



Department of
Justice

www.dojni.gov.uk

Summary of Responses

Consultation on proposal to extend the power of
the Criminal Cases Review Commission to obtain
documents from private organisations and
individuals

January 2016

1. Introduction

- 1.1 In December 2014 the Department of Justice published a consultation on a proposal to extend the power of the Criminal Cases Review Commission to obtain documents and other material from private organisations and individuals.
- 1.2 The Criminal Cases Review Commission is an independent body which investigates potential miscarriages of justice in Northern Ireland and refers appropriate cases to the Court of Appeal. Anyone who believes they have suffered a miscarriage of justice can ask the Commission to review their case. Currently the Commission has no power to obtain material for their investigations from the private sector and this has often worked to the disadvantage of applicants.
- 1.3 The consultation paper set out a number of examples where the new provision might be required including such bodies as private schools, clinics, the banking sector, shops and stores, employers and GP's as well as private individuals.
- 1.4 The consultation considered that such a change would benefit applicants who believe they have suffered a miscarriage of justice however we welcomed views on the impact of the proposal to inform our decision on whether to extend this legislative change to Northern Ireland.
- 1.5 We received 10 responses to our proposal. We are grateful to everyone who took time to address the issues in our consultation and who provided thoughtful, high quality suggestions. The organisations who responded are listed in [appendix A](#).

2. Responses

- 2.1 This section sets out respondents' views on the proposal and the Department's response. We received 10 responses to the consultation. Six of the respondents were fully supportive of the change, one had no contrary views to the proposal and one respondent could neither support nor reject the proposal suggesting that each request would require consultation with the person affected and that a process for pre court mediation would be beneficial.
- 2.2 One respondent suggested protections to balance the rights of the parties affected by the disclosure, particularly the rights protected by the European Convention on Human Rights and one highlighted the requirement for compliance with the third data protection principle of the Data Protection Act.
- 2.3 One respondent highlighted that the new power should also extend to commercial companies who provide forensic services and the Department can confirm that such organisations would be included.

Supportive views

- 2.4 Two respondents noted that in cases whereby grave or exceptional matters of public concern are engaged, it is important that the investigative body has access to all relevant information in order to discharge its statutory duties.
- 2.5 One respondent highlighted that the work of the Criminal Cases Review Commission is of vital importance as they enhance public confidence in the criminal justice system. While the lack of this power remains unaddressed, they are frustrated in their ability to gain access to documents from organisations previously in the public sector and thus prevented from pursuing cases with the required pace, rigour and probity that should be at the core of any independent review process.
- 2.6 Two respondents noted that such provisions are already available to other bodies in Northern Ireland including the Commissioner for Complaints,

Financial Services Ombudsman, the Parliamentary Commissioner and the Health and Safety Inspector.

Safeguards

- 2.7 The safeguards proposed were considered by most respondents to be adequate and proportionate. There is a facility to seek consent of the individual and a choice for them to release the material and where necessary the court would ensure that non-public sector bodies will have the protections required in exceptional cases.
- 2.8 One response highlighted that in considering the proposal to extend the power it is necessary to balance the competing rights and interests of the parties affected by the disclosure, perhaps particularly the rights protected by article 8 of the European Convention on Human Rights.
- 2.9 As a section 6 Human Rights Act public authority the Commission itself must form a proper judgment in balancing the possible relevance of perhaps unknown material against the relevant rights of third parties. While it is noted that the Commission would always first attempt to obtain any information voluntarily this may not be of assistance to individuals or bodies who may be unable to share sensitive material about others.
- 2.10 The response highlighted that it would be proper to require the Commission to persuade a Court that a reasonably demanding threshold has been met to justify disclosure. Courts are of course, well placed to carry out the human rights analysis required. Without the interposition of a Court there is a risk that individuals and organisations may provide documents and other material too readily as they may be under the impression that any refusal to provide the material will inevitable result in a court order compelling them to do so.
- 2.11 One response focused on compliance with the Data Protection Act (DPA). This noted the difficulties in investigating some cases and therefore welcomed the proposal to create a statutory footing for the Commission. They noted that

a number of the examples cited confidentiality as a reason that information is not provided and would like to reinforce that the DPA contains a number of exemptions which allows organisations to disclose personal data which would otherwise be protected. However creating a legal obligation for private organisations to provide information would strengthen the exemption in 35(1) by providing a statutory duty rather than a discretionary obligation.

- 2.12 Any powers of the Commission should comply with the DPA; the information must be processed fairly, lawfully and certain conditions must be met. A condition from Schedule 2 must be met and for sensitive material a condition in Schedule 3 is also required. A statutory requirement would allow organisations to provide information satisfying the condition in Schedule 2 (3).
- 2.13 The existing legislation requires a public body to make information available where it is reasonable to do so. The respondent would recommend that any proposal to obtain information from private organisations contains similar qualification to ensure that the disclosure is proportionate and justified and in compliance with the third data protection principle.
- 2.14 One respondent noted that their organisation operated within very clear legislative guidelines in relation to the confidentiality of information of clients and employees. They expressed sensitivity to the potential implications of a loss of trust where sensitive information may no longer remain confidential. They suggested that consideration should be given for a mediation system to reach agreement.

Impact assessments

- 2.15 One respondent had no contrary views to the proposal however they insisted that a full legal aid impact assessment was completed on any proposals which could give rise to legal aid.
- 2.16 One respondent commented on the consultation document and equality screening highlighting that they were disappointed that copies in other formats

'may' be available on request rather than 'can' be made available. They welcomed the plain language and topical examples but would recommend that a full list of evidence is provided in screening documents. There was no breakdown of applications by section 75 groups. This would have proven useful as there is clear evidence that significant numbers of prisoners in Northern Ireland are disabled or have significant medical problems.

- 2.17 The Department accepts the comments regarding equality screening. Unfortunately there was no further breakdown of applications available although we would agree that a number of prisoners/ex-prisoners may be disabled or have medical problems. The Department is not aware of any barriers preventing people from making an application to the Commission. The Commission reports that the total number of applications made to them has increased each year since they were established particularly following the introduction of an Easy Read application form in early 2012. Since then applications have increased by 50% to upwards of 1,500 each year from across England, Wales and Northern Ireland.

3. The Way Forward

- 3.1 The Department is grateful to those who took the time to respond to this consultation and for the detailed comments submitted. We welcome the general support for this change and are grateful for the suggestions for additional protections for private organisations and individuals.

- 3.2 The Department will now seek to legislate for this change taking on board the recommendations from respondents to this consultation.

Respondents

We are very grateful to all of the following people and organisations who responded to our consultation:

- ◆ Attorney General's Office
- ◆ Chief Executive of the Bar of Northern Ireland
- ◆ Department of Justice and Equality
- ◆ Disability Action
- ◆ Forensic Science Northern Ireland
- ◆ Information Commissioners Office
- ◆ Legal Services Commission
- ◆ Police Ombudsman
- ◆ Police Service Northern Ireland
- ◆ The Senior Coroner's Office