



CRIMINAL APPEAL ACT 1995

STATEMENT OF REASONS FOR A DECISION NOT TO MAKE A REFERENCE TO THE COURT OF APPEAL.

CCRC Reference:	01230/2019
Applicant:	Ms Chloe Mason – on behalf of Mrs Alice Wheeldon (Deceased) Mr Alfred Mason (Deceased) Mrs Winnie Mason (Deceased)
Applicant's Representative:	Ms Chloe Mason, c/o Mr Ben Williams. St Philips Chambers, 55 Temple Row, Birmingham, B2 5LS

In the exercise of its powers under the Criminal Appeal Act 1995 ("the Act") the Criminal Cases Review Commission ("the CCRC") has considered the application of Chloe Mason for review of the convictions of Mrs Alice Wheeldon, Mr Alfred Mason and Mrs Winnie Mason.

The CCRC has decided **not** to refer the convictions of Mrs Alice Wheeldon, Mr Alfred Mason and Mrs Winnie Mason to the Court of Appeal.

Details of Conviction and Sentence

Date:	10 March 1917
Court:	Central Criminal Court
Offence:	Alice Wheeldon – Conspiracy to Murder (Lloyd George) and soliciting and proposing to Murder. Alfred Mason - Conspiracy to Murder (Lloyd George). Winnie Mason - Conspiracy to Murder (Lloyd George).
Sentence:	Alice Wheeldon – 10 years’ penal servitude Alfred Mason - 7 years’ penal servitude Winnie Mason - 5 years’ penal servitude

Summary

- i. On the 22 April 2021, on information available from Ms Mason and her representatives, the CCRC decided not to refer the convictions of Alice Wheeldon, Alfred Mason and Winnie Mason to the Court of Appeal. The representatives were given until 7 June 2021 to make further comments to the CCRC
- ii. The CCRC received further comments on 20 September 2021. Having read and considered both the initial and further comments the CCRC has made a final decision not to refer the conviction to the Court of Appeal. The CCRC's decision is explained in the "Analysis and Reasons" and "Further Analysis and Reasons" sections of this Statement of Reasons.
- iii. The position in relation to papers considered and disclosure of material is set out in Annex 1. A summary of the Commission's powers is at Annex 2.

The Trial

This section summarises the case as presented at trial. It does not necessarily reflect the CCRC's view of that evidence or of those arguments or indeed the applicant's assessment of the evidence or arguments as presented to the CCRC.

1. On 7 December 1916, David Lloyd George was appointed Prime Minister of the United Kingdom; Mr Lloyd George was a vocal supporter of conscription.
2. At this time, the first defendant Alice Wheeldon was living in Derby and was part of the anti-war movement that opposed conscription. The second defendant, Winnie Mason, was one of Mrs Wheeldon's four children. She was married to the third defendant, Alfred Mason, who worked as a pharmacist. Winnie and Alfred Mason lived together in Southampton. Harriet [Hettie] Wheeldon was the fourth defendant, also living in the Wheeldon household in Derby.
3. On 21 December 1916, a man using the name Alec Gordon was sent as an undercover agent to Derby by Herbert Booth, who was an employee of the Ministry of Munitions (PMS2). Posing as a conscientious objector seeking accommodation, he was referred to Harriet (Hettie) Wheeldon and subsequently visited the Wheeldon household.
4. From 26 December 1916, Mr Gordon and Mrs Wheeldon met on an unknown number of occasions, staying overnight on 27 December. On 29 December, Mr Gordon introduced Herbert Booth to Mrs Wheeldon. Mr Booth also posed as a conscientious objector.
5. On 1 January 1917, a parcel addressed to Mrs Wheeldon was intercepted at Derby railway station. It contained poison that had been sent from Southampton by Winnie Mason. Winnie had acquired the poison from her husband Alfred Mason.
6. On 30 January 1917, Alice Wheeldon, Winnie Mason, Alfred Mason, and Harriet Wheeldon, another of Mrs Wheeldon's four children, were arrested. They were later charged with Conspiracy to Murder the Prime Minister, David Lloyd George, and Sir Arthur Henderson, Labour leader and a member of the small War Cabinet.

Prosecution Case

7. The prosecution asserted that Mrs Wheeldon had suggested to Mr Gordon that she should acquire poison to enable him to murder Mr Lloyd George and Sir Arthur Henderson.

