

INTERVIEWING JURORS

CASEWORK POLICY

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1 Introduction

- 1.1 There are two ways in which the CCRC may seek to interview one or more members of the jury at trial:
- 1.2 First, the CCRC may decide that in order to properly discharge its functions it will be necessary and appropriate to interview one or more members of the jury at trial.
- 1.3 Second, the Court of Appeal may request the CCRC to carry out interviews with jurors pursuant to a direction under section 15 of the Criminal Appeal Act 1995.
- 1.4 In the ordinary appeal process there can be occasions when, following conviction, either the defence or the prosecution wish to interview jurors.
- 1.5 Additionally, where there is a suggestion of a tainted acquittal under section 54 of the Criminal Procedure and Investigations Act 1996 (see

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Annex A), the police may wish to investigate whether an “administration of justice” offence has been committed.

- 1.6 With the agreement of the Lord Chief Justice, all Circuit Administrators have been required to forward any application by the defence or the Crown Prosecution Service for the names and addresses of jurors to the Registrar of Criminal Appeals, so that it can then be considered by a nominated Lord Justice of Appeal.
- 1.7 The CCRC has agreed with the Registrar of the Court of Appeal (Criminal Division) that it would not be appropriate for the CCRC to follow this procedure.
- 1.8 The CCRC’s powers to obtain jurors’ names and addresses under section 17 of the Criminal Appeal Act 1995 and to take any necessary investigative steps under section 21 are not qualified by any requirement for judicial oversight. Nor would it be desirable to follow a procedure in which conflict could arise between the CCRC’s view about the proper exercise of its statutory functions and that of the nominated Lord Justice.
- 1.9 Should the CCRC have any concerns about its proposed action in an individual case, the power to seek the Court’s opinion under 14(3) of the Act is available.

2 Section 20D Juries Act 1974

- 2.1 Section 77 of the Criminal Justice and Courts Act 2015 partially repealed section 8 of the Contempt of Court Act 1981 and amended the Juries Act 1974 to create new offences and provisions relating to the disclosure of jury deliberation information.
- 2.2 This amendment applies only to juries sworn on or after 13 April 2015.
- 2.3 The aim of the legislative change is to allow jurors to report concerns to the Court or to the police who will then inform the Court of Appeal. It is not intended that the CCRC be used as an initial point of contact for jurors in such circumstances.
- 2.4 The Court of Appeal can instigate an investigation if necessary and make disclosure to a relevant investigator.
- 2.5 Section 20D Juries Act 1974 now provides that:

“it is an offence for a person intentionally –

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a) to disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in proceedings before a court, or

b) to solicit or obtain such information

- 2.6 A person found guilty of an offence under this section is liable on conviction to 2 years imprisonment or a fine.
- 2.7 The same Act provides exceptions in sections 20E to 20G which include the trial judge at the court investigating issues relating to jury deliberations for the purpose of dealing with the case.
- 2.8 In order to determine whether an offence of contempt of court has been committed by or in relation to a juror in the relevant proceedings a judge may also disclose information for the purposes of an investigation by a “relevant investigator”.
- 2.9 A “relevant investigator” is defined as a police force, the Attorney General or any other person or class of person specified by the Lord Chancellor for the purposes of this section by regulations made by statutory instrument.

3 Section 8(1) Contempt of Court Act 1981

- 3.1 This section still applies to juries sworn before 13 April 2015.
- 3.2 Once a jury has retired to consider its verdict, its discussions and reasons for its decision are sacrosanct. Section 8(1) of the Contempt of Court Act 1981 provides:

“... it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings”.

- 3.3 Section 8 does not apply to the courts themselves, but there is also a longstanding common law principle that only the judge at the court of trial is entitled to investigate issues affecting jury deliberations, except where criminal conduct is suspected.
- 3.4 Section 8 does not prevent jurors being asked about matters that are not “in the course of their deliberations”. Relevant situations may include:
- improper approaches made to jurors

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- allegations of direct or indirect contact with witnesses
 - their conduct outside the jury room
- 3.5 In *R v Young* [1995] 2 Cr App Rep 379, for example, the jury used a Ouija board during an overnight stay in a hotel. It was not used in the jury room, so it was not “in the course of their deliberations” within the meaning of section 8.

