



Terms of Reference

Review of the CCRC's Handling of Andrew Malkinson's Case

Context

1. On 26 July 2023, the Court of Appeal quashed Mr Malkinson's convictions for rape and his sentence of life imprisonment. On 7 August 2023, the Court published its judgment.¹
2. The convictions were quashed on grounds relating to new DNA evidence and undisclosed material recovered from police files.
3. The CCRC had referred the case following a third review. Concerns have been raised about the investigative strategies in the two previous reviews that had resulted in refusals to refer, the length of time taken and the quality of the decisions made.
4. On 17 August 2023, the CCRC decided that a review of the handling of the case would be led by an external KC.

Purpose

5. The review will consider the conduct of the CCRC's three reviews.

Format

6. A KC will be appointed to conduct the review. The KC will have a blend of prosecutorial and defence experience as well as senior standing within the profession and availability to complete work within a reasonable timeframe.
7. The KC will have sole responsibility for making findings and recommendations as well as drafting a report to the CCRC Board.

¹ [Malkinson -v- R \(judiciary.uk\)](https://www.judiciary.uk/malkinson-v-r/)

Key Considerations

8. The CCRC considers that the KC should have a wide scope for comment. The KC should seek to address the investigative decisions made in each of the three reviews. It is anticipated that considerations will include:
 - i The decisions not to obtain the police file.
 - ii Opportunities and decisions relating to DNA work.
 - iii Criticisms and concerns raised in the media.
 - iv Other observations, learning points and recommendations.

Sources of Information

9. The KC will have full and open access to all of the case material held by the CCRC.
10. Requests are being made for files held by the courts, police, CPS and forensic scientists. Again, the KC will have full and open access to all of the material provided by these agencies.
11. Additionally:
 - i Commissioners and CCRC staff involved in the reviews and who are still in post may be asked questions by the KC.
 - ii The KC may ask Independent Non-Executive Directors to share their experience of governance and scrutinising the organisation.
 - iii Consideration can be given to contacting individuals who were involved in the reviews and have since left the CCRC.

Resources and Budget

12. The following arrangements will be made:
 - i Kings Counsel at a day rate to be agreed with Chambers.²
 - ii Operational and administrative support to be provided as required from within existing CCRC staffing.

² Commercial figure to be shared with the Board.

Accountability, Output and Timescales

13. The KC is to provide a report to the CCRC Board.
14. It is envisaged that the full report will be shared with the Lord Chancellor's office and the findings made public.³
15. Periodic updates on progress are to be provided to the CCRC Board by the KC.
16. The full report is to be provided by 24 October 2023 and earlier if possible.

21 August 2023

³ Personal data and sensitive information would be redacted in line with any legal constraints or privacy issues.