

Institution: University of Oxford		
Unit of Assessment: 18 - Law		
Title of case study: Strengthening accountability and decision making at the Criminal Cases Review Commission		
Period when the underpinning research was undertaken: 2010–2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Professor Carolyn Hoyle Dr Mai Sato	Role(s) (e.g. job title): Professor of Criminology Research Officer	Period(s) employed by submitting HEI: 22/05/2000 – present 01/09/2013 – 31/08/2015
Period when the claimed impact occurred: 2014 – July 2020		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact (indicative maximum 100 words) The Criminal Cases Review Commission (CCRC) receives around 1,400 applications per year from appellants in England, Wales and Northern Ireland. It is the only body that can refer a case back to the Court of Appeal once appellants' opportunities for direct appeal are exhausted. The CCRC instigated key changes as a result of Hoyle's work thereby strengthening accountability and decision making at the Commission. These changes: improved the consistency of decision making at the Application Review (case screening) stage; increased the consistency and thoroughness of empirical Case Review practices; influenced the Commission to encourage and facilitate systemic learning in the wider criminal justice system; and changed legislation to extend the Commission's access to data held by private bodies to support appeals and reduce wrongful convictions.</p>		
<p>2. Underpinning research (indicative maximum 500 words) The CCRC subjects just over half of its approximately 1,400 yearly applications to full and thorough investigation, often rejecting the others with minimal review. Between one and four per cent of applications are referred back to the Court, a small and recently declining number, that leaves many applicants and their legal representatives disappointed. This also occasions anxiety within the Commission that innocent people may be being screened out.</p> <p>Hoyle began her research on the CCRC with a scoping study in November 2010, which included in-depth interviews with Commissioners and some case reviewers as well as discussions with the senior management team and administrative ('categorisation') team. Analysis of the data collected in the scoping study was followed by an extensive pilot project between 2011 and 2013. This entailed a thorough review of cases recorded on the Commission database and a purposive sampling method to identify categories of cases (types of applications that best illustrate a range of decision-making processes). Within those categories 146 'live' and 'closed' cases were chosen using random sampling techniques. Methods for collating information on cases, which included close analysis of all documents and interviews with investigators, were developed during this stage. From 2013 to 2015, the Leverhulme Trust funded an in-depth study of discretion and decision-making at the CCRC, and Hoyle was helped by a part-time research officer, Dr Mai Sato in 2015 to assist with fieldwork and some data-analysis, contributing to 6 of the 14 chapters in the 2019 monograph [R1].</p> <p>The research revealed what happens to applications for post-conviction review when those in England, Wales and Northern Ireland who believe they are wrongly convicted apply to the CCRC. Hoyle's research study demonstrated, through its rich empirical data and socio-legal analysis, that in its open-ended investigations, the CCRC has considerable scope for discretion [R2]. While structured internal guidance, drawing heavily on jurisprudence from the Court of</p>		

Appeal, shaped decision-making, creating some consistency in approach, there remains marked variability across cases, over time. This can partly be accounted for by the different professional backgrounds and personalities of CCRC staff. Crucially, the study demonstrated that reviewers may be 'missing [wrongfully convicted] people at the beginning' of the appeals process.

Key differences and inconsistencies in the Commission's approach to cases identified by Hoyle's research are: first, their approach to screening cases for a full and thorough review; and second in how they investigated those cases that were screened in for full review. Hoyle's findings identified chronic inconsistencies because the chance of having a case screened in and then investigated thoroughly was better with one Commissioner or one review team, than with another [R1].

Qualitative research found that the confidence of Commissioners engaged in case screening (to establish which cases should be subject to a full and thorough review) varied and the perception amongst staff was that only some Commissioners were rigorous and thorough. Quantitative data showed that individualistic decision frames influenced by Commissioners' different and sometimes opposing outlooks, values, and backgrounds caused considerable variation in their review of applications. For example, Commissioners interpreted terminology and situations differently (e.g. exceptional circumstances), and similarly approached the task of screening with varied levels of attention to detail [R1].

Legal representatives, campaign groups and academics expressed concerns about efficiency, in particular, criticizing the CCRC for being too slow and insufficiently thorough in its empirical case review practices [R4]. In response, the Chair of the Commission invited Hoyle to conduct a supplementary study of the extent to which empirical investigations (e.g. meeting applicants, conducting forensic tests, or visiting a crime scene) were carried out by Case Review Managers (CRMs), and what factors militated against such investigations. Hoyle's study found inexplicable variability in CRMs' inclination to conduct empirical investigations, unrelated to manager's experience or case type [R1].