Defence Case

8. The defence case was that Mrs Wheeldon believed Mr Gordon to be a conscientious objector, who had offered to help her with an 'emigration scheme' for her son and others. In return Mr Gordon sought assistance from Mrs Wheeldon in securing the escape of his friends from an internment camp. She agreed to provide poison to Mr Gordon for use on the guard dogs at the camp.

Trial

9. The trial commenced on 6 March 1917 at the Central Criminal Court. Herbert Booth gave evidence on behalf of the prosecution. Alec Gordon was not called as a witness.
10. On 8 March 1917, the prosecution closed their case and the defence case commenced. That same day, a member of the jury became ill. They were replaced, and the trial started again from the prosecution opening.
11. During the trial, the prosecution adduced 'bad character' evidence in respect of Alice Wheeldon's alleged involvement in other purportedly criminal acts/plots engaged in by the suffragettes. Mrs Wheeldon gave evidence denying any involvement.
12. On 10 March, the defendants, other than Harriet Wheeldon were convicted and sentenced to penal servitude: Alice Wheeldon - ten years, Alfred Mason – seven years and Winnie Mason – five years.

The Appeal

This section summarises the arguments raised on appeal and the outcome of the appeal.

13. On 19 March 1917, the defendants sought leave to appeal their convictions on the following three grounds:

i. On the point of law:

That the prosecution failed to call or disclose details of their most material witness, Alec Gordon, and thereby perverted the course of justice to the detriment of the appellants.

ii. The learned Judge misdirected the jury in that:

He failed to sufficiently point out that the evidence of Alice Wheeldon in relation to why Alec Gordon wanted the poison remained uncontradicted.

iii. That the verdict of the jury was against the weight of the evidence.

14. On 2 April 1917, permission to appeal was refused.

The Applicant's Submissions

15. The application was received by the CCRC on 19 November 2019. Chloe Mason is represented by Mr Ben Williams of St Philips Chambers.
16. The application raises the following three potential grounds for an appeal:
 - i. **The role of 'Gordon', specifically the failure to call him as a witness and the failure to disclose his background.**

The agent, Gordon, was deliberately kept out of the trial. He did not appear as a witness and the defence were not told of his true identity. Research has shown that Gordon was William Rickard, a mentally unstable convicted criminal.
 - ii. **Discharge of Jury 1 and empanelling of Jury 2.**

The first trial was aborted after the close of the prosecution case due to the illness of a juror. The trial was restarted with the original 11 jurors plus 1 new juror and all the evidence that had been heard to that point was heard again.
 - iii. **Admission of and judicial reference to evidence of the defendants' 'bad character'.**

Inadmissible bad character evidence was adduced against Mrs Wheeldon. This was evidence, disputed at trial, of Mrs Wheeldon's involvement in the 'suffragette outrages', including the Breadsall Church arson, sending a skull to the Home Secretary McKenna, and the failed 'poisoned nail in the boot' plot against Lloyd George.

The CCRC's Review

17. The CCRC has focussed the initial stage of this review on the questions of approved person and discretion, while always bearing in mind the referral test.
18. The CCRC has read and carefully considered the points made in this detailed application, particularly in respect of the issues around 'approved person' and 'discretion'.
19. The CCRC is sympathetic towards the frustrations endured by Ms Mason and the obstacles that she has faced, in particular, in obtaining material from public bodies and her endeavours in seeking justice.
20. In reaching its decision, the CCRC has considered relevant caselaw in respect of the questions of approved person and the CCRC's discretion in referral.

