



Criminal • Cases • Review • Commission

Mr Mark Alexander A8819AL
HMP Gartree
Gallow Field Road
Market Harborough
Leicestershire
LE16 7RP

Your ref:
Our ref: 01299/2012

26 March 2015

Dear Mr Alexander

Re: your complaint

I am now in the position to respond to your complaint as set out in your letter dated 20th November 2014.

Complaints procedure

I would like to begin my response by explaining how the complaints procedure operates in relation to cases which have been reviewed by the Commission.

The complaints procedure exists to ensure that the people that we deal with receive a fair and courteous service from us. An investigation under the complaints procedure cannot be an appeal against a case decision or a further review of your entire case. The purpose of the investigation, insofar as it concerns the outcome of your case, is to establish whether the review of your application was carried out properly in accordance with the Commission's standards of service and to ensure that all relevant procedures were followed when reaching a decision. If there have been errors in the process by which a decision has been reached then the decision can be reconsidered. Examples of this could be if the Commission had overlooked a significant issue that an applicant had raised or had failed, without good reason, to carry out a significant piece of investigative work.

The Commission makes a decision by applying the statutory test of whether there is a real possibility that the relevant appeal court would find the conviction to be unsafe if it were to be referred. The responsibility for deciding this is that of the Commission alone. There may be occasions when the Commission attributes different significance to matters of fact and law than you have done, or adopts an interpretation of the

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evidence that you do not agree with. Unless the decision can be regarded as unreasonable in the context of the information that it is based on, these are not circumstances where the complaints procedure can substitute a different decision. If, however, it appears that the review of your case was not carried out in accordance with the Commission's procedures or standards of best practice then steps can be taken to rectify this, and in some cases this could lead to a reconsideration of a decision. I have enclosed a complaints leaflet which explains more about the Commission's complaints procedure.

Investigation of your complaint

In considering your complaint, I have not carried out a further review of your case, but I have independently considered the approach that the Commission has taken to the issues you have raised and the way in which the Commission's conclusions have been set out in the provisional and final Statement of Reasons you have received. I have also taken into account the procedures that the Commission has followed whilst dealing with your application and have spoken to the members of Commission staff who have had dealings with your case, including the Case Review Manager and his Group Leader.

Issues raised in your complaint

Although you have provided a detailed list of reasons as to why you disagree with the Commission's conclusions, it would not be appropriate under the complaints procedure for me to respond to your concerns on a point by point basis as this would mean that I would effectively be carrying out a further review of your case and providing a further Statement of Reasons, which would then be my view rather than the Commission's decision. You will appreciate that the purpose of a complaint investigation is to ensure that our procedures were followed, that all the relevant information was evaluated and that the decision taken was not unreasonable in the light of that information

Commission's powers

Before I discuss the findings of my investigation into your complaint I think it would be helpful for me now to take this opportunity to clarify the Commission's statutory powers. Under sections 9 to 12 of the Criminal Appeal Act 1995, where a person has been convicted in a criminal court the Commission may at any time refer the resulting conviction to the Court of Appeal. Section 13 of the Act also states that such a reference can not be made unless the Commission considers that there is a **real possibility** that the conviction would not be upheld by the Court of Appeal, and this consideration must be reached because of new argument or evidence that has not been previously raised in the trial proceedings or an appeal.

The fact therefore that you may feel you have presented the Commission with new evidence or argument is not enough in itself to refer your conviction to the Court of

Appeal: rather the new evidence has to carry enough significance for the Commission to conclude that there is a real possibility the Court of Appeal would quash your conviction. The responsibility for deciding this is that of the Commission alone. I appreciate that you feel very strongly about the circumstances of your conviction but the Commission can only act within the constraints of the Criminal Appeal Act 1995 which sets out our powers and duties.

Response to your complaint

I am sorry to have to inform you that I can find no basis upon which to uphold your complaint. This is primarily because the points that you have raised relate to matters that have already been considered by the Commission as part of the review of your case. Many of the concerns you have raised appear to me to be an example of one of those occasions that I mentioned at the beginning of this letter when the Commission attributes different significance to matters of fact and law than you have done, or adopts an interpretation of the evidence that you do not agree with and I'm afraid I cannot uphold a complaint on this basis.

I understand that you must be very disappointed with the Commission's decision not to refer your case but I could find no fault with the Commission's treatment of your application. Although it is not for me, as the Customer Service Manager, to give an opinion on the significance of the issues you have raised, I have carefully considered all aspects of the service you have received and the procedures that have been followed and I have found no failure whatsoever in the standard of service you have received.