Hoyle's research also found that the Commission's investigations into possible wrongful convictions were hindered in certain cases by a lack of legal powers to require private bodies to produce data and other evidence that could help in their enquiries. Section 17 of the Criminal Appeal Act 1995 grants the Commission the statutory power to request from any public body material that may assist in their investigations and that public body is under a duty to make such material available to the Commission. However, until recently, private bodies were not similarly obligated. Given that some formerly public bodies are now in the private sector, including some medical services and some social care and welfare agencies, the Commission has sometimes failed to secure relevant data because it had no powers to insist on it being made available to the organisation [R5].

3. References to the research (indicative maximum of six references)

[R1] (Book) Carolyn Hoyle & Mai Sato (2019) *Reasons to Doubt: Wrongful Convictions and the Criminal Cases Review Commission*, Oxford University Press. ISBN 9780198794578. Available via REF 2 submission

[R2] (Journal article) Carolyn Hoyle (2018) 'Forensic Science and Expert Testimony in Wrongful Convictions: A study of decision-making at the Criminal Cases Review Commission' *British Journal of Criminology* <https://doi.org/10.1093/bjc/azy066>

[R3] (Journal article) Mai Sato, Carolyn Hoyle & Naomi-Ellen Speechley (2017) 'Wrongful Convictions of Refugees and Asylum Seekers: Responses by the Criminal Cases Review Commission', *The Criminal Law Review*, 2, 106 <https://ora.ox.ac.uk/objects/uuid:d83aab8e-5600-4dc1-aff8-aeb4bf613ab7>

[R4] (Working paper) C.Hoyle and L.Welsh, 'Hoyle and Lucy Welsh on the CCRC', *Proof Magazine No: 4, Crime and Punishment*, May 2019, 84–88. Available upon request

[R5] (Journal article) C. Hoyle (2020) 'The shifting landscape of post-conviction review in New Zealand: reflections on the prospects for the Criminal Cases Review Commission, Current Issues in Criminal Justice, 32:2, 208-223 <https://doi.org/10.1080/10345329.2020.1735924>

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4. Details of the impact (indicative maximum 750 words)

According to the former Chair of the CCRC Hoyle's research had "*a profound and entirely positive effect on the Commission's work, notably in the efficiency and effectiveness of its casework, in its engagement with applicants and stakeholders and in its willingness to comment on and critique the wider justice system*" [C1].

Four specific areas of change were:

Improved consistency of decision making at the Application Review (case screening) stage

Hoyle reported her research findings [R1] on 'screening' variability to the Commission in June 2015 [C1]. In response to data she presented, the Commission introduced changes to the screening process to bring about more consistency. Specifically, "*The screening role was expanded to include all commissioners*", previously it had been around half of 13 Commissioners and, "*the administrative team that receives applications now allocates most cases to 'group leaders' [of which there are 5] who screen all 'first-time' applications... They also screen reapplications when a first or even a second application has not led to a referral and the applicant feels there is something new for the Commission to consider.*" [C1].

As a result of Hoyle's findings, "*Case Review Managers (CRMs) now assist the screening process...*" to achieve greater consistency "*by examining 'no-appeal' cases to identify any 'exceptional circumstances' that would allow the Commission to review the case even though the applicant has not gone through the regular appeals process. They also screen reapplications for something 'new' that might indicate the need for a further substantive review.*" Revised internal guidance was then issued to all staff [C1].

In final change in procedure attributed to Hoyle's findings "*the quality assurance process for checking on the consistency of screening has been changed from peer-review by other Commissioners to review by the Chief Executive or the Director of Casework Operations*" [C1].

Increased consistency and thoroughness of empirical Case Review practices

Hoyle's research findings on inconsistency in empirical investigations of cases [R1] changed the Commission's guidance to staff regarding their ongoing contact with applicants. Hoyle formally fed back her findings to the Commission through a keynote at the Commission's stakeholders conference in 2015 [C3]; at an informal seminar at the Commission in 2015; and at their Project Advisory Board meeting in 2015 [C1]. The Chair of the Commission wanted this feedback to encourage staff to go beyond desktop reviews where it would help the investigation and not be dissuaded by the existing culture which encouraged letters rather than phone calls and actively discouraged face-to-face meetings between senior staff and applicants [R2].

After receiving a first draft of Hoyle's monograph in early 2018, the CCRC changed its internal guidance in respect of CRMs' and Commissioners' communication with applicants and sent Hoyle the following memo: "*on reading the draft chapters, and on reflection we realise that the guidance struck the wrong tone and it has now been changed*" [C2]. CRMs are no longer discouraged from conducting face-to-face meetings with applicants.