Analysis and Reasons

Approved Person

21. Where a convicted person is deceased, the Court of Appeal must firstly decide whether the appeal has been brought by an approved person.
22. Section 44A of the Criminal Appeal Act 1968 defines an approved person to be:
 - a. the widow or widower;
 - b. the “personal representative” (within the meaning of the Administration of Estates Act 1925, s. 55(1)(ix)); or
 - c. any other person appearing to the Court to have, by reason of a family or similar relationship with the dead person, a substantial financial or other interest in the determination of the appeal.
23. The applicant, Ms Chloe Mason, is the great granddaughter of Alice Wheeldon and the granddaughter of Alfred and Winnie Mason. Ms Mason’s father, Peter (now deceased) is the son of Alfred and Winnie.
24. It is submitted that Ms Mason qualifies as an ‘approved’ person in accordance with section 44A(c) of the Criminal Appeal Act 1968.
25. It is submitted that Ms Mason has a substantial emotional interest, in the determination of the appeal:
 - i. Profound feelings of humiliation, anger and sadness have been experienced by Ms Mason and her family as a result of the case. The sense of injustice was and is plainly felt very keenly. The impact of the case was particularly acute because its premise was anathema to the family’s actual social and ethical outlook over generations.
 - ii. The convictions have meaningfully tarnished the family’s name and reputation.
26. In determining whether the Court of Appeal would consider Ms Mason to be an approved person the CCRC has looked at the relevant caselaw.
27. *R v Whelan* [1997] Crim.L.R. 659 and *R v Finlay* [2009] EWCA Crim 1493 demonstrate that where an applicant has died during the process of an appeal, the Court has approved a close relative to continue with the application.

28. Generally, approval has been granted to immediate family members, for example parents, siblings, and children. In historic cases, approval has been granted to other family members as identified in *R v Knighton* [2002] EWCA Crim 2227 and *R v Bentley* [2001] 1 Cr.App.R. 21. In both cases, the convicted person's niece was held to be an 'approved person' under the act.
29. While the CCRC has not identified any cases where the Court of Appeal either accepted or refused to approve a person under Section 44 who was a grandchild of the convicted person, arguably a granddaughter/great granddaughter is in a closer familial relationship than a niece and therefore the Court may accept that Ms Mason is an approved person under the Act.
30. The CCRC has considered whether Ms Mason has a substantial emotional interest in this matter. It is accepted that Ms Mason had never met Alice Wheeldon. As a young child, she knew her Grandmother Winnie Mason, as her family lived with Winnie in Welwyn Garden until her death in 1953. Ms Mason also recalls visiting Alfred Mason in London at his pharmacy with her sister Deirdre in the late 1950's and early 1960's. She has confirmed that she did not know of the case until after both grandparents had died.
31. The application refers to a number of incidents which have caused Ms Mason to have "profound feelings of humiliation, anger and sadness". The CCRC accepts entirely her account of the effect the discovery of the convictions has had on her and her family. The CCRC notes that the Court of Appeal would have regard to all of the circumstances surrounding Ms Mason's involvement with the defendants and their case and believes there is a real possibility that the Court would be satisfied that she falls within the Section 44A(c) of the Act.

The CCRC's considerations

32. The CCRC is of the view that submissions identified in the application may raise a real possibility that these convictions would be overturned.
- i. **The role of 'Gordon', specifically the failure to call him as a witness and the failure to disclose his background.**
It is accepted that Gordon, was deliberately kept out of the trial and should have been called as a witness, where his evidence could have been properly tested.
 - ii. **Discharge of Jury 1 and empanelling of Jury 2.**
The CCRC accepts that the replacement of the juror was wrong, and the trial should have continued with the 11 jurors.
 - iii. **Admission of and judicial reference to evidence of the defendants' 'bad character'.**
The CCRC would agree that the admission of the 'bad character' evidence should have been considered separately and submissions to challenge this should have been allowed by the defence.
33. Accordingly, the CCRC is of the view that if the defendants were alive today and the convictions were more recent, and that the allegations being made by the applicant could be substantiated to the satisfaction of the Court of Appeal, then there is prima facie a real possibility that the Court of Appeal would consider these convictions to be unsafe.
34. Nonetheless, the CCRC has decided to exercise its discretion not to refer this case to the Court of Appeal.

CCRC's discretion not to refer.

35. Section 9, subsection 1 of the Criminal Appeal Act 1995 states:

“(1) Where a person has been convicted of an offence on indictment in England and Wales, the Commission-
a) may at any time refer the conviction to the Court of Appeal.

“(2) A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under section 1 of the 1968 Act against the conviction.”

