

PE1370/C



BY EMAIL ONLY

Mr Fergus D Cochrane
Clerk to the Public Petitions Committee
TG.01, The Scottish Parliament
Edinburgh
EH99 1SP

GS

7 February 2011

Dear Mr Cochrane

CONSIDERATION OF PETITION PE1370

Thank you for your letter of 25 January 2011. I note that the Public Petitions Committee is seeking a response to the specific issues raised, in particular by Christine Grahame MSP and Bill Butler MSP, during the discussion on the above petition.

I note that Mr Butler identified two questions. My understanding is that the first was directed to the Cabinet Secretary and that it is the second question, '*can the SCCRC open an abandoned appeal?*' to which the Committee seeks a response from the Commission.

The Commission's position is that, in terms of its founding legislation (Part XA of the Criminal Procedure (Scotland) Act 1995 as amended), it is competent for the Commission to refer a case to the High Court in which a previous appeal was abandoned.

It may be helpful for me to add the following observations. If the Commission were to receive an application in respect of a case in which a previous appeal had been abandoned, before accepting the case for review the Commission would first consider the reasons for the abandonment of the appeal. Having considered those reasons, and any other relevant circumstances, the Commission would accept the case for review only if it was satisfied that it was in the interests of justice to do so. This is because, in terms of the Commission's statutory test, before the Commission may refer a case to the High Court, it must believe not only that a miscarriage of justice may have occurred in the case but also that it is in the interests of justice that a reference should be made (see section 194C of 1995 Act).

What I have said in the foregoing paragraph reflects what is contained in the 'Frequently Asked Questions' section of the Commission's website (available at <http://www.sccrc.org.uk/frequentlyaskedquestions.aspx>). It may also be helpful to point out that it is competent for the Commission to refer to the High Court the

conviction of a person who is deceased (see section 194B(4) of the 1995 Act), provided the Commission believes that the grounds set out in section 194C are met. Again, further information in that regard is available from the Commission's website at the above link.

Finally, I note that, in addition to the question posed by Mr Butler, Christine Grahame also indicated that she would like to know the SCCRC's views on the amendments to Part XA of the 1995 Act, as inserted by section 7 the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010. The Commission's Chairman, Jean Couper CBE, issued a statement on this matter on 23 November 2010. It is available from the Commission's website at <http://www.sccrc.org.uk/ViewFile.aspx?id=486>.

I trust that this is of assistance in addressing the issues raised.

Yours sincerely

Gerard Sinclair
Chief Executive