

CHAPTER 17 – CONFIDENTIALITY, DISCLOSURE AND RELATIONS WITH THE MEDIA

INTRODUCTION

Confidentiality and disclosure are complex and conflicting areas of law underpinned by different considerations and objectives. Reconciling duties of privacy and confidentiality with obligations of disclosure demands sensitivity, integrity and professional judgement.

The introduction of Convention rights, new data protection legislation and impending freedom of information legislation add to the existing tensions and increase the complexity of an already problematic area of law.

The purpose of this chapter is to provide assistance and guidance to deal with confidentiality and disclosure in relation to both criminal proceedings and non-criminal matters. The objective is to ensure a consistent, fair and principled approach throughout the Service.

All Procurators Fiscal must be familiar with this area of law and must ensure that all members of staff are aware of their duties and obligations.

PART I: CONFIDENTIALITY

17.01 OFFICIAL SECRETS ACTS

All staff in the Procurator Fiscal Service are bound by the Official Secrets Act 1989.

The 1989 Act provides, inter alia: -

" A person who is or has been a Crown servant is guilty of an offence if without lawful authority he makes a damaging disclosure of any information, document or other article relating to the following classes of information:

- (a) security or intelligence;
- (b) defence;
- (c) international relations;
- (d) foreign confidences;
- (e) information which might lead to the commission of crime; facilitate an escape from legal custody; impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders;
- (f) any information obtained by the interception of any communication under a warrant issued under section 2 of the Interception of Communications Act 1985 or section 3 of the Security Service Act 1989."

A disclosure is made with lawful authority if, and only if, it is made in accordance with official duties.

It is also an offence for a Crown servant to fail to take care to prevent the unauthorised disclosure of the document or article as a person in his position may reasonably be expected to take.

(Sections 1 - 8 of the 1989 Act are referred to in full for their terms)

Each member of staff when signing his/her contract of employment undertakes to abide by the Official Secrets Act. Care should also be taken to ensure that any temporary staff, students, etc are fully advised as to the provisions of the 1989 Act and its implications.

17.02 INTERNAL GUIDANCE: BOOK OF REGULATIONS; CROWN OFFICE CIRCULARS; LORD ADVOCATE'S GUIDELINES ETC

All internal guidance is confidential to the Service unless it is explicitly stated that it can be disseminated outwith the Service.

Lord Advocate's guidelines have been issued in respect of various issues. Unless it is specifically stated otherwise the guidelines are confidential to the Service.

The policies and instructions in the Book of Regulations are confidential to the Service unless stated otherwise.

All staff must be properly instructed as to the use of "confidential waste" sacks and shredders.

Care should be taken to ensure that confidential papers and documents are not left lying around where they may be read by any unauthorised persons.

(The Finance Manual gives instructions regarding safekeeping of cash and productions etc).

17.03 STAFF REPORTS ETC

The contents of annual confidential reports and job appraisal review reports must not be disclosed except as authorised by staff circulars. Similarly, information about staff gained in the course of welfare, promotion, disciplinary interviews and the like should not be disclosed to any unauthorised person.

17.04 DRAFT LEGISLATION

From time to time Procurators Fiscal may be consulted about or otherwise learn of the contents of draft Parliamentary bills. Great care must be taken to ensure that information is not disclosed before the bill is presented to Parliament.

17.05 INTERNAL COMMUNICATIONS

All communications between the Crown Office and Procurators Fiscal must be considered strictly private and confidential. When they are required or permitted to be disclosed intimation to this effect will be given.

Any person employed in the office of the Procurator Fiscal who shall directly or indirectly communicate or make public any information about internal communications particularly in relation to a case that is current shall be held liable for a serious breach of duty and dealt with accordingly.

17.06 DATA PROTECTION ACT 1998

The data Protection Act 1998 came into force on 1 March 2000. The Act regulates data relating to individuals including the obtaining, holding, use or disclosure of such information. The 1998 Act extends the provision of "data" to include manual records.

Personal data is defined broadly and includes any data from which a person can be identified. In brief, any information on a computer or contained within manual records from which an individual, i.e. an accused or witness, can be identified is personal data which falls under the Act. This includes police reports, witness statements, complaints etc. Accordingly, all information held, relating to the criminal investigation and prosecution of individuals, is "data" within the terms of the Act

The Act provides individuals with a right to be informed whether personal data of which that individual is the data subject is being processed by or on behalf of the data controller, and if that is the case, to be given a description of the data, the purpose for which it is being processed, the recipients to whom it may be disclosed and any information regarding the source of the data. If the processing is for the purpose of evaluating his performance at work, credit worthiness or reliability the data subject requires to be informed of the logic involved in such decision taking.

There is no obligation to supply any information unless a request has been received in writing and provides such information as is reasonable to be satisfied as to the identity of the person making the request and to locate the information which that person seeks. Accordingly, if a request is received asking for all data held in relation to a particular individual, it is appropriate to ask which Procurator Fiscal's office the individual may have had contact with and if the request is restricted to that office.

Furthermore, the Act applies certain restrictions if compliance with the request will

result in identifying another individual.

A data controller must always reply to a subject access request. If no personal data is held about the individual a reply stating "the data held do not include personal data which I am required to reveal to you" is sufficient.

The Act provides a number of exemptions from these provisions. The most significant of these for the Fiscal Service is the exemption for data processed in any case to which the application of the subject access provisions would be likely to prejudice the prevention or detection of crime or the apprehension or prosecution of offenders.

If all the personal data about the individual is covered by one of the subject access exemptions, there is no need to advise the data subject of that fact. He should be advised that "the data held do not include personal data which I am required to reveal to you."

However, there must be an identifiable prejudice to the prevention or detection of crime or the apprehension or prosecution of offenders before the exemption can be invoked. This necessitates each case being considered individually.

Crown Office will be the registered data controller and for that reason all subject access requests should be reported to the Policy Group at Crown Office. The Procurator Fiscal should attach a brief report specifying all the information being held in relation to that individual. The report should consider whether the disclosure of the data will cause prejudice to the prevention or detection of crime or the apprehension or prosecution of offenders and whether compliance with the request will result in information being disclosed relating to another individual who can be identified from that information.

