused by failure by the Crown to provide important information to the defence

- **Misdirection**

Miscarriages of justice in jury trials caused by the instructions the trial judge gives to the jury.

- **Sufficiency**

Miscarriages of justice in cases in which the judge should not have convicted/allowed the jury to reach a verdict because there was not enough evidence in law

- ***Moorov***

A special class of cases in which the Crown seeks to establish sufficient evidence to convict by proving that two or more incidents are linked as a single course of criminal conduct.

- **Tribunal Bias (with Interviewing Jurors Appendix)**

Miscarriages of justice caused by bias on the part of the judge or individual jury members. This paper explains the circumstances under which the Commission will conduct investigations into the conduct of jury members.

- **Unreasonable Verdict**

Miscarriages of justice in cases in which the evidence was of such poor quality that no reasonable jury could have convicted the accused or in which the verdict was irrational.

- **Defective Representation**

Miscarriages of justice caused by a failure of the legal team to present the defence.

- **Fresh Evidence**

Cases in which important evidence has come to light after the trial

- **Oppression**

Cases in which, for a wide variety of different reasons, the prosecution was unfair. This paper deals with the legal consequences of intentional wrongdoing on the part of police and prosecuting authorities.

Next Steps

If anything in this document is unclear, please contact us on 0141 270 7030 or info@sccrc.org.uk. Our staff can't give you legal advice, but they can answer questions about how to apply.