



REPORTING MATTERS TO THE POLICE, OTHER INVESTIGATING AUTHORITIES, OR OTHER CRIMINAL JUSTICE SYSTEM BODIES

CASEWORK POLICY

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Introduction

- 1. This document sets out the CCRC’s policy in relation to:
(i) crimes admitted to, reported to, or discovered by the CCRC during a review;
(ii) requests for information from the police or other investigating authority;
(iii) discovery by the CCRC of evidence relating to a crime known to the police or other investigating authority;
(iv) discovery by the CCRC of evidence of significant misconduct or negligence by a police officer, by an officer or other person employed by an investigating authority, or by any other person working in the criminal justice system;
(v) discovery by the CCRC of a threat or risk to people or property, particularly threats to life;
(vi) the making of witness statements by CCRC staff to the police or other investigating authority.

Crimes Discovered During a Review

2. Applicants and witnesses interviewed by the CCRC may admit committing criminal offences or allege that others have done so. The CCRC might, from its own enquiries, discover that a crime has been committed.
3. If the CCRC is to be successful in reviewing cases of alleged miscarriage of justice there is a need for witnesses to be frank and open when interviewed, which is unlikely to be the case if the CCRC acquires a reputation for reporting every crime it hears about. However, the CCRC is a public body and an integral part of the criminal justice system: it cannot ignore the fact that it has been made aware of a crime having been committed.
4. The circumstances in which the CCRC believes that a crime has been committed and the nature of the crime itself will vary and each case must be considered on its own merits. Set out below are some general principles, which will assist in deciding what action, if any, the CCRC should take and the procedure to be followed to ensure consistent decision making.

General Principles

5. The principles applied by the CCRC when deciding what action should be taken are:
 - (i) There should be some evidence or good reason to believe a crime had been committed.
 - (ii) Where a reference to the crime is contained in a referral Statement of Reasons, the police will normally be informed of the crime when the Statement of Reasons has been issued.
 - (iii) The CCRC will take into account the age and seriousness of the crime and may also have regard to the Code for Crown Prosecutors.
 - (iv) The CCRC will not generally report matters already known to a court, the police, or other appropriate investigating authority.
 - (v) The CCRC should not usually report witness intimidation against the wishes of the witness.
 - (vi) Where a police officer or other person involved in an official capacity in the prosecution process admits perjury or an act amounting to perverting or attempting to pervert the course of justice the matter shall be reported.
 - (vii) Where an ordinary citizen admits an act amounting to perverting or attempting to pervert the course of justice the matter should normally be reported.

- (viii) The CCRC will not generally report cases where a witness admits perjury but their account is not considered credible.
- (ix) Where a person admits the CCRC of the crime for which the applicant was convicted, and the CCRC believes the admission may be credible, the matter shall be reported.
- (x) Where a crime is discovered by a police officer acting on behalf of the CCRC under Section 19 or Section 21 of the Criminal Appeal Act 1995 ('the Act'), the crime will be regarded as 'known to police' and no action need be considered by the CCRC. The police have an absolute duty to take appropriate action in respect of all crimes reported to them or discovered by them.
- (xi) Where the knowledge of a crime leads to a Section 19 requirement for the appointment of an Investigating Officer, there will be no need to follow the decision-making procedure set out below.
- (xii) Where there is a real risk of harm to an individual, group of individuals or general public at large, the presumption will be in favour of reporting.

Procedure

6. The Commissioner or case reviewer dealing with the case is responsible for informing the Head of Investigations of any crime admitted to, reported to, or discovered by the CCRC.
7. The Head of Investigations will discuss the case with the Commissioner or case reviewer in the light of the general principles set out above and consider what action, if any, might be taken. The Commissioner or case reviewer will then prepare a brief report on the crime and how the CCRC became aware of it. The Head of Investigations will add to the report his recommendation as to whether or not the matter should be reported. Where the recommendation is to report, that will also address *when* the matter should be reported, having regard to, amongst other relevant considerations, the potential impact that any delay in reporting may have in hindering the crime's effective investigation and/or bringing an offender to justice and the integrity and effectiveness of the CCRC's review.
8. The Head of Investigations will forward the report to a Designated Disclosure Decision-Maker who will decide what action, if any, the CCRC will take.
9. Where information is disclosed by the CCRC, regard must be had to the requirements of sections 23 and 24 of the Act.
10. Where the Designated Disclosure Decision-Maker decides that a crime should be reported, the matter will be referred by the Head of

Investigations to the appropriate authority, normally the police, through the established points of contact.