PART 2: DISCLOSURE

CRIMINAL PROCEEDINGS: DISCLOSURE TO THE DEFENCE

17.07 GENERAL PRINCIPLES AND POLICY

Our system of criminal procedure proceeds on the basis that the Crown has a duty at any time to disclose to the defence information in their possession which would tend to exculpate the accused. The duty of the Crown is not simply to put forward witnesses who support the Crown case but to include in the list other witnesses whose testimony may not be in line with the Crown case but which may have a bearing on the innocence of the accused and so help the Court to form a balanced view of the evidence relating to the incident in question: McLeod v HMA 1998 SCCR 77.

The Crown will respond to specific requests from the defence if satisfied that the production of the particular documents or other items would be likely to be of

assistance to the proper preparation or presentation of the accused's defence. The accused will need to show how the documents relate to the charge or charges and the proposed defence to it or them: McLeod v HMA 1998 SCCR 77.

The Crown will respond sympathetically if a request arises as a result of persons being unable to remember the events in question or refusing to co-operate or whom the defence has been unable to locate.

The duty of disclosure relates not only to documents, but also to information, which need not be in written form.

The duty is a positive one: there is an obligation to make reasonable inquiries to ensure that the duty is carried out. The routine provision of a list of witnesses and copy productions will not satisfy this obligation.

The duty is a continuing one: the prosecutor must keep disclosure under review. In particular disclosure must be reviewed if the defence lodge a special defence or advise of a change of defence. Accordingly, if an accused person alters his defence, the question of disclosure will require to be considered.

Procurators Fiscal are reminded that any alteration or inconsistency by a witness on a material matter **must** be disclosed to the defence. The materiality is dependent on the facts and circumstances of each case. Prosecutors must be fair and objective when assessing whether information may assist the accused.

Article 6(1) of ECHR requires that the hearing should be fair. One aspect of ensuring fairness is that there must be equality of arms between the parties, which means that each party must be afforded a reasonable opportunity to present his case, including his evidence, under conditions which do not place him at a disadvantage vis - à - vis his opponent. This does not *necessarily* entitle the defence to every document or statement generated during an investigation.

A system under which an accused person needs to indicate the reason why the documents should be produced is consistent with the requirements of a fair hearing under Article 6(1).

17.08 CUSTODY STATEMENTS

To comply with Article 5(4) of ECHR, the concept of equality of arms requires that, wherever an individual's liberty is at risk in criminal proceedings, the proceedings afford him the right to challenge the lawfulness of the detention. In all cases in which bail is opposed, the Procurator Fiscal should disclose the evidential basis upon which the proceedings have been taken. This should be contained within a custody statement. Reference is made to paragraphs 3.88.

17.09 DISCLOSURE OF INFORMATION CONCERNING THE MENTAL AND PHYSICAL STATE OF THE ACCUSED

Any information regarding the physical or mental well being of an accused person in the possession of the Procurator Fiscal should be disclosed to any person or authority that has contact with the accused including the court, police and prison authorities. For example any concern that the accused is suffering depression or has suicidal tendencies should be intimated in order to enable the appropriate care and arrangements to be made.

In particular, if bail is opposed, any information of this nature should be placed before the court and communicated to the relevant authorities if the accused is remanded. Even if information of this nature derives from the police, it should not be assumed that the police will communicate any concern to other authorities. Procurators Fiscal should take steps to ensure that any information within their knowledge has been communicated to all appropriate persons or authorities.

17.10 PRECOGNITIONS

Precognitions are confidential and in general should not be furnished to the defence. The courts will not order the production of precognitions as they are not admissible in evidence: Ward V HMA 1993 SLT 1202.

However, the Procurator Fiscal may exercise discretion in deciding whether it may be in the interests of justice to show a precognition to the defence in any particular case. In some cases this could result in pleas of guilty or in formal evidence being admitted with a resultant saving in time and expense. If in such circumstances it is decided to show a precognition to the defence there is no objection to editing it beforehand and in many cases this will be essential. If a witness specifically requires that his precognition remains confidential his wish should be respected. Particular consideration should be given to providing the defence with access to precognitions of children. Reference is made to paragraph 16.79 regarding precognitions of children.

17.11 ACCESS OF DEFENCE SOLICITORS TO LISTS OF WITNESSES AND PRODUCTIONS

Procurators Fiscal should provide defence solicitors with a list of witnesses in solemn and summary cases at the earliest stage that it is considered that there would be no detriment to the investigation on behalf of the Crown, whether requested or not. The defence should be allowed access to productions where appropriate or necessary as instructed in paragraph 5.27. Prior to providing any details of child or vulnerable

witnesses, any Crown precognition should be completed and the child or his carers advised of the possibility of a defence precognition as instructed in paragraph 16.72.

Similar considerations should be applied to the giving of such information about witnesses and productions (including copies of reports if appropriate) to solicitors acting for interested parties in advance of a fatal accident inquiry. Reference is made to paragraph 13.12.

17.12 POLICE STATEMENTS

Copies of statements of police witnesses are supplied, on request, by the police to the defence in summary cases. Reference is made to paragraphs 7.57 and 7.85.

17.13 CIVILIAN STATEMENTS

Normally, copies of civilian statements will not be furnished to the accused or his solicitor. However, copies of statements may be provided in the following circumstances:

The evidence is regarded as formal or technical.

Assistance by providing a copy of civilian witness statements may be given if the defence has encountered a practical difficulty in obtaining the statement. For example, the defence are unable to locate the witness or the witness refuses to cooperate. In these circumstances, the Fiscal should ensure that the statement does not contain information about the witness of a personal nature, any operational information or any other information not relevant to the specific charge or charges.

If the accused is unrepresented, the Fiscal must ensure that the accused is aware of all the evidence in the case, whether of an incriminatory or exculpatory nature. This may necessitate the provision of a summarised account of the evidence or the provision of civilian witness statements edited in the manner referred to above.

Unless dealing with an unrepresented accused, failure by the defence to conduct their own investigation whether on financial grounds or any other ground is generally not sufficient reason for the defence to obtain information. If it is perceived that the accused is at a substantial disadvantage as a result of the lack of preparation of their agent then having regard to Article 6 of the Convention, a summary of the evidence can be provided. The provision of information for this reason should be minuted on the papers.

