



Criminal Cases Review Commission

CASEWORK POLICY

Policy Title: **Power to Obtain Material from Private Bodies and Individuals (s.18A)**

Reference: **CW-POL-28**

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.

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Introduction

This policy states the CCRC's approach to obtaining material held by private bodies and individuals using the CCRC's powers under section 18A of the Criminal Appeal Act 1995 (as amended by the Criminal Cases Review Commission (Information) Act 2016).

Key Points

- 1) Unless otherwise stated, all references to 'sections' are in relation to the Criminal Appeal Act 1995.
 - 2) The CCRC's power allows the CCRC to seek an Order from the Crown Court requiring a person in the private sector to give the CCRC access to documents or other material in that person's possession or control.
 - 3) A private body or individual receiving a Court Order under section 18A is under a legal duty to comply with the Order.
 - 4) In most cases, the CCRC will seek to obtain the material by way of voluntary disclosure, without resorting to an application to court.
 - 5) An Order under section 18A may direct the person against whom it is made not to destroy, damage, or alter the document or other material before the direction is withdrawn by the court.
 - 6) The duty on a private body or individual to comply with an Order under section 18A 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 Data Protection or the Official Secrets Acts.
 - 7) The CCRC will handle and store all material provided by a private body or individual in accordance with the CCRC's relevant policies.
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Definitions

Key Word	Meaning
Commission	The CCRC
CrimPR	Criminal Procedure Rules
<i>Ex parte</i>	A Latin term meaning "by or for one party." It refers to legal proceedings that are conducted without notice to, and outside the presence of, other parties affected by the proceedings.
Respondent	The party in the proceedings who is responding to the application i.e. the private body / individual is the respondent when the CCRC makes the application to the court for an Order to be made under section 18A CAA.

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1 General Information

- 1.1 Section 18A (see [Appendix 1](#)) was inserted into the Criminal Appeal Act 1995 by the Criminal Cases Review Commission (Information) Act 2016.¹ It applies where the CCRC believes that a private body or individual has possession or control of a document or other material which may assist the CCRC in the exercise of any of its functions.
- 1.2 This provision allows the CCRC to seek an Order from the Crown Court requiring a person in the private sector to give the CCRC access to documents or other material in that person's possession or control.²

2 Applying for a Court Order

- 2.1 In most cases, the CCRC will seek to obtain the material by way of voluntary disclosure, without resorting to an application to court. If requests for voluntary disclosure are refused or not appropriate, the CCRC's legal team will arrange for the s.18A application to be made to the Crown Court.
- 2.2 Applications by the CCRC will be made in the Central Criminal Court; see Criminal Procedure Rules (CrimPR) 47.54 to 47.58. Before an Order can be granted, the Court must think that the document or other material may assist the CCRC in the exercise of any of its functions.³

3 The meaning of "Possession or control"

- 3.1 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 18A Order is made, but it may still be under the "control" of another person or office elsewhere.

¹ In force as of 12 July 2016.

² Section 18A (1) of the Criminal Appeal Act 1995.

³ Section 18A (2) of the Criminal Appeal Act 1995.

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4 The duties imposed on a private body or individual by section 18A

- 4.1 A private body or individual receiving a Court Order under section 18A is under a legal duty to comply with the Order. Failure to comply with an Order from the Crown Court would put an individual or company in contempt of Court and potentially subject to the associated sanctions.
- 4.2 The Order will specify exactly what the CCRC is requesting the private body or individual to do. The Order may include a provision about the manner in which access must be given, including allowing the CCRC to take away a document or other material, or to make copies.⁴
- 4.3 An Order under section 18A may direct the person against whom it is made not to destroy, damage, or alter the document or other material before the direction is withdrawn by the court.⁵

5 The Extent of the Section 18A Power

- 5.1 Once an Order has been made by the Crown Court, the provisions of that order apply notwithstanding any obligations of secrecy or other limitations upon disclosure. It should be noted that if the information sought is eligible to be requested under section 17,⁶ then there is no power to apply for a section 18A Order.⁷
- 5.2 Sections 17(3) and 17(4) apply for the purposes of section 18A.⁸
- 5.2.1 Section 17(3) provides that the material may relate either directly to a case 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 to a co-defendant of an applicant, even if that co-defendant had not applied to the CCRC themselves.
- 5.2.2 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

⁴ Section 18A (3) of the Criminal Appeal Act 1995.

