



OPERATIONAL SELECTION POLICY OSP21

RECORDS OF THE
CRIMINAL CASE REVIEW COMMISSION
(CCRC)

February 2003, Revised December 2005

1 Authority

1.1 The National Archives' Acquisition and Disposition policy statements announced the Office's intention of developing, in consultation with departments, Operational Selection Policies across government. These policies would apply the collection themes described in the policy to the records of individual organisations.

1.2 Operational Selection Policies are intended to be working tools for those involved in the selection of public records for permanent preservation. They may therefore be reviewed and revised at any time in the light of comments from record users, archive professionals, the department's experience of using the policy or as a result of newly discovered information. There is no formal cycle of review and we welcome comments at any time. The extent of any review or revision exercise will depend on the nature of the comments received.

1.3 If you have any comments upon this policy, please e-mail records-management@nationalarchives.gov.uk or write to:

Acquisition and Disposition Policy Project Manager
Records Management Department
The National Archives
Kew
Richmond
Surrey
TW9 4DU

1.4 Operational Selection Policies do not provide guidance on public access to selected records.

2 Scope

2.1 This Operational Selection Policy covers all records which have been or will be created and held by the Criminal Case Review Commission (CCRC), including those inherited from the Home Office and the Northern Ireland Office.

2.2 The Operational Selection Policy relates only to records of the Commission; it does not cover records relating to the Commission held by:

- The Home Office as the CCRC's parent department with primary responsibility for the criminal justice system
 - Other government departments (e.g. Crown Prosecution Service, Court Service) which have regular contact with the Commission
- Such records will be covered by future Policies relating specifically to the policy and case-work functions of those departments.

3 History and functions of the Commission

- 3.1 The Criminal Case Review Commission was established in January 1997 under the Criminal Appeal Act 1995. The Act implemented a recommendation of the 1993 report of the Royal Commission on Criminal Justice which had been set up in response to a series of major miscarriages of justice in cases arising from terrorist bombings.
- 3.2 The Commission has the status of an executive non-departmental public body financed by grant-in-aid through the Home Office Main Estimate. It reports annually to the Home Secretary. It is required to have at least eleven members, one of whom will be chairman, who are appointed by the Queen on the recommendation of the Prime Minister. The Commission may appoint a Chief Executive and other staff.
- 3.3 The Commission took over the responsibility previously exercised by the Home Office and the Northern Ireland Office for reviewing alleged and suspected miscarriages of criminal justice in England, Wales and Northern Ireland. The Commission
- Reviews cases heard either in magistrates' courts or Crown Court and may refer them to the appropriate court of appeal when there is a real possibility that the original conviction, verdict, finding or sentence will not be upheld
 - Investigates matters referred to it by the Court of Appeal and reports on them to the Court
 - Provides assistance to the Home Secretary in connection with Her Majesty's prerogative of mercy in relation to a conviction

4 Relevant collection themes in The National Archives' Acquisition Policy

- 4.1 The Acquisition Policy outlines certain themes which form the basis of The National Archives' appraisal and selection decisions. Of these themes the one relevant to the records of the Commission is 2.2.1.4 *Policy and administrative processes of the state: administration of justice and maintenance of security.*
- 4.2 The Acquisition Policy also states, at section 2.3.4, that the cost of selection and of storage must be an explicit element in appraisal decisions.
- 4.3 Most documents created by the Commission were created and are held electronically. Many documents inherited or received have been scanned. However some early documents and some inherited or incoming documents are available only in paper format. Publicity material is available in both paper and electronic format. The National Archives will preserve selected records electronically unless they are only available in paper format and will preserve all selected records in the most complete version available.
- 4.4 Compared with the total number of cases dealt with in the criminal

justice system, the Commission deals with only a small number. Of these, only a modest proportion is referred to the appeal courts. It follows that a substantial proportion of the Commission's work needs to be preserved if historians and others are to be able to make judgements about the causes and handling of miscarriages of justice.

- 4.5 The records of the Commission fall into three broad functional areas:
1. Policy
 2. Casework
 3. Administration

4.6 **Theme 1: Development of policy and procedures**

Primary responsibility for the development of policy and legislation in the criminal justice field rests with the Home Office. However the Commission is tasked to suggest in the light of its experience any improvements in its powers or any changes in legislation which may be necessary or useful. For example, in July 1999 the Home Office sponsored the Criminal Cases Review (Insanity) Act 1999 in response to Commission recommendations arising out of the case of Iain Hay Gordon whose conviction was subsequently quashed in December 2000.

- 4.7 The views of the Commission as communicated to the Home Office will be documented on related Home Office files; these are not yet covered by an Operational Selection Policy but will be selected in line with standard appraisal criteria for policy files in the Home Office (see Annex A).

- 4.8 The CCRC's internal discussions, including any views which are not conveyed to the Home Office, will be documented in minutes of and submissions to meetings of the Commission. A full set of minutes and papers of meetings of the Commission will be preserved.

- 4.9 Major issues and developments will also be reported in published reports and confidential reports. The National Archives will preserve a complete set of:

- Annual reports presented to the Home Secretary
- Reports on matters referred to the Commission by the Court of Appeal
- Reports of internal working parties, and
- Reports of research commissioned by the Commission

- 4.10 The National Archives will not preserve any of the supporting files for the above meetings and reports. These will be destroyed as soon as they are no longer required for administrative purposes.

4.11 **Theme 2: casework**

In its first five years the Commission carried out 4,830 case reviews,

including 279 cases inherited from the Home Office and Northern Ireland Office. It referred 161 cases to the court of appeal, of which 94 have been determined. The cases cover a wide range of offences and a span of fifty years.