36. This section has been interpreted as conferring on the CCRC the discretion whether or not to refer a case to the Court of Appeal where the statutory criteria are met.
37. The Court of Appeal¹ has acknowledged, that the CCRC has a discretion whether or not to refer a case to the appropriate appeal court even where the statutory conditions for referral are satisfied.
38. The discretion not to refer must be exercised in accordance with public law principles. The decision must be lawful, fair and reasonable. Each case must be considered on its individual merits. All relevant factors must be considered, and the irrelevant disregarded. The reasoning must be set out fully and the applicant must have an opportunity to comment specifically before the decision is finalised.²
39. It has been submitted that there are powerful grounds to refer the convictions to the Court of Appeal in this case on the basis that the case is of real historical significance. The submissions cite the seriousness of the offence and the status of the target and allege that the defendants' right to a fair trial was sacrificed in the name of political interests.
40. It is accepted within the application that for sound public policy reasons the CCRC are required to scrutinise posthumous applications for a referral with care.
41. The CCRC has acknowledged the comments of the Court of Appeal in the following cases with regard to the exercise of its discretion not to refer:

¹ (Clark [2001] EWCA Crim 884, Smith (Wallace Duncan) [2004] EWCA Crim 631) and R v Luckhurst (deceased) [2010] EWCA Crim 2618 and the Divisional Court (R (Saxon) v CCRC [2001] EWHC Admin 505 and R (Westlake) v CCRC [2004] EWHC 2799)

² CCRC Discretion in Referrals Casework Policy

42. In *R v Hanratty* [2002] EWCA Crim 1141, at paragraph 214, Lord Woolf LCJ stated:

"We do not consider it would be right to attempt to judge the Commission with the benefit of hindsight in relation to this case. We do however emphasise that there have to be exceptional circumstances to justify incurring the expenditure of resources on this scale, including those of this court, on a case of this age."

43. At paragraph 90 of the judgment in *R v Ellis* [2003] EWCA Crim 3556, the Court of Appeal stated:

"We would wish to make one further observation. We have to question whether this exercise of considering an appeal so long after the event when Mrs Ellis herself had consciously and deliberately chosen not to appeal at the time is a sensible use of the limited resources of the Court of Appeal. On any view, Mrs Ellis had committed a serious criminal offence. This case is, therefore, quite different from a case like *Hanratty* where the issue was whether a wholly innocent person had been convicted of murder. A wrong on that scale, if it had occurred, might even today be a matter for general public concern, but in this case there was no question that Mrs Ellis was other than the killer and the only issue was the precise crime of which she was guilty. If we had not been obliged to consider her case we would perhaps in the time available have dealt with eight to twelve other cases, the majority of which would have involved people who were said to be wrongly in custody. The Court of Appeal's workload is an ever-increasing one and recent legislation will add substantially to that load. Parliament may wish to consider whether going back many years into history to re-examine a case of this kind is a use that ought to be made of the limited resources that are available. The exercise of the CCRC's discretion in deciding, whether to refer cases is one that is a frequent source of challenge by way of Judicial Review and it may be that an express power to consider factors of this kind would enable the CCRC to take into account more readily the public interest in making its decision."

44. At paragraph 26 of the judgment in *R (Westlake) v CCRC* [2004] EWHC, the High Court stated:

"I do not think that the court was there indicating that an amendment to the 1995 Act was required in order for the Commission to take into account the costs and resources of an appeal. Indeed, as already indicated, Mr Fitzgerald accepts that costs and resources consequential on a referral are a relevant factor to be taken into account by the Commission in deciding whether or not to exercise its statutory discretion."

45. At paragraph 54 of the judgment in *R v Luckhurst* [2010] EWCA Crim 2618, the Court of Appeal stated:

“We decline to give directions to the Criminal Cases Review Commission on this subject. The discretion is one which it is for the Commission to exercise. However, we shall make these observations. In cases of this age, where the defendant has died, the test to be applied by the Commission should not be the rather negative approach that there is ‘no justification not to refer it’ so that it should be referred. We suggest that the approach should be the other way round: that in the judgment of the Commission there should be a positive justification for referring such a case before it is referred. Left to ourselves, we should not have granted any extension of time.”