17.14 ANONYMITY OF WITNESSES

- (1) The home addresses of witnesses should not be disclosed in cases where they are witnesses in relation to matters arising from their employment. The address

of their place of employment should be shown on the list of witnesses attached to the indictment or supplied to the solicitor in summary cases.

- (2) In cases where the police information discloses that a witness fears reprisal, an accommodation address, such as a named police station, may be given. The police in such a case must be instructed to make the witness available at the address given for precognition purposes. Subject to the overriding control of the presiding judge, the home address should not be mentioned in court and if the defence attempt to elicit the address, objection should be made by Procurators Fiscal.
- (3) In any case where the spouse or partner has moved to an address of which the accused is unaware, the new address should not be disclosed. The complainer should be designed as being care of a police station.
- (4) In cases where a witness, such as a rape victim, states that publicity would be a great embarrassment, an accommodation address such as a police station should be given. If the actual address is revealed in court, the judge should be requested to ask the press not to disclose the identity of the witness.

The court has power under statute to exclude the press, along with the public, in cases involving a charge of rape or other charges of a sexual nature: Section 92(3) of the Criminal Procedure (Scotland) Act 1995.

As a matter of custom and practice, where it is considered appropriate to clear the court, for the protection of a witness, the order does not apply to reporters covering the case. This is on the understanding that the reporters respect the intention in excluding the public is to protect the witness, by refraining from disclosing the identity of the witness. While the court almost certainly has no authority to require journalists to restrict their reports in this way, and whilst such an understanding is not binding, it is certainly the case that the terms of the "agreement" are generally honoured by the press. The anonymity of victims of rape, or attempted rape, is generally preserved in the subsequent reports of court proceedings.

17.15 DISCLOSURE OF PREVIOUS CONVICTIONS

Defence solicitors may be supplied with copies of the criminal records of their clients if they so request in connection with any matter relating to bail.

In relation to any request for the criminal record of a witness, the defence should be asked to state the basis upon which the previous convictions are sought in relation to each witness and in particular the relevance of any previous convictions to the proposed defence.

If any witness gives false evidence regarding their criminal record it is the duty of the Crown to ensure that the court is made aware of the true position.

17.16 DISCLOSURE OF REASONS FOR DECISION NOT TO PROSECUTE

See paragraph 3.24 supra.

17.17 OFFENCES INVOLVING CHILDREN

Procurators Fiscal should liaise with reporters and social work departments in relation to offences by children and in relation to children at risk. Reference is made to paragraph 16.18.

Procurators Fiscal may give to Social Work Departments, on request, copies of summary complaints or indictments together with the SCRO Unique Reference Number (URN). Copies of petitions should not be given, but there is no objection to the Procurator Fiscal informing the Social Work Department of the general nature of the charge. Where the accused is a child, or in any other case where the Procurator Fiscal thinks that the court may call for a social enquiry report, the Procurator Fiscal should, where possible, notify the Social Work Department in advance of the time and place of the court hearing. (In offices where a court list is made in advance, a copy of the list might serve as sufficient notice.) Should a request for additional details be received, Procurators Fiscal must exercise their discretion as to what information may be given but under no circumstances will the Procurator Fiscal provide a copy of a police report.

17.18 PSYCHIATRIC REPORTS

Where a Procurator Fiscal requests a psychiatric report about an accused he will provide the psychiatrist with as much information as possible regarding the offence and the history and background. Otherwise the assessment of the psychiatrist would be taking place in a vacuum: Sloan v Crowe 1995 SCCR 200.

Where such a report on a convicted person is requested by the court, the Procurator Fiscal may give the above information to the psychiatrist.

The Procurator Fiscal will advise the institution in which an accused is detained that a psychiatrist will call to examine him. Copies of all psychiatric reports obtained by the Procurator Fiscal, which he intends to found on, may be given to the defence.

Pre-conviction, where an accused is ordered to be detained in any prison, detention centre, young offenders institution, hospital or other institution the Procurator Fiscal will ensure that the institution receives copies of any psychiatric reports. Reference is made to paragraphs 15.08 and 15.12 in relation to these matters. Post-conviction,

copies of any psychiatric reports obtained by a Procurator Fiscal may be provided to prison or hospital authorities on request.

17.19 EXPERT WITNESSES

Where a Procurator Fiscal instructs an expert witness, the expert should be apprised of sufficient information to allow him to reach a considered opinion. (See Chapter 4, The Precognoscers Handbook on Expert Witnesses.

PART 3: DISCLOSURE TO THIRD PARTIES

17.20 PROVISION OF EVIDENCE TO THE REPORTER

In terms of Section 53(4) of the 1995 Act, the Procurator Fiscal has a duty in certain circumstances to comply with a Reporter's request for evidence unless in terms of section 53(5), he reasonably believes that it is necessary to retain the evidence for the purposes of criminal proceedings. It is important to maintain a good and open relationship with the Reporter. A joint protocol for the operation of Section 53 is contained at Annex 4A. Reference is also made to paragraph 16.53 and Annex 4.

17.21 SCOTTISH CRIMINAL CASES REVIEW COMMISSION (SCCRC)

GENERAL PRINCIPLES AND PROCEDURES

With effect from 1 April 1999 the Scottish Criminal Cases Review Commission assumed the responsibility previously carried out by the Secretary of State in relation to the consideration of cases of alleged miscarriage of justice and the referral of appropriate cases to the High Court.

In terms of Section 194F(6) of the Criminal Procedure (Scotland) Act 1995 as amended, the Commission is empowered to request the Lord Advocate to undertake such inquiries or obtain such statement, opinions and reports as the Commission consider appropriate for assisting them in the exercise of any of their functions.

The general policy of the Department is to comply with reasonable requests from the Commission for assistance and to make such disclosure of information to the Commission as is necessary to assist it in the exercise of its functions.

The High Court has held that the Commission has a statutory duty to carry out a full and independent examination and that the Commission are entitled to any material if it has a basis for averring a belief that the documents and materials **might** assist them in the exercise of their functions. (SCCRC Petitioners, unreported 30 August 2000).

