

CCRC Written Response to Research by Professor Burman *et al*

The Criminal Cases Review Commission ('CCRC') welcomes the publication of the research paper "Digital Communications as Evidence (DCE) in Sexual Offence Applications to the Criminal Cases Review Commission", which was funded by the University of Glasgow Revitalising Research fund.

The CCRC recognises the importance of independent scrutiny of the CCRC's performance and of the way that it discharges its vital public function, and we are grateful to Professor Burman and her colleagues for the detailed consideration which has gone into this research report. The report makes 5 recommendations on which the CCRC has commented below.

Research recommendations together with CCRC response:

1. That the CCRC consider the implications of the Police, Crime, Sentencing and Courts Act 2022, which introduces requirements around the extraction of digital data and in particular section 39(3) of that Act which states that complainants must receive notice in writing about what information is being sought, why it is being sought, and how the information will be dealt with.

The CCRC will consider the potential implications of this legislation – in particular of section 39(3) - and take any appropriate action. The CCRC takes extremely seriously the rights of complainants / victims under Article 8 European Convention on Human Rights (ECHR) – see further below.

2. That consideration is given by the CCRC to include information about the CCRC in police Digital Processing Notices (DPN) which state that the complainant will be informed about sharing their digital data with others.

The CCRC will consider whether information about the CCRC should be included in the Digital Processing Notices which are given to complainants when the police ask them voluntarily to provide their digital devices for the purposes of data extraction. The CCRC will liaise with the National Police Chiefs' Council in this connection.

3. That CCRC reviewers are mindful of victim's privacy rights when it comes to digital evidence and third-party material (as recognised by the MoJ 2023) and do not endorse disproportionate levels of investigation when conducting future credibility checks which appear to be a significant part of CCRC reviews.

As stated above, the CCRC takes extremely seriously the rights of complainants / victims under Article 8 of the ECHR. We give careful consideration to those matters in connection with CCRC enquiries into third-party material and digital evidence.

The CCRC has published Casework Policies which set out the relevant considerations in relation to such enquiries - see [CW-POL-23-Witness-Credibility-Checks-v2.0.pdf](#) (in particular paragraphs 1.2–1.3) and [CW-POL-27-Power-to-Obtain-Material-from-Public-Bodies-s.17-v2.0.pdf](#) (in particular paragraphs 3.1-3.3).

The CCRC's powers to obtain third party material may only be exercised where they are necessary and reasonable for the discharge for the CCRC's statutory function. In addition, the CCRC will only make enquiries which interfere with an individual's rights under Article 8 of the ECHR where those enquiries are strictly necessary and proportionate.

However, the CCRC will pay close attention to the research findings on this subject, and will consider whether any of its formal policies, internal training or guidance materials need to be amended or strengthened in order to give further protection to complainants' rights under Article 8 ECHR.

4. Whilst not advocating for more frequent victim notification, consideration of the likelihood that victims would become aware of a CCRC application sometimes appears inadequate; hence we recommend that victim notification is carefully considered, particularly where there is a familial connection or the case involved domestic abuse, and clear justifications for decisions are provided.

The Code of Practice for Victims of Crime (the Victims' Code) sets out the services and a minimum standard for those services that must be provided for victims of crime, by every organisation in the Criminal Justice System (CJS) in England and Wales. The CCRC is one of these providers and has specific responsibilities to victims under Sections 9.15 to 9.18 of the Code. The CCRC also has a published policy in connection with victims - [CW-POL-09-Victim-Notification-v2.0-2.pdf](#) - which sets out our approach to considering whether victims of crime should be notified of a CCRC review. We also have a member of casework staff who acts as the CCRC's 'Victims Champion', and who provides advice, alongside our Head of Investigations, in cases where victim notification is being considered.

While victim notification is considered in every CCRC case, we also recognise the need to ensure that our reasoning on victim notification is always fully documented. The CCRC is currently developing additional training for casework staff and Commissioners on this subject, in order to embed best practice.

5. That more explicit consideration of victims' privacy rights under victim notification and credibility check notes are undertaken. One way to achieve this would be to

conduct a Rape Victim Impact Assessment (RVIA) of policies (McGlynn, et al, 2024).

As stated above, the CCRC takes extremely seriously the privacy rights of complainants / victims. We are committed to embedding best practice on this subject, and we will explore whether a RVIA of our casework policies will assist. More broadly, we will consider whether any of our formal policies, internal training or guidance materials need to be amended or strengthened in order to give further protection to the privacy rights of complainants / victims.