4 The Court of Appeal

- 4.1 Under section 20F(4) Juries Act 1974 the Court of Appeal can disclose information in order to initiate an investigation into jury related impropriety. In such circumstances it is not a criminal offence for a juror to disclose information about deliberations for the purpose of that investigation.
- 4.2 However, where the Court of Appeal has not instigated an investigation, exceptions provided within the Act do not apply and it would therefore be a criminal offence for the juror to disclose information about deliberations and for the CCRC to solicit information about those deliberations. This effectively replicates the position that exists under section 8 of the Contempt of Court Act 1981.
- 4.3 In circumstances where the Court of Appeal exercises its powers under section 15 of the Criminal Appeal Act 1995 to direct the CCRC to conduct inquiries into alleged jury related impropriety it should explicitly indicate that it intends that the CCRC, as a relevant investigator, will be afforded protection under sections 20E – 20G. In the event of doubt, it is vital that the CCRC obtains written confirmation of its legal standing.
- 4.4 Providing the Court of Appeal has initiated the investigation, and the jury was sworn on or after 13 April 2015, section 20G allows for the soliciting of that disclosure and so CCRC staff can legitimately ask a juror about deliberations.
- 4.5 It is important to recognise that section 20D and section 8 of the Contempt of Court Act 1981 (for pre 13/4/2015 sworn jurors) does not preclude jurors being questioned about matters that were not in the course of their deliberations. Relevant situations include:
- Improper approaches made to jurors
 - Allegations of direct or indirect contact with witnesses
 - Juror conduct outside the jury room

5 Procedure to be followed when interviewing jurors

- 5.1 Careful precautions need to be taken by the CCRC in relation to interviewing jurors. First, the object must only ever be to obtain relevant information which complies with the 1974 Act. Second, considerable care must be taken not to stray beyond the legitimate object into questioning the juror about, or letting the juror volunteer, anything which would breach section 20D or section 8 of the Contempt of Court Act 1981 (for pre 13/4/2015 sworn jurors).
- 5.2 In any case in which a case reviewer thinks that members of a jury should be interviewed, the following procedure must be adopted before any steps are taken:
- i. The case reviewer must discuss the issue with the Head of Investigations and the Nominated Decision Maker (if appointed) or Group Leader.
 - ii. A plan of the proposed interview(s) and an outline of the questions to be asked must be prepared in consultation with an Investigations Adviser.
 - iii. Advice must be obtained from a Legal Adviser that the purpose and proposed contents of the interview(s) do not breach section 20D of the 1974 Act and section 8 of the Contempt of Court Act 1981 (for pre 13/4/2015 cases) exposing the CCRC or its staff to the risk of criminal proceedings. An advice form which has been used successfully in a case where jurors were interviewed can be found in Appendix B.
 - iv. The fact that the above steps have been taken must be recorded. The legal advice obtained, and the decision whether or not the interviews are to be undertaken, must also be recorded in writing.
 - v. The CCRC will notify the Registrar of the Court of Appeal (Criminal Division) of the intention for the CCRC to interview juror(s) and, in cases where the jury was sworn on or after 13 April 2015 where there is a requirement to solicit information concerning juror deliberations seek official designation as a relevant investigator.

- vi. The CCRC will generally advise a senior member of staff at the relevant Crown Court, so that the juror has someone with whom s/he can verify the CCRC's role.
- 5.3 Initial contact with a juror requesting an interview should be by letter, explaining the CCRC's role and the reason for the request. If appropriate, the letter must refer to section 20D of the Juries Act 1974 and matters about which questions cannot be asked or information given. It is important that the juror is given no reason to believe that the CCRC's approach has been misleading or that the intrusion into the sensitive area of his/her jury service might be unlawful.
- 5.4 Exceptionally, where the enquiry is very urgent (such as when the Court of Appeal has requested it under section 15 Criminal Appeal Act 1995 within a short time frame for current proceedings), initial contact can be made in some other way, provided that the same degree of care is taken to make clear the CCRC's role. In such circumstances, wherever possible, the juror should also be sent or handed a letter or statement explaining the CCRC's role and the reason for the interview prior to the interview taking place.
- 5.5 The Head of Investigations must participate in all interviews with jurors. He and the case reviewer must be aware at all times of the sensitivity of interviewing a juror and of the terms of section 20D and where legal exemption under sections 20E to 20G do not apply must be prepared to intervene if the juror appears to be straying into matters involving the jury deliberations.
- 5.6 Situations may arise where the Head of Investigations is not available to participate in an interview. In such exceptional circumstances, the Investigator will stand in. This will only happen following discussions with, and with the approval of the Head of Investigations who will advise on the interview plans. If this is not practicable, the Director of Casework Operations must give approval. The fact that this decision has been taken must be recorded.

