

Confidentiality Agreement

for the purposes of Academic Research into the functions of
the Criminal Cases Review Commission

THIS AGREEMENT is made on the date of signature below

BETWEEN

The Criminal Cases Review Commission (“the Commission”), whose offices are at 5 St. Philip’s Place, Birmingham B3 2PW.

and

[NAME OF RESEARCHER & ESTABLISHMENT]
 (“the Researcher”)

and

[NAME OF ESTABLISHMENT]
 (“the Institution”)

1 BACKGROUND

- 1.1 The Researcher has provided the Commission with a proposal for the subject, methods and extent of his/her research (“the Research”), which has been approved by the Commission and is detailed in Schedule 1.
- 1.2 The Commission is a body corporate established under the Criminal Appeal Act 1995 (“the Act”). The nature of its statutory functions means that from time to time the Commission receives information of a highly confidential nature. On occasions this may be information which is subject to restrictions on disclosure under other statutes, such as the Official Secrets Acts or the Data Protection Act, or to common law obligations of confidentiality. The Commission as a responsible public body has a broad duty to treat with confidence any information with which it is entrusted, unless it is clear that in a particular case such an approach would be contrary to the public interest.
- 1.3 Parliament explicitly recognised the importance of this confidentiality by enacting sections 23-25 of the Act. Section 23 creates a criminal offence of disclosing information obtained by the Commission in the exercise of its functions. Section 24 provides some limited circumstances under which disclosure does not amount to a criminal offence. Section 25 provides a

mechanism for a public body to impose on the Commission a requirement to seek prior consent before disclosing information provided to the Commission, even when disclosure is permitted under section 24.

- 1.4 In addition, section 6 of the Human Rights Act 1998 imposes a statutory obligation on all public authorities, including the Commission, to ensure that the rights protected by the European Convention on Human Rights are not violated. Article 8 – a qualified right - includes the right to respect for private life. The Commission may not interfere with that right unless there is a legitimate reason to justify the interference, and to do so is proportionate. The Commission may, as a result of its statutory powers, decide to obtain information relating to a person's private life. It may not, however, make onward disclosure of that information other than in the limited circumstances described above. Failure to observe this fundamental principle would create a breach of the Commission's statutory obligations under the Human Rights Act 1998 and the Data Protection Act 1998.
- 1.5 During the period of the Research it is likely that the Researcher will be given access to information covered by sections 23-25 of the Act and falling within the ambit of Article 8. The Commission has authorised this access under section 24(1)(f) of the Act: "in or in connection with the exercise of any function under this Act". It is part of the Commission's purpose to ensure that the criminal justice system is aware of its role, functions and remit, and the ways in which its services can best be accessed by the public it serves. This includes the development of work towards informing and enhancing the Research, which brings many potential miscarriages of justice to the attention of the Commission.
- 1.6 Responsible academic research into aspects of the Commission's work can provide valuable information both for the Commission itself and also for anyone with an interest in the operation of the criminal justice system. Certain kinds of research would be impossible to conduct unless the Researcher had access to information which would normally be covered by sections 23-25 of the Act.

2 'CONFIDENTIAL INFORMATION'

- 2.1 During the Research the Researcher will only have access to information and material which has been approved by the Commission, which may include Confidential Information.
- 2.2 In this Agreement "Confidential Information" means all information disclosed (whether orally, in writing or by any other means, including access to any premises) by the Commission to the Researcher, relating to the statutory functions of the Commission under the Act, but shall not include any part of such information which:
 - 2.1.1 is in or comes into the public domain in any way other than by breach of this Agreement by the Researcher or the Institution; or

2.1.2 which the Researcher can show (the burden whereof shall fall for all purposes upon the Researcher):

2.1.2.1 was in his/her possession or known to him/her prior to access to Confidential Information being granted by the Commission; or

2.1.2.2 was independently obtained by the Researcher without recourse to any Confidential Information held by the Commission.

3 AGREEMENT

3.1 In consideration of the Commission's assistance in conducting the Research, the Researcher and the Institution undertake:

3.1.1 to treat all information in the possession or under the control of the Commission as Confidential Information unless the Commission has acknowledged otherwise in writing, and to make use of it only for the purpose of the Research which is the subject of this Agreement;

3.1.2 not to at any time disclose to any person, firm, company or organisation, nor use or publish any Confidential Information other than in accordance with this Agreement;

3.1.3 to ensure that no form of publication resulting from the Research is capable (either directly or indirectly by association with any other material) of leading to the identification of any individuals. This includes but is not limited to the identity of applicants, victims, experts and witnesses and those who have provided information to the Commission either voluntarily or via section 17 of the Act. It includes the identity of all staff, Commissioners, investigating officers and contractors, past or present, who are or have been working for, on behalf of or at the Commission);

3.1.4 to observe the principles of Data Protection with respect to all information obtained in the course of the Research as further detailed in section 4;

3.1.5 not to copy or write down, in hard copy or electronic format, any Confidential Information, save for with the prior agreement of the Commission where it is reasonably necessary for the Research;

3.1.6 to treat all Confidential Information with a high degree of care and with sufficient protection from unauthorised disclosure;