The Department will co-operate and respond to requests from the Commission by disclosing factual information, copies of witness statements and precognitions (subject

to considerations of confidentiality set out below) and any other documentation the Commission believe will assist in their investigation. Any results of enquires, statements, opinions or reports instructed at the request of the Commission will be provided. As far as possible such disclosure will be made voluntarily, without the need for the Commission to seek a court order under Section 194I of the 1995 Act as amended.

Crown Office will not provide comment, advice or analysis in relation to the merits of cases considered by the Commission.

All requests by the Commission for assistance from the Lord Advocate or from the police will, in general, be submitted to and co-ordinated by the Policy Group at Crown Office, who will refer appropriate matters to the Procurator Fiscal from whose office the case in question originated. If any such requests are received contact should be made with Crown Office Policy Group.

Where Procurators Fiscal on receipt of intimation from the Policy Group of a request for assistance from the Commission find it necessary to contact the police for information or for example, to request that a witness be traced or interviewed, contact should in all cases be made with the Deputy Chief Constable of the relevant police force who will co-ordinate the response to the Procurator Fiscal.

The Commission has undertaken to make its request for assistance specific and to provide an indication of the reason for its requests.

Procurators Fiscal should deal with requests for assistance as soon as possible after receiving intimation from the Policy Group and should forward the requested information or copies of the requested statements, precognitions or other documents to the Policy Group as soon as possible for onward disclosure to the Commission where appropriate.

COMMISSION DISCLOSURE POLICY

In general, copies of witness statements and precognitions will be disclosed together with appropriate factual information and results of enquiries, opinions and reports instructed at the request of the Commission. In appropriate cases access will be permitted to productions for examination or analysis by persons appointed by the Commission.

The Commission has agreed that it will be bound at common law by limitations on its onward disclosure of information imposed as conditions of voluntary production of statements, precognitions and other information by the Department to the Commission.

On receipt of intimation of the Commission's interest, Procurators Fiscal must ensure that all the case papers and productions still held by them are retrieved and secured

against the possibility of routine disposal or destruction, and that the police are instructed via the Deputy Chief Constable to secure case papers and productions still held by them, pending the making of specific requests for assistance by the Commission.

In terms of Section 194I of the 1995 Act, as amended, the Commission may apply to the High court for an order requiring a person or body to produce documents or other material to the Commission. Where a Procurator Fiscal receives intimation otherwise than from the Policy Group, of an application for the grant of such an order, the circumstances must be reported immediately to the Policy Group for consideration.

17.22 CIVIL PROCEEDINGS

Procurators Fiscal are often approached by individuals, solicitors, insurance companies etc for information obtained in a criminal investigation or prosecution for the purpose of civil proceedings. The following guidance should be applied in relation to such requests:

PRECOGNITIONS

- Any request to recover a precognition of a witness should be refused on the ground that precognitions are confidential and not recoverable: HMA v Ward 1993 SLT, 1202 at 1204H. Any motion to recover a precognition by court order should be intimated immediately to the Policy Group.

POLICE REPORTS

- Any request to recover an internal police report for the purposes of civil proceedings should be refused on the grounds of confidentiality. Police reports often contain observations and private communications from the police or other investigating agencies. Confidentiality is necessary to secure absolute candour and freedom in the making of such reports. Any motion to recover a police report by court order should be intimated to the Policy Group to consider a claim of PII or to provide material in a redacted form.

NAMES AND ADDRESSES OF ACCUSED AND PROVISION OF WITNESS LISTS

- Names and addresses of accused may be disclosed for the purposes of civil redress if the Procurator Fiscal has no reason to believe that the information being requested is for the purpose of retribution. In the first instance the Fiscal should offer to provide the information to a legal representative. Lists of witnesses may be provided to solicitors, insurance companies etc for the purposes of associated legal proceedings. Lists of witnesses should only be

provided to a legal representative. This requires to be read in accordance with the guidance at paragraph 17.14 regarding vulnerable witnesses.

WITNESS STATEMENTS: CONFIDENTIAL OR SENSITIVE INFORMATION

- Any motion to recover statements for the purposes of civil proceedings in which there is confidential and/or sensitive information should be reported to the Policy Group to consider a claim of public interest immunity. The basis of such a claim being that disclosure of the information would cause substantial and real harm to the prevention and detection of crime.

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WITNESS STATEMENTS

- No witness statements are to be disclosed for any type of civil proceedings unless under the authority of a court order either obtained as a result of a motion for commission and diligence or recovered in terms of a statutory provision, for example, an order under the Administration of Justice (Scotland) Act 1972.

EXCEPT

- If, witnesses or complainers indicate that they are content for their statement to be provided to a third party, a copy of their statement should be provided subject to the qualification that it contains no matters which would be considered confidential or sensitive. The onus of obtaining consent rests with the party requesting the document although personal details including addresses of witnesses should not be disclosed to unrepresented individuals. In these cases the Fiscal should ascertain whether the witness has any objections.
- If the witness demands sight of their statement prior to providing consent, a copy of the statement should be sent to the witness.
- If, the witness indicates reluctance or unwillingness or declines to provide consent to the statement being disclosed, the party seeking disclosure should be advised that they will require to obtain a court order to obtain the statement.

STATEMENTS UNDER CAUTION OR A COMPULSION.

- Any statement made under caution or obtained under a compulsory or statutory requirement should not be provided for the purposes of civil proceedings unless under the authority of a court order or with the consent of the person concerned.

PLANS, SKETCHES AND REPORTS

- Reports or documentary productions of a factual and non-personal nature, which have been referred to in criminal proceedings or a fatal accident inquiry may be disclosed to persons with a legitimate interest. If no proceedings have been taken in a case, the Procurator Fiscal may advise any interested party that there is no objection to the person who produced the sketch or plan etc being precognosed and a copy being obtained from the author. Examples being technical health and safety reports or road traffic accident investigation reports. The consent of the author of any such report should be obtained. In the absence of consent, a court order will be required. The onus of obtaining consent rests on the person seeking the item.
- Any report or production in which the primary purpose is to establish whether the accused has committed a criminal offence or contains personal information concerning the accused should not be disclosed unless authorised by a court order. Examples being forensic reports relating to the accused and medical reports. Any sample taken or any production or document seized under statutory powers or common law powers in a criminal investigation should not be released unless authorised by a court order.

PHOTOGRAPHS AND CCTV FOOTAGE

- See paragraph 17.46.