11. The Head of Investigations will keep a log of all decisions. The Director of Casework Operations will be informed of any decisions made to disclose information under the terms of this policy.

Requests for Information

12. There may be occasions where the police or another investigating authority believe that the CCRC has discovered information which might assist them in the investigation of an offence or deciding whether to prosecute a person for an offence. The CCRC is permitted to disclose any such information by Section 24(3) of the Act.
13. There may also be occasions where the police or another investigating authority believe that the CCRC has discovered information which might assist them in connection with any criminal, disciplinary or civil proceedings. The CCRC is permitted to disclose any such information by Section 24(1)(a) of the Act.
14. Should the police or other investigating authority request disclosure of information for the purposes outlined in Section 24(3) or 24(1)(a), the matter will be brought to the attention of the Head of Investigations. The Commissioner or case reviewer involved will prepare a brief report detailing the information sought and the background to the request. The Head of Investigations will add his recommendation to the report as to whether or not the information should be disclosed.
15. The Head of Investigations will forward the report to a Designated Disclosure Decision-Maker who will decide what information, if any, will be disclosed.
16. The Head of Investigations will keep a log of all decisions.

Discovery of Evidence in Relation to a Crime Known to Police

17. There may be occasions when the CCRC discovers evidence which might assist the police or other investigating authority with regard to an offence already known to them. The CCRC is permitted to disclose any such evidence by Section 24(3) of the Act if disclosure is for the purpose of the investigation of an offence, or deciding whether to prosecute a person for an offence. If criminal proceedings have commenced, disclosure is permitted by Section 24(1)(a).
18. The discovery of such evidence should be brought to the attention of the Head of Investigations. The Commissioner or case reviewer involved will prepare a brief report detailing the evidence and the circumstances in which it was discovered. The Head of Investigations

will add to the report his recommendation as to whether or not the evidence discovered should be disclosed.

19. The Head of Investigations will forward the report to a Designated Disclosure Decision-Maker who will decide whether or not the evidence will be disclosed. Where the Designated Disclosure Decision-Maker decides that the evidence should be passed to the appropriate investigating authority, the Head of Investigations will ensure that this is done.
20. The Head of Investigations will keep a log of all decisions.

Significant Misconduct or Negligence Discovered During a Review

21. There may be occasions where the CCRC discovers evidence of significant misconduct or negligence by a police officer, or an officer or other person employed by an investigatory authority, or by any other person working in the Criminal Justice System. In respect of misconduct or negligence by expert witnesses, see also the policy on Experts Selection And Instruction. In the first instance, any such matter should be brought to the attention of the Head of Investigations.
22. The Commissioner or case reviewer will prepare a brief report setting out the evidence discovered. The Head of Investigations will add his recommendation as to whether the matter should be reported and in the case of a police officer, or an officer or other person employed by an investigatory authority forward it to a Designated Disclosure Decision-Maker. In the case of any other person working in the Criminal Justice System, it will be forward to the Director of Casework Operations. Any evidence found may well relate to material originating from the police or other investigatory authority. Where this is not the case care will be taken to ensure that disclosure is permitted by Section 24 of the Act.
23. Where the Designated Disclosure Decision-Maker decides that the matter should be reported, the Head of Investigations will ensure that this is done. Where the Director of Casework Operations decides that a matter should be reported (s)he will report the matter to the appropriate body.
24. The Head of Investigations will keep a log of all decisions.

