

MEDICAL RECORDS

CASEWORK POLICY

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**Introduction**

1. This document sets out the CCRC's policy on when and how it will seek to obtain personal information from patient medical records under section 17 or section 18A of the Criminal Appeal Act 1995.
2. On occasions where the use of the section 17 or 18A powers for medical records relates to enquiries by the CCRC to assess witness credibility, the CCRC will have regard to its policy on [Enquiries as to Witness Credibility](#).

**The CCRC's power to obtain information from public bodies**

3. A full explanation of the CCRC's powers under section 17 Criminal Appeal Act 1995 and information about how it approaches the exercise of those powers is set out in the CCRC's policy on [Section 17](#).

4. Briefly stated, section 17 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. 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.
5. 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 the Commission”. 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, or the existence of a court order for public interest immunity, or by legislation such as the Data Protection Acts or the Official Secrets Acts.

### **The CCRC’s power to obtain information from private bodies or individuals**

6. A full explanation of the CCRC’s powers under section 18A Criminal Appeal Act 1995 and information about how it approaches the exercise of those powers is set out in the CCRC’s policy on Section 18A.
7. In summary, section 18A gives the CCRC the power to apply to a Crown Court for an order compelling a private body or individual to provide material to the CCRC. In order to grant an order, the Court must think that the document or other material may assist the CCRC in the exercise of any of its functions.
8. Subsection (4) of section 17 applies for the purposes of section 18A as it applies for the purposes of section 17; the same provisions outlined above apply to an order made under section 18A.
9. 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.

### **The CCRC’s approach to obtaining medical records**

10. The CCRC places a high priority on respecting the confidentiality of patient medical records, and recognises the general public interest in ensuring that a frank and open relationship between patient and doctor can be maintained.
11. In deciding whether to use its statutory powers to obtain medical records, the CCRC will have regard to its obligations under the European Convention on Human Rights. Personal information, including official

records and medical data, is protected by Article 8 of the Convention. Making enquiries relating to medical information is an interference with a person's Article 8 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 reasonable.

12. In any event, the CCRC will not make any attempt to access patient medical records unless it believes that at least one of the following conditions is satisfied:
  - (i) The patient has given informed and voluntary consent (in writing) to the CCRC seeing his/her medical records.
  - (ii) All reasonable efforts have been made to obtain consent, but these have failed; and there is a real possibility that the medical records contain information without which the thoroughness of the CCRC's review would be significantly reduced.
  - (iii) There are grounds for the CCRC to believe that an approach to the patient might either:
    - cause a risk of distress or harm to the patient that is disproportionate to the possible value of the information to the CCRC's review; or
    - cause a risk of disorder or offending that is disproportionate to the possible value of the information to the review; or
    - significantly compromise the integrity of the CCRC's enquiries; and there is a real possibility that the records contain information without which the thoroughness of the CCRC's review would be significantly reduced.
13. If the CCRC has not sought the consent of the patient the relevant public body will be provided with a summary of any information that has persuaded the CCRC not to seek consent. This is to assist the public body in assessing its own obligation to seek consent or inform the patient that information has been provided to the CCRC.
14. The CCRC will seek no more than the level of disclosure necessary in each case. Where it is possible to do so, the CCRC will identify the precise nature of the information it seeks, and request an extract from the patient's medical records. Where it is not possible to be specific, the entire record will be requested.

### **Procedure adopted by the CCRC**

15. Advice must be sought from the Head of Legal and any decision to access a medical record must be endorsed by a Group Leader, a reasoned decision being recorded in the case record.

16. In order to ensure that clear lines of statutory responsibility and communication are maintained, when seeking to obtain patient medical records held by a GP the CCRC will, as a general rule

- issue the relevant statutory notice to the Regional Medical Director;
- copy the request to the Legal Team at [england.legal@nhs.net](mailto:england.legal@nhs.net) (even for Welsh or NI cases)
- provide the patient's consent (or the reasons why obtaining consent is impracticable or inappropriate);
- require the NHS to obtain the patient's medical records from the GP within a specified period of time;
- require the NHS to provide the medical records to CCRC within a specified period of time thereafter;
- the Regional Medical Directors office will liaise with the GP to obtain the medical records, before forwarding them on to the CCRC
- liaise with the regional NHS in relation to the return of the medical records.

### **The practical application of section 17 to medical records**

17. NHS hospitals are public bodies and therefore required to produce patient medical records to the CCRC when a reasonable request is made. Generally the CCRC will issue a statutory notice under section 17 direct to the hospital concerned.

18. A General Practitioner (GP) is not a public body, so the basis on which the CCRC obtains information from medical records held by a GP in relation to a patient requires further explanation.

19. Every GP operates under a contract with the NHS. One of the terms of the contract is that patient medical records - which are in the physical 'possession' of the GP - must be supplied to NHS England or Wales in order to discharge its own functions.

20. One of the functions of the NHS, as a public body, is to make a proper response to any statutory notice, such as a notice from the CCRC under section 17. NHS England / Wales will need to call for the medical records in order to respond to the CCRC's statutory notice. NHS England \ Wales therefore has 'control' of patient medical records within the meaning of section 17.

### **Medical records held by private hospitals**

21. As private hospitals are by definition not public bodies, the CCRC will seek to use section 18A of the Criminal Appeal Act 1995, as outlined above.

22. Where NHS medical care is provided within a private hospital, the terms of the contract will almost invariably create a similar situation, so that the

NHS exercises 'control' over such medical records for the purposes of section 17.

### **Safeguards against onward disclosure**

23. Within the CCRC, sensitive information is stored and handled under secure conditions.
24. At some point in the review the CCRC may have to consider whether information contained in medical records should be disclosed.
25. The CCRC's approach to disclosure of information is set out in its policy on [Disclosure by the Commission](#).