INFORMATION IN ROAD TRAFFIC CASES

- The Road Traffic Act 1988 imposes specific statutory duties on the keeper and driver of a motor vehicle to disclose certain information. If the Fiscal is in possession of any information, which is required to be provided in terms of the 1988 Act, that information may be disclosed to any interested party. For example, the name and address of a driver involved in an accident who has failed to stop and provide his relevant details may be imparted.

17.23 SUPPLY OF INFORMATION BY THE POLICE IN ROAD TRAFFIC CASES

The former Scottish Office Home Department - now the Justice Department - after consultation with the Crown Office has issued the following guidelines to the police, should the latter receive requests from solicitors or insurance companies for information in road traffic cases: Chief Constables have absolute discretion as to what information to release, but: -

- (1) Where no formal police report exists, either on account of the triviality of the case or the officers notes were not transcribed from his notebook, the notes should not be abstracted purely for civil purposes.
- (2) In a case where a report is made within the Police Service by means of a summary only with no witness statements and which for some reason was not

sent to the Procurator Fiscal the police may provide a copy of the summary. Witness statements should not be extended for civil purposes.

- (3) In a case where statements have been sent forward to the Procurator Fiscal and he has decided that there should be no prosecution the police may furnish to solicitors or insurance companies copies of the statements sent to the Procurator Fiscal, provided they have the consent of the witnesses. If full statements have not been provided for the Procurator Fiscal the police should not extend them for civil purposes.
- (4) In a case where the Procurator Fiscal has taken a prosecution and the criminal case is closed the police may furnish to solicitors, insurance companies or to a party involved in the accident, copies of the statements sent to the Procurator Fiscal provided the witnesses consent.

17.24 FATAL ACCIDENT INQUIRIES

Procurators Fiscal may in their discretion on the completion of a fatal accident inquiry, in circumstances where the notes of evidence have been transcribed on behalf of the court, make the notes of evidence available to the Police to be used in the investigation of a fatal road traffic accident if such a criminal investigation is still proceeding.

Where the notes of evidence have not been extended by the court, Procurators Fiscal may in their discretion furnish parties with a legitimate interest general information as disclosed either in the fatal accident inquiry or criminal proceedings as to the cause or causes of the accident. The evidence in fatal accident inquiries is now tape recorded and Procurators Fiscal are reminded that they should not make application for a transcript of the evidence in a fatal accident inquiry except on instruction of Crown Counsel.

17.25 CRIMINAL INJURIES COMPENSATION AUTHORITY

The new scheme administered by the Authority was set up under the Criminal Injury Compensation Act 1995. The CICA replaced the Criminal Injuries Compensation Board, though the board remains in being to finalise applications that commenced before the CICA scheme came into force. The purpose of the scheme is to pay compensation to persons who have sustained criminal injuries. Injury includes physical injury (including fatal injury), mental injury (that is, a medically recognised psychiatric or psychological illness) and disease (that is, a medically recognised illness or condition). In determining whether an award is payable, and the amount, it is open to the CICA and CICB to take into account a number of factors. These include the following: -

1. Whether the applicant failed to take, without delay, all reasonable steps to

- inform the police of the circumstances giving rise to the injury;
2. The co-operation of the applicant with the police or other authority attempting to bring the assailant to justice;
 3. The conduct of the applicant before, during or after the incident giving rise to the application;
 4. The applicant's character as shown by his criminal convictions or by other evidence.

The underlying policy of the Procurator Fiscal Service is to provide the authority with the information it requires to enable an informed decision to be taken on the payment of compensation to an applicant. However, in the absence of any statutory obligation or authority to provide information to the authority, the provision of information must accord with our own duties of confidentiality to other parties and the law in terms of the Data Protection Act 1998 and the European Convention on Human Rights.

In all cases where a death has been caused by the criminal act of an accused person, Crown Office will supply the CICA with the appropriate information.

In all other cases the CICA will write directly to the Procurator Fiscal requiring information regarding the circumstances of the incident. Procurators Fiscal should provide information in accordance with the guidance:

- stated case can be provided to the CICA.

17.26 DISCLOSURE TO THE PAROLE BOARD AND TO PRISONERS

Section 17 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 enables the Secretary of State to revoke the licence of a long-term prisoner (sentenced to 4 years or more) or life prisoner and recall him to prison if (i) he is recommended to do so by the Parole Board, or (ii) revocation and recall are, in the opinion of the Secretary of State, expedient in the public interest and it is not practicable to await a recommendation from the Parole Board. A person recalled under this provision must be informed of the reasons for his recall and that he has the right to make written representations to the Secretary of State in that regard. Where the prisoner is recalled without a recommendation from the Parole Board, the Secretary of State is obliged to

refer the case to the Parole Board. He must also do so if, after recall by the Board, the prisoner makes representations.

In the majority of cases, decisions on recall are taken in the light of information from the Police that the licensee is alleged to have committed a criminal offence and as such are a risk to the public. On receipt of this information, which is generally received in the first instance by telephone, officials at the Parole Division at the Scottish Executive will request that the Police provide them with a copy of their report to the Procurator Fiscal. In order to make an informed decision, the Board require some description of the alleged offence. In cases referred to the Parole Board, whether to obtain a recommendation for recall, or by way of a reference after the licensee has been recalled by the Secretary of State, officials at the Parole Division of the Scottish Executive will extract information about charges and prepare a summary of the evidence from the Police report for submission to the Parole Board. The Police report itself will not be copied. This is particularly important with regard to designated life prisoners, as defined in Section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993, as amended by Section 16 of the Crime and Punishment (Scotland) Act 1997.

Designated life prisoners include those upon whom a sentence of life is imposed for an offence, the sentence for which is not fixed by law; those imprisoned for life on a further conviction for certain offences in terms of Section 205A(2) of the Criminal Procedure (Scotland) Act 1995; or those whose sentence was imposed in respect of a murder committed before the accused attained the age of 18 years. The Parole Board (Scotland) Rules 1993, Rule 6, provides for circumstances in which information given to the Board need not be disclosed to the prisoner as its disclosure would be likely to be damaging. This rule does not, however, apply to designated life prisoners. All material provided to the Board must be copied to the prisoner. It is for that reason that officials at the Parole Division will prepare a summary giving the gist of the information in the Police report.