Discovery or Identification of a Threat to People or Property, Particularly Threats to Life

25. There may be occasions where the CCRC discovers or receives a threat or identifies a risk to people or property. The CCRC has a

responsibility to consider reporting such information to the police to enable an appropriate police response. Failure to do so properly may not necessarily lead to a loss of life or serious injury, but could undermine public confidence in the CCRC and in our ability to manage serious issues.

26. Examples of threat or risk may include:

- a. A direct threat to members of the public or property
- b. A direct threat made to the CCRC or its staff
- c. Risk placed upon individuals as a result of their engagement with the CCRC
- d. Risk placed upon individuals as a result of the activities of the CCRC
- e. Threats of self harm

27. The response to threats and risks to individuals shall be in line with Article 2 of the Human Rights Act 1998 and the principles of *Osman v UK* 1988. The dictum of *Osman* requires public agencies; in consideration of threat and in light of available resources and against competing demands, to consider the threat carefully and to undertake reasonable action to remove or minimise the threat.

28. The basic principle is that if there is a 'real' and 'immediate' threat to the life of a named individual then that person should be informed of the threat unless there is a justifiable reason for not doing so, which involves serious risk to life or serious injury to a third party or parties. Threats to life include threats to cause serious harm, injury, rape and other serious sexual assaults.

29. The principle is readily extended to serious risks to property.

30. The police are experienced in the requisite risk assessment and this better sits with them.

31. In almost all cases such matters will involve information that would assist the police or other investigating authority in the investigation of an offence or deciding whether to prosecute a person for an offence. The CCRC is permitted to disclose any such information by Section 24(3) of the Act. An exception to this rule would be a person threatening to immediately self harm themselves, where there would be a moral and ethical responsibility on the CCRC to report such information.

32. Where any member of CCRC staff becomes aware of a threat or risk this should be immediately reported to the Investigations Advisor or in their absence a senior manager.

33. The Investigations Advisor, or in their absence the senior manager, will be responsible for the identification of any urgent action to be taken

and the determination of whether to recommend that the threat or risk identified should be disclosed to the police.

34. Where in their judgement the threat may be assessed by the police to be 'real' and 'immediate', the Investigations Advisor, or in their absence the senior manager, will then verbally brief a Designated Disclosure Decision-Maker immediately, who will decide whether or not the information will be disclosed. In less urgent cases, a written report may be prepared for submission to the Designated Disclosure Decision-Maker.
35. For the purposes of this policy 'real and immediate' means:
 - a. a risk that has been reasonably assessed to be real, and
 - b. the potential assailant has the intention and current ability to carry out the threat.
36. It must be remembered that such threats and risk can resurface. Recent cases including *Van Colle and others v CC of Hertfordshire Police* and *R v Dyche and others*, were based around escalating series of incidents, which when considered in totality, indicated that Article 2 had been engaged. It is therefore important that measures to monitor, review and consider renewal of the threat are in place.
37. Where the Designated Disclosure Decision-Maker decides that there will be disclosure of such a threat or risk the Investigation Advisor, or in their absence the senior manager will be responsible for liaising with the police in relation to:
 - a. the risk assessment
 - b. where the threat or risk is to the CCRC or its staff, the development and implementation of plans to remove or minimise the threat or risk and the formal CCRC risk management procedures will be followed.
 - c. any measures considered necessary for the CCRC to assist in the monitoring, review and consideration of the renewal of the threat or risk.
38. In the event that the Designated Disclosure Decision-Maker decides that the information will not be disclosed, the Investigation Advisor, or in their absence the senior manager, will be responsible for the determination of any measures considered necessary for the CCRC to monitor, review and consider any renewal of the threat or risk.
39. An audit trail of decision making is essential and the Investigation Advisor will keep a log of all decisions.

Witness Statements Made by CCRC Staff

40. In all cases where a member of staff is requested to make a statement to an investigating authority as a consequence of their CCRC duties they will seek the advice of a Legal or Head of Investigations before signing such a statement.