Influenced the Commission to encourage and facilitate systemic learning in the wider criminal justice system

In December 2014, Hoyle gave evidence to the House of Commons Justice Committee on the Criminal Cases Review Commission. She formally stated that the Commission should do more to engage with the criminal justice system to feedback systemic learning, but noted they were limited by a lack of resources and a sense that they should not criticise criminal justice agencies, despite being in a unique position to identify and evidence failings [C4b and C4c]. In a 2017 article [R3], Hoyle similarly highlighted the importance of the Commission proactively engaging with the criminal justice system in the wrongful convictions of refugees and asylum seekers. She reiterated this position to the government's Tailored Review of the Commission in 2018 and recommended that the CCRC should 'hold the system to account' by publishing its Statement of Reasons to refer cases back to the court (which, at the time it was prevented from doing by legislation) [R5] [C5].

The former Chair of the CCRC confirms that Hoyle's position gave the Commission confidence to engage more critically with other criminal justice institutions. He writes "*Hoyle's advocacy played an important part in shaping the Commission's change of approach. The Commission is now much more prepared to speak out where it sees systematic failings. For example, serious professional failings by defence lawyers and prosecutors in asylum and immigration cases, and police and prosecution disclosure failures notably in serious sexual offense cases, and in short comings in forensic and expert evidence.*" Hoyle's work, he continues "*helped a move to rebalance the Commission's priorities on this aspect of its work*" [C1].

Legislation change to extend the Commission's access to data held by private bodies to support appeals and reduce wrongful convictions

When Hoyle was asked, in December 2014, to give evidence to the House of Commons Justice Committee on the Criminal Cases Review Commission [C4b and C4c], she made a specific request that Government introduce a new law to widen the Commission's access to privately held data. Hoyle's written evidence [C4c] recommended that "*the CCRC's s.17 powers should be extended to cover private organisations and private individuals. Many agencies and services that were previously in the public sector have, over the past few decades, been moved into the private sector and are therefore beyond the powers of the CCRC, not least the former Forensic Science Service*".

According to former Chair of the CCRC, "*The Justice Committee's Report strongly recommended the exact change Hoyle and others giving evidence to the Committee had suggested*" [C1]. The Committee's report cited Hoyle's evidence nine times and stated "*The extension of the CCRC's section 17 powers to cover private bodies is urgently necessary and commands universal support. Successive Governments have no excuse for failing to do this and any further continuing failure is not acceptable*" [C4a]. This recommendation was successful and the Criminal Cases Review Commission (Information) Act 2016 inserted section 18A into the Criminal Appeal Act 1995 to extend the Commission's power to obtain material from private bodies and individuals, allowing the Commission to provide evidence to satisfy the Court of Appeal in more cases and so reducing wrongful convictions [C6].

5. Sources to corroborate the impact (indicative maximum of 10 references)

C1: Written testimony from former Chair of CCRC, June 2019. Former Chair of CCRC also available as **Corroborator 1**.

C2: Email exchange and note from Head of Legal, CCRC, commenting on significance of draft chapters 9-14

C3: Criminal Cases Review Commission Annual Report 2015/2016. Details of Professor Hoyle's work and presentation are on page 36. <http://www.ccr.gov.uk/app/uploads/2015/07/CCRC-Annual-Report-and-Accounts-2014-15.pdf>

C4a) House of Commons Justice Committee, report on the Criminal Cases Review Commission (Twelfth Report of Session 2014-15), March 2015

Prof Hoyle's oral evidence is discussed at paras 15, 18, 24, 25, 36, 38, 40, **48** (para 48 having direct relevance to the issue of the thoroughness of the Commission's reviews).

<https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/850/850.pdf>

C4b) Transcript of Prof Hoyle's oral evidence (January 2015):

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/criminal-cases-review-commission/oral/17545.pdf>, pages 17-27

C4c) Prof Hoyle's written evidence (December 2014):

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/criminal-cases-review-commission/written/16093.html>

Paragraphs 7 & 8 are of relevance to the issue of widening the Commission's s. 17 powers to include 'private bodies'. Paragraphs 11 & 12 are of relevance to the matter of systemic learning from the Commission.

C5: Hoyle's submission to the Government's Tailored Review of the CCRC, January 2018

C6: Criminal Cases Review Commission (Information) Act 2016,

https://www.legislation.gov.uk/ukpga/2016/17/pdfs/ukpga_20160017_en.pdf