3.1.7 at the end of the Research, to return promptly (and no later than 7 days after the end of the Research) all original CCRC data including documents, materials and records or direct copies of information to the Commission, and not to make any permanent copies whether in hard copy or on any electronic storage media or memory;

3.1.8 at no time during or after the Research should the Researcher or the Institution publish in any format items such as documents, reports,

statements, dissertations, essays or presentations unless the Commission has first been afforded the opportunity to consider their contents;

3.1.9 to ensure that in the event of the Commission identifying any factual errors or any breaches of this agreement that any such issues are addressed by the Researchers;

3.1.10 in addition to and without affecting any other rights or remedies the Commission may have, to indemnify, and keep indemnified, the Commission from and against all actions, claims, demands, liabilities, damages, losses, costs, charges and expenses (including, without limitation, consequential losses, loss of profit and loss of reputation and all interest, penalties and legal and other professional costs and expenses) that the Commission may suffer or incur in connection with, or arising (directly or indirectly) from, any breach of this Agreement;

3.1.11 to remain bound by this Agreement without limit in time.

3.2 The Commission undertakes:

3.2.1 to allow the Researcher access to all information in the control or possession of the Commission which is reasonably necessary for the purposes of the Research; and

3.2.2 to provide reasonable facilities for the Researcher in terms of access to the Commission's premises, staff, and equipment for the duration of the Research.

3.2.3 for the duration of the Research, not to enter into any agreement with any other Researcher in relation to research on the same or a closely similar subject that would compromise the Research.

4 DATA PROTECTION

4.1 Research using Commission data is possible by virtue of the exemptions under section 33 of the Data Protection Act 1998. These can exempt the Commission from the usual non-disclosure provisions of the Act as long as the disclosures are made "only for research purposes" and where the processing of personal data will not cause "substantial damage or substantial distress" to the data subject. Researchers will need to comply with the obligations that the Act places on the Commission and its third party data processors.

4.2 During the Research the Researcher will be provided with data which comes within the remit of the Data Protection Act 1998 ("the DPA").

4.3 "Personal Data" under the DPA is data which relates to a living individual who can be identified from the data itself or from the data in conjunction with other information which is, or is likely to come, in the possession of person processing the data. Where this data contains information relating to the following, it is "Sensitive Personal Data":

- 4.3.1 the racial or ethnic origin of the data subject;
 - 4.3.2 his/her political opinions;
 - 4.3.3 his/her religious beliefs or other beliefs of a similar nature;
 - 4.3.4 whether he/she is a member of a trade union;
 - 4.3.5 his/her physical or mental health or condition;
 - 4.3.6 his/her sexual life;
 - 4.3.7 the commission or alleged commission by him/her of any offence; or
 - 4.3.8 any proceedings for any offence committed or alleged to have been committed by him/her, the disposal of such proceedings or the sentence of any court in such proceedings.
- 4.4 In consideration of the Commission's assistance in conducting the Research, the Researcher and the Institution undertake to adhere to all of the requirements of the DPA, and in particular:
- 4.4.1 to process all Personal Data fairly and lawfully and in accordance with the DPA;
 - 4.4.2 to only obtain Personal Data from the Commission for the purpose of the Research and not to process Personal Data outside of this purpose;
 - 4.4.3 to only obtain and use Personal Data to the extent required for the purpose of the Research;
 - 4.4.4 to keep Personal Data for no longer than is necessary for the purpose of the Research;
 - 4.4.5 to take appropriate measures against unauthorised or unlawful processing, accidental loss or destruction of, or damage to, Personal Data;
 - 4.4.6 to ensure that Personal Data is not transferred to a country or territory outside the European Economic Area without prior written authorisation from the Commission.
- 4.5 Any publication, or release of information to any other party, relating to research conducted using Commission data will need, in order to comply with the provisions of the Data Protection Act, to ensure that it contains no material that can lead to the identification of any individual data subject. This may mean that anonymisation is required (for instance when an individual case is discussed) in order to comply with the Act. Where this is the case researchers will need to apply the required anonymity in with the principles set out in the Information Commissioners' Office code of practice on anonymisation (see ico.org.uk).

5 GENERAL

- 5.1 If a party does not enforce a right available to it under this Agreement in any particular instance, then that will not prevent it from enforcing that right in future or in any other instance.
- 5.2 Neither party shall assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.
- 5.3 This Agreement does not grant any right or licence under either party's intellectual property rights.
- 5.4 Neither this Agreement nor any of its provisions shall be amended or waived unless agreed in writing by the Commission and the Researcher. No waiver of any provision of this Agreement shall constitute a waiver of any other provision or of the same provision on another occasion.
- 5.5 This Agreement is made subject to English law and to the exclusive jurisdiction of the English courts, and shall be effective as from the date of signature by the Researcher and despatch to the Commission.
- 5.6 In the event of any dispute arising from this Agreement, the matter will be referred to the Chief Executive who will decide the appropriate action.
- 5.7 This Agreement constitutes the entire agreement between the parties on its subject matter and supersedes all previous agreements, understandings or discussions between the parties whether written or oral.

SIGNED on behalf of the Commission:.....

Dated:.....

SIGNED by the Researcher:.....

Dated:.....

SIGNED on behalf of the Institution:.....

Dated:.....

Schedule 1

The Project

[INSERT DETAILS OF PROJECT]