The Scottish Executive may prepare a summary for the Board of the contents of any "remarks" section of the report as it may contain pertinent information about the prisoner. The prisoner would require to be given only the gist of the remarks section, for which the relevant Procurator Fiscal may be consulted.

The Board will not be made privy to the content of the "further enquiries" section or be given a list of witnesses. (Thus, in common with the Board, the prisoner will never see the section relating to further enquiries or the list of witnesses.) Nor should the information extracted identify any co-accused or the part played by them.

If the Police have concerns about any part of the report being disclosed to the prisoner, they should still provide a copy to the Scottish Executive but make it clear the summary should not be disclosed to the Parole Board until consultation with the Procurator Fiscal.

17.27 DISCLOSURE OF CRIMINAL CONVICTIONS FOR EMPLOYMENT PURPOSES

The Scottish Criminal Record Office centrally holds details of information on criminal records and is responsible for arrangements concerning the disclosure and notification of conviction details.

When implemented the disclosure of criminal records and other information for certain types of employment will be regulated by Part V of the Police Act 1997.

Part V sets in place a system of registration for employers and licensing bodies working in areas which require access to certain types of pre-employment information and provides controls on employers and registered bodies receiving criminal records information to protect the confidentiality of the personal information involved. Eligibility to receive such information will be achieved through registration of the various professional bodies by the Secretary of State. In relation to certain sensitive areas of work, the Act provides for enhanced criminal record checks which will reveal information regarding minor convictions, cautions and “non-conviction information.”

In the meantime, the arrangements in paragraphs 17.28 – 17.36 will continue.

17.28 PERSONS WHOSE EMPLOYMENT INVOLVES SUBSTANTIAL ACCESS TO CHILDREN

It has been agreed that the public interest in the protection of children justifies disclosure to potential employers of information concerning an individual's criminal record where that individual is to be offered employment which involves working closely with children. The arrangements apply only to positions within the statutory sector fields of education, social work and the National Health Service and to a limited class of voluntary child care groups.

It has been agreed that checks will be made against SCRO records in respect of all candidates who are to be offered employment, within the above sectors, which involves substantial access to children in order to establish whether any criminal convictions are recorded against them. Details of any convictions so recorded will be disclosed to the employing agency who must decide whether the information affects the candidate's suitability for employment. SCRO will provide factual data only: any assessment of the effect of previous convictions on the candidate's suitability for employment is entirely a matter for the employer.

In addition to the above categories, checks are made to establish whether certain volunteers within these three agencies have convictions recorded against them. Enquiries are also made in respect of persons applying for registered child minders

and prospective foster parents. Details of the criminal convictions of any other adult living in the same household as prospective foster parents will be similarly disclosed.

Procurators Fiscal will not normally be involved in the procedures for pre-employment checks unless the interrogation of the SCRO computer reveals a case falling within the pending category which indicates that criminal proceedings might be current at the time of the enquiry.

Provision has been made for such cases and it has been agreed that where a pending case is indicated, the police will approach the local Procurator Fiscal to determine the current position. The definition of "pending case" for this purpose has been narrowly drawn. A case is described as pending where (a) a report has been received by the Procurator Fiscal and (b) proceedings have been instructed and remain outstanding at the time of the enquiry. Accordingly, Procurators Fiscal should disclose details of cases only where a decision to prosecute has been taken and proceedings have been commenced.

17.29 DISCLOSURE IN THE PUBLIC INTEREST FOR EMPLOYMENT PURPOSES

Some Procurators Fiscal have received requests for further information about previous convictions which have already been disclosed. Enquiring agencies should be advised of the option of obtaining a full extract conviction or a certified copy of the principal complaint from the Clerk of Court containing details of the libel of the charge to which the conviction relates. No additional information concerning the circumstances of any convictions should be disclosed by Procurators Fiscal. The only exception is where the Fiscal is of the opinion that there is information not identifiable from the libel of the charge which requires to be disclosed in the public interest. Such information must be regarded as being directly relevant and significant to the suitability of the accused for the specific category of employment. Crown Counsel's instructions should be obtained before any disclosure of this nature.

CASES MARKED NO PROCEEDINGS

Unless specified below, if information is requested in relation to a case that has been marked no proceedings, the agency may be advised that a report was received but no information should be provided regarding the allegations or the reason for the decision not to take proceedings.

In certain restricted categories of employment, it is considered to be in the public interest to provide certain information.

Where the nature of the employment involves the individual working with children, the elderly, mentally ill persons or any other vulnerable groups of society and the allegations cause serious concern regarding the suitability of that person to be employed in such a position, the authority or agency may be advised of the nature of

the allegations and the most common reasons that proceedings are not instituted, including insufficient evidence etc. Such disclosure is only envisaged in exceptional cases and Crown Counsel's instructions **must** be obtained before any disclosure of this nature.

17.30 DISCLOSURE TO THE PUBLIC HEALTH POLICY UNIT

The Mental Health (Public Safety and Appeals) (Scotland) Act 1999, extends the provisions of the Mental Health Act 1984 and imposes a duty on a judge to have regard to the wider issue of public protection in determining whether to discharge certain patients detained under the Mental Health (Scotland) Act 1984.

It is in the public interest that Ministers or judges implementing these provisions are in possession of all relevant information to allow them to make an informed decision. It has, therefore, been agreed that on receipt of a request from the Public Health Policy Unit, the Procurator Fiscal will provide a narrative of the circumstances of the offence as disclosed in the summary of the police report with appropriate deletions or amendments to reflect the terms of any plea or finding of guilt.

The High Court Unit will provide a copy of the indictment and a narrative of the circumstances in High Court cases.

Information regarding offences that have not been the subject of criminal proceedings may be relevant in any determination of risk to the public. Information regarding such offences may be disclosed if the circumstances of the offence provide a real concern for public safety.

