



Criminal Cases Review Commission

## CASEWORK POLICY

Policy Title: **Witness Credibility Checks**

Reference: **CW-POL-23**

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](http://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].

### Introduction

This policy states the CCRC’s approach to, and the methods of, conducting checks on the character and credibility of a witness.

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## Key Points

- 1) The CCRC's powers give it access to material, some of which the applicant and their representative might not normally be able to obtain.
- 2) In deciding whether to use its legal powers to check for information relating to the character and credibility of a witness, the CCRC will have regard to its obligations under the European Convention on Human Rights (ECHR).
- 3) The CCRC will make enquiries only where those enquiries are necessary, reasonable, proportionate, strictly limited to what is required and in no way arbitrary; the CCRC will apply the 'necessary and reasonable' test and, in relation to third-party material, the Attorney General's Guidelines (AGG) 2022 principles (see [paragraph 2.8](#)).
- 4) Enquiries relevant to witness credibility will always be considered in cases where the conviction rests principally upon the credibility of one individual ("one person's word against another's"). These are often, but not always, sexual offences.
- 5) Any suggestion of a false allegation will be fully investigated.
- 6) The CCRC will normally interview a witness if they are now retracting their original evidence.

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## Definitions

Key Word	Meaning
ABE	Achieving Best Evidence
AGG	Attorney General's Guidelines 2022
CAA	Criminal Appeal Act 1995
CICA	Criminal Injuries Compensation Authority
ECHR	European Convention on Human Rights
PNC	Police National Computer
PND	Police National Database
SSD	Social Services Department

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## 1 General Information

- 1.1 It is the duty of the prosecution to disclose any information they have which may affect the assessment of a witness's character and credibility. The Crown is obliged to make reasonable inquiries when aware that such information might exist. There are, however, cases where relevant information may be missed during the investigation, or the trial and appeal process. In addition, there are cases where

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information relevant to the assessment of witness **character and credibility** becomes available post-conviction and post-appeal.

- 1.2 The CCRC's powers under sections 17 and 18A of the Criminal Appeal Act 1995 (CAA)<sup>1</sup> give it access to material, some of which the applicant and their representative might not normally be able to obtain. Where the evidence of a prosecution witness is of real significance to the case against an applicant, the CCRC will, if necessary and reasonable,<sup>2</sup> use its legal powers to check for any undisclosed or new information relating to a witness's **character and credibility**.
- 1.3 In deciding whether to use its legal powers to check for information relating to the **character and credibility** of a witness, the CCRC will have regard to its obligations under the European Convention on Human Rights (ECHR). Personal information, including official records and medical data, is protected by Article 8 of the ECHR. Making enquiries relating to a witness's **character and credibility** is an interference with the person's Article 8 ECHR rights unless the enquiry is "necessary in a democratic society for ... the protection of the rights and freedoms of others", in this case the applicant's right to a fair trial. The CCRC will make enquiries only where those enquiries are **necessary**, reasonable, proportionate, strictly limited to what is required and in no way arbitrary.
- 1.4 In cases where the prosecution relied on **additional** evidence such as forensic evidence, the CCRC will carefully consider the validity and **weight** of such evidence when assessing if credibility enquiries are 'necessary and reasonable'.

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<sup>1</sup> See 'CW-POL-27 Power to Obtain Material from Public Bodies (s.17)' and 'CW-POL-28 Power to Obtain Material from Private Bodies and Individuals (s.18A)' for further information.

<sup>2</sup> The 'necessary and reasonable' test is mentioned many times in this policy. Whether the use of the CCRC's powers is necessary and reasonable will usually depend on an assessment of two factors. First, whether the use of these powers might reasonably enable the CCRC to view material that was not available to the defence at the time of the trial. Second, in the context of the case, whether such material might give rise to grounds for a referral. In making the assessment whether something is necessary and reasonable, the CCRC will also have regard to the Attorney General's Guidelines 2022.

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## 2 CCRC Enquiries

- 2.1 Where the CCRC takes the view that enquiries as to witness character and credibility are 'necessary and reasonable' in the case, the reasons for making the enquiries - and the nature of the enquiries - will be recorded. Where the CCRC considers that such enquiries are not necessary, those reasons will also be recorded.
- 2.2 A judgement will be made as to the nature and extent of those enquiries, continuing to apply the 'necessary and reasonable' test. A staged approach to enquiries may be appropriate, assessing the necessity and reasonableness at each stage.
- 2.3 Enquiries relevant to witness character and credibility will always be considered in cases where the conviction rests principally upon the credibility of one individual ("one person's word against another's"). These are often, but not always, sexual offences.
- 2.4 The decision whether to undertake such enquiries will depend on all the evidence and all the circumstances. Cases will be assessed on an individual basis applying the 'necessary and reasonable' test.
- 2.5 Enquiries made in relation to witness character and credibility [text deleted] may include any or all of the following types of enquiry:
- a) Police National Computer
  - b) Police National Database
  - c) Police Child Protection Files
  - d) Social Services Department Files
  - e) Education Department Files
  - f) Criminal Injuries Compensation Authority Files
  - g) Civil Actions
  - h) Family Court proceedings
  - i) Medical Records
  - j) False Allegations
  - k) Retractions
- 2.6 The above list is not exhaustive or exclusive; appropriate lines of investigation will always be assessed on a case-by-case basis.
- 2.7 In every case where sensitive personal material is sought, careful consideration will be given to setting parameters for the material sought, in terms of timescale and subject material. For example, the CCRC will not seek a witness's entire medical history if a more limited time period would be sufficient.