46. It is against this background that the CCRC has considered the exercise of its discretion in this case. The CCRC considers the following points to be of relevance to this issue:

The Public Interest and the Cost to the Public Purse

47. The CCRC will have regard to the following factors in considering whether to exercise its discretion not to refer³:
- The public interest, including the cost to the public purse involved in an appeal⁴ and in correction of an injustice.
 - The age and seriousness of the conviction, and whether the convicted person is deceased⁵.
 - The interests of third parties.
 - Whether the defendant was denied a basic constitutional right.
 - Whether the prosecution constituted an abuse of process or affront to justice.
 - Other remedies already secured.
48. The CCRC recognises that this is a case of significant interest to historians and others in the wider community who have shown an interest in these types of cases, especially where Government agencies may have acted unlawfully. This is particularly the case with the citizens of Derby, especially Derby People’s History Group (DPHG). The unveiling of the ‘walk of fame’ and ‘blue plaque’ in Derby has kept this topic on the agenda in that community.

³ CCRC Discretion in Referrals Policy

⁴ Which has greater relevance in circumstances where the convicted person is deceased – see paragraph 22 of *R (Westlake) v CCRC* [2004] EWHC 2799

⁵ See, for example, paragraph 22 of *R (Westlake) v CCRC* [2004] EWHC 2799 and paragraph 54 of *R v Luckhurst (deceased)* [2010] EWCA Crim 2618

49. If a case continues to attract the interest and support of some members of the public, it does not necessarily follow that public interest would be served by referring this case to the Court of Appeal.
50. It is submitted on behalf of the applicant that, “The time and cost pressures on the CCRC will be substantially reduced by the applicant’s comprehensive presentation of primary documentary evidence, including evidence not available to the defence, discovered by expert archivists and historians. The application is detailed and prepared in conjunction with counsel. Further, should these convictions be referred, cost for the Crown investigating and preparing for the appeal, and the Court of Appeal’s time are unlikely to be high.”
51. The CCRC does not accept this submission. This is a case that would take a considerable amount of time to prepare at a cost to the public purse. The CCRC would have to independently assess the submissions that have been made. If a referral were to be made this would engender significant costs to the Crown Prosecution Service, instructed Counsel, the Criminal Appeal Office and judicial time.
52. The Court of Appeal have repeatedly stated that the CCRC should consider very carefully the cost involved in referring cases of significant age and should only do so where it is in the public interest. This case is over 100 years old, and all the defendants are deceased.
53. It would only be in the most exceptional circumstances that the CCRC would refer to the Court a 104-year-old conviction. The CCRC does not accept that there would be a public interest in referring this case to the Court of Appeal, considering the very high workload of the Court of Appeal, and the considerable expense to the public purse of an appeal.

The denial of constitutional rights to the defendants, abuse of process and affront to justice

54. It is submitted that, “Arguably a major importance of the Wheeldon-Mason investigation and trial is to drive home that flawed practices are repeated across generations, and that lessons will not be learned unless institutions own up to the transgressions and improprieties that have occurred within.”
55. The application alleges a number of breaches of law and procedure which led to unfairness in the trial, or which would, applying the law as it is now, give rise to a basis for a stay of the proceedings as an abuse of process. Broadly speaking these are:

- That the true identity and criminal past of a potentially crucial prosecution witness, Gordon, was deliberately withheld from the court, and that Gordon himself was not called in order to avoid exposing these matters.
 - That the way in which the jury was supplemented by a replacement juror, leading to eleven of the original jury hearing the prosecution case twice, resulted in fundamental unfairness in the proceedings.
 - That highly prejudicial and unproven bad character evidence in respect of Alice Wheeldon was wrongly admitted.
56. Assuming for the purposes of this decision that these allegations could be substantiated to the satisfaction of the Court of Appeal, the CCRC has considered whether the exposure of such egregious breaches of the proper conduct of a criminal trial means that it would be in the public interest to refer the case. In doing so, the CCRC has fully considered what lessons the modern criminal justice system could learn from this case.
57. This trial took place in January 1917. In the intervening 104 years, there have been significant changes to the regulation and operation of the Police, Security Services, the criminal justice system, the media, and the political system. Any potential lessons from this case need to be considered in the light of these changes and are discussed below.