17.31 DISCLOSURE FOR RISK ASSESSMENT

Procurators Fiscal may receive requests for information from psychologists, forensic psychiatrists or other members of the medical profession for information regarding the offending of an accused person for the purposes of risk assessment. Procurators Fiscal should co-operate with such requests by providing a copy of the indictment and any information not identifiable from the libel of the charge that may be relevant to the assessor including, for example, the particular modus operandi of an offender. Any report prepared by the Judge whether in relation to a sentence or conviction appeal may be provided to the assessor. In some circumstances, information concerning offences which have not been the subject of criminal proceedings may be relevant for risk assessment purposes. Information of this nature may be provided if the nature of the allegations provide a real concern for public safety. Disclosure of such information may constitute "interference" with an individual's rights in terms of Article 8 of the Convention. Accordingly, care must be taken to ensure that information of this nature is only provided in circumstances where the public interest clearly outweighs any duty of confidentiality.

17.32 OFFENCES BY MEMBERS OF ARMED FORCES

Certain arrangements are in place to determine whether a member of the Army or the AirForce who is alleged to have committed a criminal offence which is also triable by a Service Tribunal should be tried by a civil court or by a Service Tribunal.

In terms of the Army Act 1955 and the Airforce Act 1955, the armed forces have authority to deal with certain offences by their own court-martial or Service Tribunal procedures. Information concerning offences by members of the armed forces may be given to the military authorities. Reference is made to Chapter 18.

17.33 PERSONS INVOLVED IN ESTATE AGENCY WORK

In order to enable the Director General of Fair Trading to fulfil his duties under the Estate Agents Act 1979, arrangements have been put in place to notify the Director General of the intention to institute proceedings for an offence under Sections 3, 14 and 23 of the Estate Agents Act 1979.

By Section 3 of the 1979 Act, the Director General is given powers to issue orders prohibiting a person from engaging in estate agency work if he considers that person to be unfit to practice on any of the grounds set out in the section.

Section 3 specifically refers to offences involving fraud or other dishonesty or violence and any other offence which, at the time it was committed, was specified for the purposes of the Section by an order made by the Secretary of State. Reference is made to statutory instruments 1991/860, 1991/861, 1991/1032, 1991/1091 and 1992/2833.

The intimation should be accompanied by a brief summary of the facts on which the charges are to be founded.

17.34 LAW SOCIETY

It has been agreed with the Law Society of Scotland that when a solicitor or a trainee solicitor is reported to a Procurator Fiscal on a charge of dishonesty that Procurators Fiscal will report the cases to the Secretary of the Law Society of Scotland.

A similar agreement has been reached with the Law Society of England and Wales. The Law Society is advised of the nature of the charge and the action, if any, taken by the Procurator Fiscal.

These matters should be reported to the Secretary of the Law Society of Scotland, 26 Drumsheugh Gardens, Edinburgh, EH3 7YR, or the Director of the Office for the Supervision of Solicitors, The Law Society of England and Wales, The Law Society's Hall, 113 Chancery Lane, London, WC2A 1PL, if the person is a solicitor in England and Wales. The notification of convictions to professional bodies is performed by the

Scottish Criminal Records Office and there is no necessity for Procurators Fiscal to report such convictions to Crown Office or to the professional bodies unless instructed to do so.

17.35 JUSTICES, SHERIFFS AND OFFICERS OF THE COURT

Where the police report a case in which a justice, sheriff or any other officer of the court is involved either as an accused or implicated in unlawful activities, including minor road traffic offences, a report should be made to the Deputy Crown Agent. If proceedings are initiated, the trial depute should submit a report on the trial or the terms of any plea for the attention of the Deputy Crown Agent.

17.36 COINAGE CASES

Procurators Fiscal will notify the Deputy Master of the Royal Mint of cases involving counterfeit coinage. At the conclusion of the proceedings, the Deputy Master should be advised of the outcome and the coins forwarded to him for examination and destruction. If there is a difficulty obtaining an expert witness regarding the coin, the Deputy Master of the Royal Mint should be consulted and he will arrange for examination of the coin and for officers to give evidence.

17.37 RESEARCH

Procurators Fiscal are often approached for access to classes of information for research purposes. All such requests which are acceptable in principle should be forwarded to the Head of the Policy Group at Crown Office. The disclosure of personal information is regulated by the Data Protection Act 1998 and involves Article 8 considerations. Each request will require to be assessed individually.

17.38 HEALTH AND SAFETY AT WORK ETC ACT 1974

INQUIRIES AND INVESTIGATIONS

Section 14 of the Act deals with the power of the Health and Safety Commission to direct investigations and inquiries into a wide range of matters.

(1) Investigations under Section 14(2)(a)

Where the Commission has directed the Health and Safety Executive, or authorised some other person to make an investigation, and where the Procurator Fiscal is requested to supply information or evidence for the purposes of such an investigation, Procurators Fiscal must exercise discretion as to what information may be supplied.

(2) Inquiries under Section 14(2)(b)

(a) Confidentiality

The procedure for inquiries under this section is regulated by Health and Safety Inquiries (Procedure) Regulations 1975 (Statutory Instrument No 335). Regulation 7 empowers the person appointed to hold the Inquiry to cite persons to appear before him and to require such persons to produce any document likely to be material evidence. Inquiries will be held in public (Regulation 83) and any person entitled or permitted to appear at the Inquiry may inspect or take copies of any documents to be tendered in evidence (Regulation 87).

Should a Procurator Fiscal be cited to appear or receive a request to produce any document, the instruction relating to investigations under Section 14(2)(a) above shall apply. Procurators Fiscal may also request that the Inquiry be adjourned (Regulation 89) or may request that a requirement to appear as a witness or to produce any document be varied or set aside (Regulation 7(2)). Subject to these limitations, a Procurator Fiscal should not normally plead that a document or evidence is privileged without the prior consent of Crown Counsel.

(b) Appearance by a Procurator Fiscal

Regulation 5(1)(c) entitles the Procurator Fiscal to appear as a party at a Section 14(2)(b) Inquiry and to make statements, call evidence and cross-examine witnesses (Regulation 85). The exact procedures of the Inquiry "shall be such as the appointed person shall in his discretion determine" (Regulation 81).

PART 4: MEDIA RELATIONS

17.39 THE PRESS OFFICER

The Press Officer is available to provide advice to deal with press enquiries and the media.

To ensure that the Department is portrayed in a positive light, contact with the media should not be restricted to responding to inquiries. The Press Office can fulfil an important role in promoting the Department by providing lines in relation to initiatives undertaken by the Department which will be of interest to the media, e.g. work with victims groups and ethnic minority groups.