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2.8 In reaching a decision to access third party material, the CCRC will apply the three-step principle laid out in the Attorney General's Guidelines (AGG) 2022:

- 1) Establishing a reasonable line of enquiry
- 2) Establishing relevance
- 3) Balancing rights

### 3 Police, Social Services, and Education Records

#### 3.1 Police National Computer (PNC)

In cases where witness character and credibility requires investigation, a PNC check may be made, subject to the age of the witness. This will reveal any relevant convictions. In cases where the subject is known to make false allegations there may be a 'warning signal' to this effect. A PNC record may also assist in establishing which police force(s) could hold information about the witness.

#### 3.2 Police National Database (PND)

In cases where witness character and credibility requires investigation, appropriate checks may be made on the PND<sup>3</sup> to see whether any information is held relating to the witness's character and credibility. Such checks could indicate that the witness has made other similar allegations or that there are other reasons which raise doubts about their credibility (such as previous convictions for perjury or perverting the course of justice etc.). In this event, details of each allegation and/or outcome and/or conviction will be obtained.

#### 3.3 Social Services Department (SSD) Files

3.3.1 SSD files are generally only relevant to sexual and/or physical offences committed against children or vulnerable adults (although some children will, of course, be adults by the time the matters complained of are investigated). Over the years the law and guidance relating to third party disclosure has changed. The effectiveness of third-party disclosure is dependent upon the quality of approach of the investigator and the person considering disclosure. (Did they, for example, conduct checks in relation to previous names or aliases, did they check previous addresses or

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<sup>3</sup> [text deleted]

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contact third parties in other counties?) Defence access to such material may have been refused because requests by the defence were not sufficiently specific or because the material requested was deemed to be inadmissible in evidence, notwithstanding its potential value in cross-examination.

3.3.2 [text deleted]

3.3.3 In sexual and/or physical violence offence cases involving complainants who were adults at the time of the alleged offence, there will generally be no indication that potentially relevant material about the complainant is held on SSD files. However, where the CCRC obtains information that SSD files do exist (or the circumstances suggest that they might) and it is considered that such material may have a bearing on the review, arrangements will be made to view the SSD files, subject to application of the 'necessary and reasonable' test and the AGG principles for accessing third-party material.

3.4 Police Child Protection Files

Although much of the material held in the police 'Child Protection file' will be contained in the SSD files, it might hold additional material. Where there is any concern that the SSD file does not contain all information which might be relevant to an assessment of the witness's character and credibility, it will be appropriate to consider checking the 'Child Protection file' in consultation with the Head of Investigations, applying the 'necessary and reasonable' test and the AGG principles for accessing third-party material.

3.5 Education Department Files

There may be some cases where the witness's behaviour at school might be relevant to their character and credibility as a witness. In such cases, access to the Education File will be considered and the 'necessary and reasonable' test applied and the AGG principles for accessing third-party material.

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## 4 Criminal Compensation, Civil Actions and Family Court Records

### 4.1 Criminal Injuries Compensation Authority (CICA) Files

Many victims of crime make an application to CICA. An account to CICA that is significantly different to that given at trial may be relevant to the safety of the conviction. In **most** cases, however, the facts of the case are most commonly established by CICA through reference to witness statements and/or transcripts of ABE interviews, all of which will have been available at the time of trial. Enquiries with CICA are most likely to be relevant where a witness stated in evidence that he or she had no knowledge of the potential for compensation in order to establish whether the witness had in fact made an application to CICA before that evidence was given. Again, the 'necessary and reasonable' test **and the AGG principles for accessing third-party material** will be applied.

### 4.2 Civil Actions

Where a child complainant was in the care of Social Services at the time of alleged sexual abuse, he or she may decide to bring a civil action against the appropriate local authority. This is particularly true in the case of historical abuse cases, where multiple allegations are made many years later by the former residents of local authority care homes and similar institutions. It will be necessary for the complainant to provide a statement in connection with such proceedings which may contain an account which differs significantly to the one given at court and/or to CICA. Where circumstances indicate that a civil action was contemplated, the CCRC will use its section 17 CAA powers to access any local authority civil action file, subject to application of the 'necessary and reasonable' test **and the AGG principles for accessing third-party material**.

### 4.3 Family Court proceedings

Where the offence(s) was/were committed in a family context, there may also be related proceedings in the Family Court. It may well be necessary for the complainant to provide a statement in connection with such proceedings which may contain an account which differs significantly to the one given at the Criminal Court and/or to CICA. Where circumstances indicate that Family Court proceedings did take, or are taking, place careful consideration will be given to the potential value of the Family Court file, subject to application of the 'necessary and reasonable' test **and the AGG principles for accessing third-party material**.

