

ENQUIRIES AS TO WITNESS CREDIBILITY

CASEWORK POLICY

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Introduction

1. It is the duty of the prosecution to disclose any information held which may affect assessment of a witness's credibility. The Crown is obliged to make reasonable inquiries when aware that such information might exist. There are, however, cases where relevant information is missed during the investigation, or the trial and appeal process. In addition, there are cases where information relevant to the assessment of witness credibility becomes available post conviction and post appeal.
2. The Commission's powers under sections 17 and 18A of the Criminal Appeal Act 1995 give it access to material, some of which the applicant and his/her representatives 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 Commission will, if necessary and reasonable, use its statutory powers to check for any undisclosed or new information relating to a witness's credibility.

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3. In deciding whether to use its statutory powers to check for information relating to the credibility of a witness, the Commission 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 a witness's credibility is an interference with the complainant'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 Commission will make enquiries only where those enquiries are reasonable, proportionate, strictly limited to what is required and in no way arbitrary.
4. In cases where the prosecution relied on evidence such as forensic evidence, the Commission will give careful consideration to the validity of such evidence when assessing if credibility enquiries are 'necessary and reasonable'.

Recording of Reasons

5. Where the Commission considers whether to make enquiries relevant to witness credibility, the reasons for making (including what enquiries) or not making such enquiries will be recorded in the Case Record.

Sex Offences

6. Sex offence convictions are a category of offence where witness credibility will often be of real significance. That will depend, however, on all the evidence and all the circumstances. Cases will be assessed on an individual basis applying the 'necessary and reasonable' test.
7. Enquiries relevant to witness credibility will always be considered in sex offence cases (the reasons for making (including what enquiries) or not making such enquiries being recorded in the Case Record).

Commission Enquiries

8. Where the Commission takes the view that enquiries as to witness credibility are 'necessary and reasonable' in the case, 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.
9. Enquiries may include any or all of the following, though not exclusively. Appropriate lines of investigation will be assessed on a case by case basis.

Police National Computer (PNC)

10. In most cases where witness credibility requires investigation, a PNC check will 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 will also assist in establishing which police forces could hold information about the witness.

Police National Database (PND)

11. In most cases where witness credibility requires investigation, appropriate checks will be made on the PND to see whether any information is held relating to the witness's credibility. Such checks could indicate that the witness has made other similar allegations or that there are other reasons which raise doubts about his/her credibility (such as previous convictions for perjury, or perverting the course of justice etc.). In this event, details of each allegation and outcome or, as the case may be, conviction should be obtained.
12. Where a PND check is appropriate, in general the age of the witness is irrelevant (especially the age of a complainant in a sex abuse case, unless he or she is – or was at the time of the alleged offence(s) - very young e.g. below the age of criminal responsibility).

Social Services Department (SSD) Files

13. 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. Effectiveness of third party disclosure is also dependent upon the quality of approach of the person considering it. 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.
14. Whilst in some cases there may be pointers to suggest that using the Commission's s.17 power to check SSD files might be particularly worthwhile, checks should be made in most sex offence cases involving a child or vulnerable adult, subject to application of the 'necessary and reasonable' test. Unless a check is made the Commission may not discover, for example, that the complainant has made what is known to be a false allegation of sexual abuse post trial or appeal. There may be circumstances where a SSD file check is not considered necessary and reasonable, especially where there is supporting evidence.

15. In sexual and/or physical violence offence cases involving adults, there will generally be no indication that potentially relevant material about the complainant is held on SSD files. However, where the Commission obtains information that SSD files do exist (or the circumstances suggest that they might) and it is considered that that such material may have a bearing on the review, arrangements should be made to view the SSD files, subject to application of the 'necessary and reasonable' test.

Police Child Protection Files

16. 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 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.

Education Department Files

17. There may be some cases where the witness's behaviour at school might be relevant to his/her credibility as a witness. In such cases, access to the Education File will be considered and the 'necessary and reasonable' test applied.

Criminal Injuries Compensation Authority (CICA) Files

18. Many victims of crime quite properly make an application to the CICA. An account to CICA that is significantly different to that given at trial may be relevant to the safety of the conviction. In sexual offence 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 will be applied.

Civil Actions

19. 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 the CICA. Where circumstances indicate that a civil action was contemplated, the Commission will normally use its section 17 powers to access any local authority civil action file, subject to application of the 'necessary and reasonable' test.

Family Court proceedings

20. 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 the CICA. Where circumstances indicate that Family Court proceedings did take, or are taking, place careful consideration must be given to the potential value of the Family Court file, subject to application of the 'necessary and reasonable' test.

Medical Records

21. In a small number of cases the circumstances will suggest that it might be appropriate to gain access to relevant parts of a witness's medical records. Medical records are properly regarded as highly confidential and must not be examined without very good reason, see the policy on [Medical Records](#), applying the 'necessary and reasonable' test. Advice must be sought from the Legal Adviser and any decision to access a medical record must be endorsed by a Group Leader.

Historical Abuse Cases

22. 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 obvious 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 Investigations Adviser should be consulted in these cases.

23. 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.

False Allegations

24. The Head of Investigations should 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 after trial and/or appeal might have a significant impact on the witness's credibility. Any suggestion of a false allegation should, 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).

Retractions

25. The Head of Investigations must be consulted in all cases where it is said that the witness has retracted his or her trial evidence.
26. 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'.
27. The Commission receives a number of applications with a clear indication that the witness (most often a complainant in a sexual offence case) is now willing to say that his or her evidence was untrue. In these circumstances the Commission 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 his or her evidence, and secondly to look for any supporting evidence that might indicate which of the witness's accounts is true. See policy on Interviewing.
28. Most typically, retractions have been made to third parties. These will normally be followed up by interviewing the third party. If this interview produces credible evidence that the witness has retracted his/her trial evidence, then the witness should normally be interviewed afterwards.