- 4.12 Most case reviews are carried out by case review managers who present findings to a Commission member or panel of Commission members for decision. Case workers are mentored by Commission members who may carry out some review work themselves but who are mainly occupied in overseeing the work of case review managers and making final decisions on case reviews.
- 4.13 The case review process is divided into discrete stages. At each stage the decision may be taken to refer or not refer a case to the courts of appeal. The decision not to refer a case may be made by a member of the administrative staff, a case review manager, or one or more members of the Commission depending on the stage. When a decision is taken not to refer a case the applicant will be given a statement of reasons and may respond by providing additional evidence in support of the application. The decision to refer a case will always be taken by a panel of three Commission members.
- 4.14 The type of documentation filed for each case depends on the nature of the offence and the complexity of the case but, with the exception of some early cases, will always include a Statement of Reasons, i.e. a case summary setting out the nature of the case, the grounds of appeal and the reasons why the Commission considers the original conviction or sentence would or would not be upheld on appeal.
- 4.15 The case file may also include documentation from courts, police, forensic science agencies, the Prison Service, HM Customs and Excise, Health Authorities and NHS Trusts, and Social Services Departments. The Commission has statutory powers to require these bodies to preserve documents as long as they are needed by the Commission and to make them available to the Commission who will usually scan them and return the originals. The originals may in due course be selected for preservation at The National Archives or local authority record offices but the fact of a document's having been used by the Commission is not in itself a reason for the creating body to preserve it.
- 4.16 The file may also contain documents received from the applicant, the applicant's representative, practising professionals, professional associations and privatised utilities. The Commission does not have power to require that these be preserved or made available; and there is no certainty that any of them will survive other than in the records of the Commission.
- 4.17 The National Archives will preserve:
- Full documentation for all cases which were referred to the Court of Appeal

- Full documentation for a selection of cases which were considered by one or more Commission members but were not referred (see below)
- The Statement of Reasons for all cases

4.18 In selecting cases to be preserved from those which were not referred to the Court of Appeal, the Commission and The National Archives will consider for permanent preservation cases which:

- Are regarded by the Commission as having particular significance legally or procedurally because, for example, they led to the revision of legislation
- Relate to a capital offence
- Relate to serial/ multiple murder (including acts of terrorism)
- Relate to serious and repeated sexual offences
- Represent the first instance of a newly defined offence
- Gave rise to widespread and prolonged public concern (measured by frequency of parliamentary questions, minister's cases and media coverage at national level) and/or were raised as a matter of concern by a criminal justice reform organisation

4.19 In order to provide context for the case documentation, The National Archives will also preserve:

- Instructions to staff on procedures to be followed in carrying out case work, in sufficient detail to document basic procedures and any major changes
- A snapshot of the Commission website (which contains information for applicants about the Commission's role, functions and procedures) to be taken when there is any major change in functions or approximately every third year from April 2003
- Other public information not available on the website (e.g. the publicity video *Open to Question*)

4.20 **Theme 3: Administration**

This function includes all the standard elements of managing an organisation - structure, staffing, finance, accommodation and facilities management. Records which document the structure and resourcing of the Commission provide information which may have a bearing on the success or otherwise of the core function.

4.21 The Commission members meet regularly to review and decide upon policy, management, operational structure and performance but delegate the immediate managerial control to a Chief Executive who is also Accounting Officer. The National Archives will preserve the minutes and papers of the meetings of the Commission but will not preserve the minutes and papers of other CCRC committees whether temporary or permanent, executive or advisory. It is assumed that significant issues raised by such committees will be reflected in the minutes of the Commission meetings.

4.22 As well as the statutory annual report and accounts presented to the Home Secretary, the Commission publishes annual management statements, corporate and business plans. The National Archives will preserve only the annual reports; other management information will be captured among the papers of the Commission meetings.

4.23 All other records relating to routine administration will be destroyed in line with The National Archives' published model disposal schedules.

5 Implementation

5.1 Implementation of this policy will fall on the Commission and The National Archives.

5.2 The Commission and The National Archives has agreed procedures for:

- The annual transfer of published annual reports in paper format
- The electronic transfer of a website snapshot every third year from April 2003
- The transfer of other records every fifth year
- The National Archives to approve CCRC's selection of non-referred cases
- The National Archives and CCRC to agree treatment of new types of records
- CCRC's destruction of records not selected for permanent preservation at The National Archives, including agreement of retention periods

Annex A: criteria used in the Home Office for the selection of policy files.

This Operational Selection Policy does not cover records created by the Home Office relating to the setting up of the Commission and subsequent relations between the two bodies. When the Home Office files are seven years old they will be appraised under the existing review programme using the following selection criteria which are applied by Home Office reviewers to all records not covered by a specific Policy.

Files should be selected for preservation if they contain:

- Agendas, minutes and circulated papers of internal Home Office meetings
- Agendas, minutes and circulated papers of interdepartmental working parties chaired by the Home Office
- Drafts of reports, Bills and Statutory Instruments where these differ significantly in form or substance from the final, published version
- 'Notes on clauses', explanatory papers and briefing notes for senior staff and ministers sponsoring primary legislation
- Comments on other departments' legislation which were clearly not conveyed to the other department and which add significantly to understanding of the Home Office's position *or* reveal a significant difference of opinion, interpretation or approach between the departments
- Submissions from other government departments or bodies or individuals in response to a specific request for comment or information
- Unsolicited submissions from other government departments, professional bodies or individuals with relevant professional knowledge only where these prompt officials to propose further consideration of or action on the issue.