You have raised concerns that the Case Review Manager in your case 'kept you in the dark' and did not respond to your request for an interview. After looking into your concerns I can assure you that it was never the Commission's intention to 'keep you in the dark'. The Commission contacted you when necessary and your written submissions were very clear as to the points you wanted the Commission to consider. To avoid the possibility of any misunderstanding or doubt, the Commission will generally request an applicant to communicate in writing and therefore face-to-face meetings with applicants are not frequent and it was not deemed necessary in your case. This is in line with the Commission's formal memorandum on Communicating with Applicants. There are therefore no grounds to uphold your complaint on this basis.

You have also raised concerns that the Commission has not fully investigated all the issues you believe are relevant. I would like to take this opportunity to explain that the Commission is an independent body which represents neither the prosecution nor the defence. We do not act *for* you, as a solicitor or campaign group might, but conduct an objective review of your case. During the course of a review of a case, the Commission will decide what investigations are necessary and relevant.

The Commission has an obvious duty to exercise its statutory functions in a manner which is reasonable and proportionate. This means that the Commission, which is entirely independent of both you and the prosecution, is not obliged to investigate an issue merely because you have asked us to do so. Instead, the Commission will use its discretion to make enquiries which have a realistic prospect of producing fresh evidence or legal argument which might, at its highest, give rise to a real possibility that the Court of Appeal would quash your conviction. The Commission will consider all lines of enquiry raised by an applicant but it is neither feasible nor justified for the Commission to undertake a full reinvestigation of an issue just because it is raised by an applicant. Once the Commission has investigated a case and decided whether or not to refer it to an appeal court, it then sets out in its final decision those facts and arguments that it considers are relevant to its analysis and reasoning.

In addition, the Court of Appeal will not interfere with a verdict lightly. You have already had a full jury trial and an application for leave to appeal which has not been successful. The Commission could only refer your case if something new and compelling were to be discovered, sufficient to raise a real possibility that the Court would not uphold your conviction. If material was available for use at trial and the defence chose not to use this material (even if they chose not to do so for tactical reasons) it is unlikely in the extreme that this could form the basis of a referral to the Court of Appeal. Further, the Commission must take as its starting point the fact that you have been convicted. Your application to the Commission begins with a presumption of guilt, not innocence, in your case. The Commission must then move on to make an assessment as to whether there is anything new that justifies a referral to the Court of Appeal. Although you clearly disagree with the verdict of the jury, the Commission cannot simply substitute its own views or refer a case where there is *not* a real possibility that the conviction would be quashed.

Moving on to you concerns that the Commission has been inconsistent with regard to its conclusions on Dr S report. I have considered this point and it is apparent that when drafting the Provisional Statement of Reasons, the Commission had not at that stage received the points you raised in your further submissions in relation to Dr S report, hence the different conclusions that were reached on this issue by the Commission as set out in the Provisional Statement of Reasons, and later in the final Statement of Reasons where the Commission concluded that evidence regarding levels of carbonation was available for you to deploy as a defence at trial. The Commission, in paragraphs 128 – 131, sets out its reasoning as to why this issue does not create a 'real possibility'. I understand that this is an issue you feel very strongly about, and I understand that you strongly disagree with the Commission's conclusions on this point. I have also carefully considered the concerns that you have raised about the Commission's conclusions on the psychological report by Dr M , which you strongly disagree with. I must inform you that under the remit of the complaints procedure, I can find no fault in the Commission's conclusions on the significance on both the evidence of Dr S and Dr M . It is apparent that submissions put

forward on these issues have been carefully considered by the Commission. There is therefore no basis for me to uphold your complaint on these concerns.

To conclude therefore, I consider that the Commission's decision has been reached in accordance with its established case-working practices and can be regarded as reasonable in the context of the information upon which it has been based. Your case was considered by a Commissioner. You were provided with a provisional Statement of Reasons setting out the Commission's provisional view of your case and were given the opportunity to respond; which after have been granted an extension of time by the Commission, you did. You were then provided with a final Statement of Reasons which dealt with your original and your further submissions.

I know you will be disappointed with my response. You may make a fresh application to the Commission if you have any significant new evidence or argument in relation to your case, although I must emphasise that it must be something that the Commission has not already considered.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Catherine Dilks', written over a faint horizontal line.

Catherine Dilks
Customer Service Manager