6 The possibility of a section 19 appointment

- 6.1 The scale of the inquiry needed, or the nature of it (e.g. if a juror is alleged to have attempted to pervert the course of justice), may raise the possibility of an Investigating Officer appointment under section 19 of the Criminal Appeal Act 1995. In that event, the IO directions must be drafted so as to identify the purpose of the interview and any limitations on what may be covered, with express reference to section 20D of the 1974 Act and section 8 of the Contempt of Court Act 1981 (for pre 13/4/2015 sworn jurors). For further information see policy on Section 19 Requirements to Appoint an Investigating Officer.

7 Section 54 Criminal Procedure and Investigations Act 1996

s54. Acquittals tainted by intimidation, etc.

(1) This section applies where -

- (a) a person has been acquitted of an offence, and
- (b) a person has been convicted of an administration of justice offence involving interference with or intimidation of a juror or a witness (or potential witness) in any proceedings which led to the acquittal.

(2) Where it appears to the court before which the person was convicted that -

- (a) there is a real possibility that, but for the interference or intimidation, the acquitted person would not have been acquitted, and
- (b) subsection (5) does not apply,

the court shall certify that it so appears.

(3) Where a court certifies under subsection (2) an application may be made to the High Court for an order quashing the acquittal, and the Court shall make the order if (but shall not do so unless) the four conditions in section 55 are satisfied.

(4) Where an order is made under subsection (3) proceedings may be taken against the acquitted person for the offence of which he was acquitted.

(5) This subsection applies if, because of lapse of time or for any other reason, it would be contrary to the interests of justice to take proceedings against the acquitted person for the offence of which he was acquitted.

(6) For the purposes of this section the following offences are administration of justice offences -

- (a) the offence of perverting the course of justice;
- (b) the offence under section 51(1) of the Criminal Justice and Public Order Act 1994 (intimidation etc. of witnesses, jurors and others);

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(c) an offence of aiding, abetting, counselling, procuring, suborning or inciting another person to commit an offence under section 1 of the Perjury Act 1911.

(7) This section applies in relation to acquittals in respect of offences alleged to be committed on or after the appointed day.

(8) The reference in subsection (7) to the appointed day is to such day as is appointed for the purposes of this section by the Secretary of State by order.

[The appointed day for the purposes of section 54(8) was April 15, 1997: CPIA 1996 (Appointed Day No. 4) Order 1997 (S.I. 1997 No. 1019).]

For the purposes of subsection (7), where an offence is alleged to be committed over a period of more than one day, or at some time during a period of more than one day, it must be taken to be alleged to be committed on the last of the days in the period: 1996 Act, s.75(1), (2).

As to the procedure for obtaining the quashing of an acquittal under section 54(3), see the Civil Procedure Rules 1998 (S.I. 1998 No. 3132), Sched. 1, RSC, Ord. 116.

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Name
Address.....
Signature.....Date.....
Others present.....

'A' - THE LAW: *(delete as appropriate)*

For Jurors sworn before 13 April 2015

Section 8 of the Contempt of Court Act 1981 states that –

..... it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings.

For Jurors sworn on or after 13 April 2015

Section 20D of the Juries Act 1974 states that –

... it is an offence for a person to intentionally disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in proceedings before a court.....

'B' - THE EXPLANATION

For the purposes of our discussion, this means two things –

Firstly, we are not allowed to ask you about things that were said by the jury members in the course of your jury deliberations; and

Secondly, you are not allowed to tell us about things that were said by the jury members in the course of your jury deliberations.

'C' - WHAT ARE THE 'JURY DELIBERATIONS'?

The jury deliberations are the discussions that take place after the judge has summed up the evidence and has sent the jury out to consider their verdict in private, usually when all jury members are present together in the jury room at the court building.

'D' - WHAT ARE WE ALLOWED TO TALK ABOUT?

We are allowed to talk freely about what was said by jury members outside the jury deliberations.

For instance –

You are allowed to tell us about things that were said by jury members before the trial began and while it was under way, perhaps before or after the daily proceedings, during coffee breaks or at lunchtime (but not once you had retired to discuss your verdict).

You are allowed to tell us about things that were said by jury members after your verdict had been delivered and the trial was all finished.

PLEASE LET US KNOW IF YOU ARE IN ANY DOUBT ABOUT WHETHER YOU CAN TELL US SOMETHING. WE WILL ASK YOU TO DESCRIBE WHEN AND WHERE THE THINGS WERE SAID AND WE WILL THEN DECIDE WHETHER YOU ARE ALLOWED TO GIVE US MORE SPECIFIC DETAILS.

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