



Criminal Cases Review Commission

CASEWORK POLICY

Policy Title: **Power to Obtain Material from Public Bodies (s.17)**
Reference: **CW-POL-27** Version: **2.0**

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The CCRC's Quality Statement

The CCRC is committed to achieving high-quality case reviews as quickly as possible. In order to achieve this, we operate under a Quality Management System; please see 'Q-POL-01 CCRC Quality Policy' for further information. Our policy documents are available on our website: www.ccrcc.gov.uk.

If you or someone you represent has difficulty accessing the internet then please contact us via 0300 456 2669 (calls charged at local rate) and we will send a hardcopy of the relevant policy free of charge.

This is a quality-controlled document. Significant changes from the last issue are in grey highlight: like this. Significant deletions are shown as: [text deleted].

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Introduction

This policy states the CCRC's approach to obtaining material held by public bodies using the CCRC's powers under section 17 of the Criminal Appeal Act 1995.

Key Points

- 1) Unless otherwise stated, all references to 'sections' are in relation to the Criminal Appeal Act 1995.
- 2) A public body receiving a notice under section 17 from the CCRC is under a legal duty to comply with the request, providing such a request is reasonable. The notice will specify exactly what the CCRC is requesting the public body to do.
- 3) "Public body" includes police forces, the Crown Prosecution Service, the Armed Forces, the Security Services, government departments, Local Authorities (including Social Services departments), Courts, HM Prisons, and the Probation Service.
- 4) The CCRC will direct any formal notice issued under section 17 to "the appropriate person" at the public body. The appropriate person will be responsible for ensuring that the public body complies with its obligations.
- 5) When a section 17 notice is received by a public body it is required to not destroy, damage, or alter the material until the notice has been withdrawn by the CCRC.
- 6) The duty on a public body to comply with a notice under section 17 is not affected by matters such as the general sensitivity of the material, or medical confidentiality, legal professional privilege, or the existence of a court order for public interest immunity, or by legislation such as the Data Protection legislation or the Official Secrets Acts.
- 7) The CCRC will handle and store all material provided by a public body in accordance with the CCRC's relevant policies.

Definitions

None

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1 The CCRC's power to obtain material from a public body

- 1.1 Section 17 of the Criminal Appeal Act 1995 (see [Appendix 1](#)) applies where the CCRC believes that a person serving in a public body has possession or control of a document or other material which may assist the CCRC in the exercise of any of its functions.¹
- 1.2 When requested to do so, a public body is under a duty to make such material available to the CCRC, providing such a request is reasonable.

2 The meaning of “public body”

- 2.1 A public body is defined in section 22(1). It includes:
- I. any body constituted for the purposes of public service, local government, or the administration of justice; or
 - II. whose members are appointed by the Queen, by any Minister or any government department; or
 - III. whose revenues consist wholly or mainly of money provided by Parliament.
- 2.2 “Public body” therefore includes police forces, the Crown Prosecution Service, the Armed Forces, the Security Services, government departments, Local Authorities (including Social Services departments), Courts, HM Prisons, and the Probation Service.²

3 The meaning of “reasonable to do so”

- 3.1 The CCRC's power under section 17 can only be exercised when it is reasonable to do so. As a matter of broad principle, no documents or material will be requested from a public body unless it appears that they may assist the CCRC in determining whether or not a case should be referred to an appeal court.

¹ Section 17(1) of the Criminal Appeal Act 1995.

² This list is not exhaustive.

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- 3.2 The fact that material held by a public body relates directly or indirectly to a case under review by the CCRC, or to a case being investigated for the Court of Appeal by the CCRC, will generally satisfy the requirement of reasonableness.
- 3.3 Where the use of the section 17 power relates to enquiries by the CCRC to assess witness credibility, the CCRC will also have regard to the policy on witness credibility checks.³
- 3.4 The CCRC may need to obtain material under section 17 from a public body when investigating a matter on behalf of the Court of Appeal (under section 15)⁴ or the Secretary of State for Justice (or the relevant Minister in Northern Ireland) (under section 16).⁵

4 The meaning of “Possession or control” and “the appropriate person”

- 4.1 Material may be with an individual or department, it may have been passed on elsewhere or it may have been archived. Therefore, material will be in the “possession” of the person or office which has physical possession at the time the section 17 notice is received, but it may still be under the “control” of another person or office elsewhere.
- 4.2 It is not always possible to identify which part of a public body is actually in possession or control of material at the time a section 17 notice is issued. Consequently, the CCRC will direct any formal notice issued under section 17 to “the appropriate person” at the public body. The appropriate person will be responsible for ensuring that the public body complies with its obligations.
- 4.3 Section 22(4) sets out who will be the “appropriate person” at a public body: for example, the head of the organisation or the Minister in charge of a government department.
- 4.4 In practice, the appropriate person will generally delegate the task of complying with a notice under section 17 to a nominated representative within the public body. Many public bodies dealing with the CCRC on a

³ See ‘CW-POL-23 Witness Credibility Checks’.

⁴ See ‘CW-POL-25 Investigations for the Court of Appeal (s.15)’.

⁵ See ‘CW-POL-26 Assisting the Royal Prerogative of Mercy (s.16)’.

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regular basis have appointed a specific member of staff to act in this capacity.

5 Form of notice under section 17

- 5.1 There is no statutory requirement for section 17 to be exercised in writing. However, in most cases the CCRC will use a standard form which sets out the specific legal obligations imposed on a public body by such a notice.