⁵ Section 18A (4) of the Criminal Appeal Act 1995.

⁶ See 'CW-POL-27 Power to Obtain Material from Public Bodies' for more information.

⁷ Section 18A (5) of the Criminal Appeal Act 1995.

⁸ Section 18A (6) of the Criminal Appeal Act 1995.

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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.”

- 5.2.3 In other words, the duty on a private body or individual to comply with an Order under section 18A is not affected by matters such as the general sensitivity of the material, or medical confidentiality,⁹ 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.

6 Sensitive Information

- 6.1 It will not always be appropriate to alert a Respondent to the fact that the CCRC is making an application for a section 18A order. This can be dealt with by way of an *ex parte* application.
- 6.2 Applications of this nature will be rare and will only be made when it is clear that the consequences for the integrity of the review should the Respondent be made aware of the application are potentially significant.
- 6.3 In other cases, the CCRC may need to withhold certain information from the Respondent during the course of making an application. In these circumstances, the application will be made using a confidential annex which is served only upon the Court. The Respondent will leave Court when the sensitive material is discussed.¹⁰

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

- 7.1 Ownership of the material remains with the private body or individual throughout the duration of its time with the CCRC.
- 7.2 The CCRC will handle and store all material provided by a private body or individual in accordance with the CCRC’s relevant policies.

⁹ See ‘CW-POL-18 Accessing Medical Records’ for more information.

¹⁰ See CrimPR - Rule 47.57.

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7.3 Will the CCRC give the material to someone else?

7.3.1 Section 25(1)¹¹ specifies that a private body or individual can notify the CCRC that no onward disclosure of material provided under section 18A is to be made without prior consent, although such consent may not be unreasonably withheld.¹²

7.3.2 The CCRC may decide that it is necessary to disclose information provided by a private body or individual under section 18A. If so, disclosure can only be made for one of the purposes specified in section 24.

7.3.3 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'.

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

The CCRC will return all original material provided by a private body or individual at the conclusion of its review, but it might be returned earlier. Once the review has been concluded, the private body or individual will be notified in writing that its obligations under section 18A are at an end.

¹¹ As amended by the Criminal Cases Review Commission (Information) Act 2016.

¹² Section 25(2) of the Criminal Appeal Act 1995.

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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-27	Power to Obtain Material from Public Bodies (s.17)

Legal Documents (available for free from www.legislation.gov.uk)

Criminal Appeal Act 1995

Criminal Cases Review Commission (Information) Act 2016

Criminal Procedure (Amendment No. 2) Rules 2016, SI 2016/705

Document Control

Document author: Head of Legal

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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****

18A Obtaining documents etc from those not serving in public bodies

- (1) The Crown Court may, on an application by the Commission, order a person to give the Commission access to a document or other material that is in the person's possession or control.
- (2) The court may make an order only if it thinks that the document or other material may assist the Commission in the exercise of any of their functions.
- (3) An order under this section may include provision about the manner in which access must be given, including provision allowing the Commission to take away a document or other material or make copies.
- (4) An order under this section may direct the person against whom it is made not to destroy, damage or alter the document or other material before the direction is withdrawn by the court.
- (5) An order under this section may not be made against a person on whom the Commission could impose a requirement under section 17 (person serving in a public body).
- (6) Subsections (3) and (4) of section 17 apply¹³ for the purposes of this section as they apply for the purposes of that section.

*****END OF DOCUMENT*****

¹³ See 'CW-POL-27 Power to Obtain Material from Public Bodies (s.17)' for more information, including an excerpt of section 17 of the Criminal Appeal Act 1995.

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