Gordon and the use of undercover officers

58. The application argues that recent revelations regarding the misuse of undercover police officers which have resulted in the ongoing Undercover Policing Inquiry demonstrate that there are lessons for the modern criminal justice system from this case.
59. The introduction of the Regulation of Investigatory Powers Act 2000 made significant changes in governing the use of covert surveillance, undercover operatives, and covert human intelligence sources by public bodies (including the Police and MI5).
60. The law on disclosure, including the concept of Public Interest Immunity has developed significantly since 1917. The Crown could not now put forward a case based on the account of an undercover officer without the trial judge being fully aware of this and of any issues of credibility or reliability in relation to the provider of the account. Were the Crown to deliberately seek to keep an important witness away from the trial this would now give rise to a basis to stay the proceedings as an abuse of process.

61. The CCRC is satisfied therefore that whilst the use of undercover officers within criminal trial remains a contentious issue, there are no significant lessons in respect of this matter, that the system could learn from this or any other case dating from more than 100 years ago.

Jury Irregularities

62. Today, the Crown Court adopts 'modern standards of fairness' in jury trials. Section 16(1) of the Juries Act, 1974 specifically deals with ill jurors, where a juror can be discharged by the Court through illness.

“Where in the course of a trial of any person for an offence on indictment any member of the jury dies or is discharged by the court whether as being through illness incapable of continuing to act for any other reason, but the number of its members is not reduced below nine, the jury shall nevertheless... be considered as remaining for all the purposes of that trial properly constituted, and the trial shall proceed and a verdict may be given accordingly.”

63. Therefore, what happened in this trial 1917 would not occur today. A new juror would not be allowed to replace a juror who became ill halfway through a trial.

Defendant's Bad Character

64. Today, there are strict rules regarding the use of bad character evidence. The Criminal Justice Act 2003 outlines procedures in introducing 'bad character' evidence which is now regulated by the Courts.
65. Part 21 of the Criminal Procedural Rules outlines the procedure in making an application to admit evidence of bad character. Unless both parties agree on the evidence being admitted, the court will hear arguments from both sides. The court will then decide to allow or refuse the application and give reasons for that decision.
66. The CCRC is satisfied that if these rules were applied at a modern trial, the evidence which is cited in the application may well not be admitted in evidence.
67. In conclusion, as a result of changes in legislation and procedures in the Criminal Justice System and accountability of public bodies, there is no reasonable prospect that any lessons would be learned from this application or that those serious breaches of fairness would occur today.

68. The CCRC has given careful consideration to the merits of the submissions which have been advanced in this case and accepts that there is, prima facie, a real possibility that the Court of Appeal would consider these convictions to be unsafe. However, having decided to exercise its discretion not to refer this case, the CCRC has not undertaken a full review of the variety of issues presented.
69. It should also be noted that the CCRC has not made any comment about Royal Prerogative of Mercy. The CCRC has not been requested to consider that subject, either by the applicant or by the Secretary of State; and, since the CCRC has carried out no substantive enquiries in the case, it has not discovered any new information which might need to be disclosed to the Secretary of State in connection with the Royal Prerogative of Mercy.
70. It is open for Ms Mason to make an application to the Secretary of State for the use of Royal Prerogative of Mercy in respect of her relatives. The CCRC is not endorsing this course of action or making any observations on the merits of such an application.
71. Therefore, the decision of the CCRC is not to refer this case to the Court of Appeal because:
 - a. Alice Wheeldon, Winnie Mason and Alfred Mason are all deceased.
 - b. Their convictions are extremely old.
 - c. A referral would result in a considerable financial cost to the state.
 - d. An appeal would also take up valuable court time. This is inappropriate given the continued pressures on Criminal Justice System in dealing with current 'live' trials and appeals.
 - e. Any lessons from this case, such as use of undercover officers, the possibility of the state acting as an 'agent provocateur', jury irregularities and bad character, have been remedied in recent years and would have no practical relevance today.

Further Comments.

72. On 22 April 2021, Ms Mason's representatives were informed that the CCRC had exercised its discretion and decided not to refer this conviction to the Court of Appeal. The representatives were offered the opportunity to make further comments in response by 7 June 2021.
73. No comments had been received by that date. However, on 20 September 2021, the CCRC received further comments from Ms Mason. Those further comments have now been considered by a committee of three Commissioners. The additional comments addressed the following subjects:
- i. Ms Mason suggests that that the decision not to refer is fundamentally based on a cost-benefit equation rather than in the public interest.
 - ii. There is no acknowledgment that the case is old because earlier appeals have not been possible due to obstacles in obtaining public records.
 - iii. Public Interest – There has been no mention of the benefits of a referral – seriousness, alleged subjects, historical interest, impact on the defendant's family.
 - iv. Request for amendments to the Statement of Reasons prior to publication in respect of:
 - amending Page 2 – Summary (i)
 - amending Page 3 – paragraphs 2, 3 and 4
 - amending Page 4 – paragraph 12
 - amending Page 6 – paragraph 16 (iii)
 - amending Page 9 – paragraph 30

Further Analysis and Reasons.