6 The duties imposed on a public body by section 17

- 6.1 A public body receiving a notice under section 17 from the CCRC is under a legal duty to comply with the request. The notice will specify exactly what the CCRC is requesting the public body to do.
- 6.2 The CCRC may require a public body:⁶
- I. To produce material.
 - II. To allow the CCRC access to it.
 - III. To allow the CCRC to take it away.
 - IV. To allow the CCRC to make and take away a copy in an appropriate form.
- 6.3 When a section 17 notice is received by a public body it is required to not destroy, damage, or alter the material until the notice has been withdrawn by the CCRC.⁷

7 The extent of the section 17 power

- 7.1 Section 17(3) provides that the material may relate either directly to a case in relation to which the CCRC's function may be exercised, or in relation to any other case which may be connected in any way with that case. As such, the CCRC could, for example, seek information relating

⁶ Section 17(2) of the Criminal Appeal Act 1995.

⁷ Section 17(2) of the Criminal Appeal Act 1995.

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to a co-defendant of an applicant, even if that co-defendant had not applied to the CCRC themselves.

7.2 Section 17(4) provides that the duty imposed on a public body:

“Is not affected by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) which would otherwise prevent the production of the document or other material to the Commission or the giving of access to it to the Commission”.

7.3 In other words, the duty on a public body to comply with a notice under section 17 is not affected by matters such as the general sensitivity of the material, or medical confidentiality,⁸ legal professional privilege, or the existence of a court order for public interest immunity, or by legislation such as the Data Protection or the Official Secrets Acts.

8 What happens to the material when it is provided to the CCRC?

8.1 Ownership of the material remains with the public body throughout the duration of its time with the CCRC.

8.2 The CCRC will handle and store all material provided by a public body in accordance with the CCRC’s relevant policies.

8.3 Will the CCRC give the material to someone else?

8.3.1 Section 25(1) specifies that a public body can notify the CCRC that no onward disclosure of material provided under section 17 is to be made without prior consent, although such consent may not be unreasonably withheld.⁹

8.3.2 The CCRC may decide that it is necessary to disclose information provided by a public body under section 17. If so, disclosure can only be made for one of the purposes specified in section 24.

8.3.3 A full explanation of the relevant statutory provisions and the CCRC’s general approach to disclosure of information is set out in ‘CW-POL-19 Disclosure by the CCRC’.

⁸ See ‘CW-POL-18 Accessing Medical Records’ for further information.

⁹ Section 25(2) of the Criminal Appeal Act 1995.

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8.4 What happens when the CCRC's review has been completed?

- 8.4.1 The CCRC will return all original material provided by a public body, generally at the conclusion of its review, but it might be returned earlier. Once the review has been concluded, the section 17 notice will be formally withdrawn, and the public body will be notified in writing that its obligations under section 17 are at an end.

9 Reminders and Discretion to extend response times

- 9.1 The CCRC will act reasonably in making all requests and where appropriate issues reminders and if appropriate may extend the time permitted for a response.

10 Non-Compliance and Escalation

- 10.1 In cases where there is non-compliance with a s17 notice, the matter will be escalated to the CCRC's Legal Team. The CCRC will consider making a formal complaint to the public body and/or litigation through judicial review (seeking a Court Order compelling disclosure and associated costs).
- 10.2 The CCRC may also report any non-compliance to relevant Ministers, officials or third parties. Details of any such actions may also feature in the CCRC's annual report to Parliament.

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Appendices

1 [Criminal Appeal Act 1995 \(excerpt\)](#)

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Relevant CCRC Documents

Q-POL-01	CCRC Quality Policy
CW-POL-18	Accessing Medical Records
CW-POL-19	Disclosure by the CCRC
CW-POL-23	Witness Credibility Checks
CW-POL-25	Investigations for the Court of Appeal (s.15)
CW-POL-26	Assisting the Royal Prerogative of Mercy (s.16)

Legal Documents (available for free from www.legislation.gov.uk)
Criminal Appeal Act 1995

Document Control

Document author: In-House Counsel
Issue authorised by: Casework Operations Director

Version History

Date Issued	Version	Brief Details of Change	DCR
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Appendix 1 - Criminal Appeal Act 1995 (excerpt)

The law stated below is provided here for information only. It is correct at the time this policy document was published. However, you should always check the www.legislation.gov.uk website for the latest version of the law

17 Power to obtain documents etc. from those serving in public bodies

- (1) This section applies where the Commission believe that a person serving in a public body has possession or control of a document or other material which may assist the Commission in the exercise of any of their functions.
- (2) Where it is reasonable to do so, the Commission may require the person who is the appropriate person in relation to the public body -
 - (a) to produce the document or other material to the Commission or to give the Commission access to it, and
 - (b) to allow the Commission to take away the document or other material or to make and take away a copy of it in such form as they think appropriate,

and may direct that person that the document or other material must not be destroyed, damaged or altered before the direction is withdrawn by the Commission.

- (3) The documents and other material covered by this section include, in particular, any document or other material obtained or created during any investigation or proceedings relating to -
 - (a) the case in relation to which the Commission's function is being or may be exercised, or
 - (b) any other case which may be in any way connected with that case (whether or not any function of the Commission could be exercised in relation to that other case).
- (4) The duty to comply with a requirement under this section is not affected by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) which would otherwise prevent the production of the document or other material to the Commission or the giving of access to it to the Commission.

END OF DOCUMENT

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