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## 5 Medical Records

- 5.1 In a small number of cases the circumstances will suggest that it might be appropriate to access relevant parts of a witness's medical records. Medical records are highly confidential and must not be examined without very good reason & by applying the 'necessary and reasonable' test and the AGG principles for accessing third-party material.
- 5.2 See policy 'CW-POL-18 Accessing Medical Records' for further, more detailed information on this type of enquiry.

## 6 False Allegations and Retractions

### 6.1 False Allegations

The Head of Investigations will be consulted in all cases where there is particular reason to believe that the witness has or may have made a false allegation, i.e. alleging a crime that had not, in fact, been committed. Evidence that the witness had previously made an undisclosed false allegation or made one post-trial and/or post-appeal might have a significant impact on the witness's character and credibility. Any suggestion of a false allegation will, therefore, be fully investigated. Conducting police checks is one line of enquiry that could produce evidence indicating that the witness may have made a false allegation. Particular regard will be had as to whether there is evidence that the allegation was, in fact, false (the unsubstantiated opinion of an individual will not be sufficient).

### 6.2 Retractions

- 6.2.1 Victims of crime can suffer the effects of the crime for many years. An interview with a witness must only be conducted where it is 'necessary and reasonable'. The Head of Investigations must be consulted in all cases where it is said that the witness has retracted his or her trial evidence.
- 6.2.2 The CCRC receives a number of applications with a clear indication that the witness, often the complainant, [text deleted] is now willing to say that his or her evidence was untrue. In these circumstances the CCRC will normally interview the witness or arrange for the witness to be interviewed. The purpose of such an interview is firstly to confirm that the witness is, in fact, retracting their evidence, and secondly to look for any supporting evidence that might indicate which of the witness's accounts is true.

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- 6.2.3 Most typically, retractions have been made to third parties. These will normally be investigated by interviewing the third party. If this interview produces credible evidence that the witness has retracted their trial evidence, then the witness will normally be interviewed afterwards.
- 6.2.4 See policy 'CW-POL-21 Interviewing' for further, more detailed information on this type of enquiry.

## 7 Historical Abuse Cases

- 7.1 Some cases involving allegations of historical abuse will be intra-familial or similar. In others, the prosecution might relate to offences alleged to have been committed years earlier by employees in care homes or similar institutions against a child or young person resident, or by someone who had 'privileged' access by virtue of their celebrity status or position of power. The police, when dealing with allegations made about employees, celebrities, teachers or similar, inquire to see whether there is any evidence that the alleged perpetrator has abused other individuals or whether other adults have been involved in the alleged abuse. This type of inquiry is sometimes referred to as 'trawling'. There are dangers in inquiries of that nature and guidance exists for police forces to help ensure that such inquiries are conducted fairly. The way in which such inquiries are managed is sometimes an issue and the Head of Investigations will be consulted in these cases.
- 7.2 In some cases involving multiple allegations, not all of the allegations made will have led to a prosecution. It may be important to establish why certain allegations were not proceeded with and to ensure that any doubts about the credibility of witnesses have been properly disclosed.

## 8 Storage, Disclosure, and Disposal

- 8.1 Sensitive personal information includes, but is not limited to, the following categories of material:
  - a) Medical records
  - b) Social Service files
  - c) Education Department Files
  - d) Family Court records
  - e) Communications data such as phone billing
  - f) Convictions and police intelligence files

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- 8.2 All sensitive personal information relating to complainants and witnesses will be stored in the Secured file with access restricted to those who need to view the records. Physical documentation will be registered and stored securely at the CCRC central office.
- 8.3 The principles in Section 25 of the Criminal Appeal Act 1995 will be applied to onward disclosure of the sensitive personal information of victims and witnesses even if not requested by the owning agency (which may be unaware of the provisions). Where necessary and possible, sensitive personal material will be incorporated into a Confidential Annex to the CCRC's Statement of Reasons. In-House Counsel must be consulted when disclosure to an applicant becomes an issue.
- 8.4 Material containing sensitive personal information of victims and witnesses will be returned and/or destroyed when a review has concluded unless the sensitive material has been relied upon in the decision-making process.
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## Appendices

None

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## Relevant CCRC Documents

Q-POL-01	CCRC Quality Policy
CW-POL-18	Accessing Medical Records
CW-POL-21	Interviewing
CW-POL-27	Power to Obtain Material from Public Bodies
CW-POL-28	Power to Obtain Material from Private Bodies and Individuals

**Legal Documents** (available for free from [www.legislation.gov.uk](http://www.legislation.gov.uk))

Criminal Appeal Act 1995

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## Document Control

Document author: Head of Investigations

Issue authorised by: Casework Operations Director

## Version History

Date Issued	Version	Brief Details of Change	DCR
15/07/2021	1.0	First Issue	21-04
30/10/2023	2.0	Amend: Intro, Key Points, Definitions, 1.1-1.4, Footnote 2, 2.1, 2.3-2.5, 3.1-3.5, 4.1-4.3, 5.1, 6.1, 6.2.2. New: 2.7, 2.8, section 8. Remove: Footnote 3, 3.3.2.	22-18

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