74. After careful consideration of the original and further submissions made by Ms Mason, the CCRC stands by its original decision to exercise its discretion and not refer this conviction to the Court of Appeal.
75. The CCRC has always maintained the view that the submissions identified in this application **may** raise a real possibility that these convictions would be overturned.

Approved Person.

76. The CCRC accepts that Ms Mason met her grandmother Winnie Mason, and that she **may** be an 'approved person' under Section 44 of the Criminal Appeal Act 1968. However, this does not change the basis of our decision.

Public Interest.

77. The CCRC fully accepts that Ms Mason had late access to public records due to the obstacles that confronted her. We also recognise the significant impact this case has had on her personal life and her family. We agree that it is a serious case and is of significant interest to historians and many other people.
78. The CCRC has properly considered the public interest side of this case and has balanced this with the current competing factors that face the Criminal Justice System today.
79. However, as highlighted in paragraph 71, the case is extremely old (over 100 years old) and any lessons from this case, such as use of undercover officers, the possibility of the state acting as an 'agent provocateur', jury irregularities and bad character, have been and are being remedied and would have no practical relevance today. It is therefore not in the public interest to refer this back to the Court of Appeal.

Amendments to the Statement of Reasons.

80. **Amending Page 2 – Summary (i)** – The Statement of Reasons document has a standard template. Part of this template is in the Summary section. The CCRC has not deviated from this template as it does not add anything further to what has already been stated.

81. **Amending Page 3 - paragraphs 2, 3 and 4** – The CCRC has amended this paragraph within the Final Statement of Reasons.
82. **Amending Page 4 – paragraph 12** – The CCRC has amended this paragraph within the Final Statement of Reasons.
83. **Amending Page 6 – paragraph 16 (iii)** – The CCRC has partially amended this paragraph within the Final Statement of Reasons and accepts that the evidence was disputed.
84. **Amending Page 9 – paragraph 30** – The CCRC has amended this paragraph within the Final Statement of Reasons.

The CCRC's Final Decision

85. On the information available from Ms Mason and her representatives, the CCRC has decided not to refer this conviction to the Court of Appeal and this statement sets out the CCRC's reasons in accordance with section 14(6) of the Act. This decision has been made by a committee consisting of three Commissioners in accordance with paragraph 6 of Schedule 1 to the Act and is signed by one of the committee on behalf of the CCRC.

Signed:

2 February 2022

A handwritten signature in black ink, appearing to be 'D. Brown', with a long horizontal stroke extending to the right.

D Brown
J Gramann
N Cockburn

Annex 1

Papers considered by the CCRC

- The application to the CCRC and supporting documents.
- Further Comments from Ms Mason.
- Relevant legislation, case law and CCRC Policy.

Note

1. The CCRC has a legal duty to disclose any new material it has obtained during its review which would help the applicant make their best case for a reference to the appeal court. The CCRC may, in its discretion, provide other material where it considers it appropriate.
2. The material may be sent to the applicant in its original form, or as an extract or it may be summarised.
3. In this case, the CCRC has not sent any material other than this document because the information is adequately summarised, or in material already available to the applicant.

Annex 2

Summary of the CCRC's powers to refer

The CCRC may refer a **conviction** to the court if:

1. there is a **real** possibility that the conviction would be overturned if it were referred; and
2. this real possibility arises from evidence or argument which was **not put forward at trial or appeal** (or there are exceptional circumstances⁶); and
3. the applicant has already appealed or applied for leave to appeal against conviction (or there are **exceptional circumstances**⁷).

⁶ "Exceptional circumstances" to allow us to refer a case without something 'new' are extremely rare.

⁷ "Exceptional circumstances" to allow us to refer a case where there has not been an earlier appeal are very rare. There has to be a good reason why there has been no appeal and why there cannot be an appeal now without the CCRC's help.