Procurators Fiscal should advise the Press Office of any local strategies or actions implemented or any other matters that reflect positive enterprises or actions of the Service.

If a Procurator Fiscal is of the opinion that a particular case or decision is likely to generate publicity or provoke press inquiries for whatever reason, the Press Officer should be advised in order to ensure that there is a co-ordinated response between Crown Office and the Procurator Fiscal.

Reporters will often seek comments or information on the same subject from separate sources, for example, the police, the Procurator Fiscal and Crown Office. Clearly it is undesirable that conflicting statements be given. If a Procurator Fiscal receives an enquiry from the press about a matter which he considers the press will also raise with Crown Office he should immediately telephone the Press Office and report briefly the circumstances and what, if anything, he has said to them.

Similarly, if a Procurator Fiscal is made aware of an adverse comment regarding the Department or the particular actions of a member of the Department that may be the subject of a press report, it should be brought to the attention of the Press Officer as soon as possible.

Where a particular case or action does create intense media interest the Procurator Fiscal can redirect media inquiries to the press office once a response has been agreed. In cases which are likely to attract intense media interest, it may be appropriate for the Press Officer to attend at court. Procurators Fiscal should liaise with the Press Office regarding such cases.

The Press often make inquiries in relation to occurrence reports submitted by the police. In general, confirmation can be given that the Fiscal is aware of the police investigation and that it is under consideration. Any particular difficulty should be brought to the attention of the Press Officer.

The Press Officer should be notified of any request for the release of photographs or CCTV footage and of the decision of the Procurator Fiscal. Reference is made to paragraph 17.46.

17.40 GENERAL RELATIONSHIP WITH THE PRESS

It is useful to maintain a helpful relationship with the press. It can be helpful to them if, on occasion, information is given "off the record" so that they are aware of, for example, the reasons why the Procurator Fiscal does not wish certain information to be published. Great care must always be exercised in such circumstances and a knowledge of the individual reporter concerned is helpful in deciding whether information beyond what ought to be published should be given. Some newspapers tape record telephone calls dealing with such matters. The media should not be given such information without good reason.

Any press releases or statements other than routine press inquiries should, wherever possible, be cleared with the Press Officer in advance. A copy of any formal press statement must be retained and it is advisable to note details of any informal conversation which may later be reported including the times and dates. This will also ensure that the same answer is given to all press inquiries. Routine inquiries include information as to whether a particular person has appeared on petition and the nature of the charges.

Should it be apparent to the Procurator Fiscal that the press intend to publish matter which will be prejudicial it is proper for the Procurator Fiscal, should the opportunity present itself, to warn the press of the possible consequences, i.e. proceedings for contempt of court if someone has been arrested, or a prosecution for attempting to pervert the course of justice if proceedings have not commenced. The Procurator Fiscal should suggest that the inquirer should consult his own legal adviser.

Where it is considered necessary in the public interest to use the medium of the press to trace a person, either as an accused or as a witness, the decision to do so lies with the Procurator Fiscal, who if he has any doubt, should consult Crown Counsel. Great care should be taken to avoid the dissemination of information which may be prejudicial. The police may want the help of the media, but at the same time they should not disclose important evidence to them. While publicity may lead to the discovery of fresh evidence, the likelihood of its doing so must be carefully weighed against the possibility of prejudice in later legal proceedings. Reference is made to paragraph 17.43.

Procurators Fiscal must not give interviews to television or radio about any matter falling within their official duties without the prior approval of Crown Office.

17.41 WITNESSES

Persons who are likely to be witnesses in the case should be discouraged from talking to the press although this can not be prevented.

17.42 INQUIRIES BY THE PRESS: CONTEMPT OF COURT ACT 1981

The Contempt of Court Act 1981 introduced "the strict liability rule" whereby conduct may be treated as contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so. The rule applies only to "publications" and only where there is a substantial risk that the course of justice will be seriously impeded or prejudiced. The Contempt of Court Act must be read in conjunction with Article 10 of the ECHR. In addition, the proceedings must be "active" (see Schedule 1 of the Act). Section 3 of the Act provides for a defence of innocent publication but only where the publisher has taken all reasonable care and did not know and had no reason to suspect that relevant proceedings were active.

In this connection, Procurators Fiscal will be approached by the media requesting information on whether proceedings are active. Procurators Fiscal must co-operate with such requests for information and minute case papers accordingly. Accurate recording of requests for information will be important if publication takes place regardless of the fact that proceedings are active.

Except as authorised by these Regulations, or by Crown Counsel in specific cases, no information should be given to the media or any unauthorised person, in particular regarding the failure to obtain evidence or the progress of the investigation, nor should reference be made to any particular clue or production or absence thereof. Procurators Fiscal must **not** inform the media or any unauthorised person that proceedings are contemplated against a named accused before the case has called in the court except in the circumstances mentioned below.

In the event of breach of this instruction, or of publication of matter prejudicial to an accused, a report should be made immediately for the instructions of Crown Counsel, who will consider whether proceedings for contempt of court or attempting to pervert the course of justice are warranted. (See also the Official Secrets Act 1989).

17.43 PRIOR TO FIRST APPEARANCE

Lord Advocate's guidelines have been given to the police and these should also be followed by Procurators Fiscal: -

1. The law in Scotland relating to Contempt of Court is governed by the Contempt of Court Act 1981. The Guidelines are given principally from the point of view of that Act, although other considerations such as defamation and the effect of giving out information on the development of an enquiry have been kept in mind.
2. Publication of information prejudicial to an accused will be treated as contempt under the rule of strict liability, only when criminal proceedings are "active" as defined in the Act occurring on arrest, the granting of a warrant for arrest, the service of an indictment or complaint, or the grant of a warrant to cite. The act embodies in statutory form the law of Scotland as defined in the previous common law, and in particular, the case of ***Hall v Associated Newspapers 1978 SLT 241***. The effect of the strict liability rule is that proceedings for contempt may be taken whether or not the publisher intended to impede or prejudice the criminal proceedings. However the strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings will be seriously impeded or prejudiced.
3. One other effect of the strict liability rule is that contempt proceedings may be taken even where the publisher was unaware that proceedings were "active." There is however a defence of innocent publication and distribution available to a publisher but only where he has taken all reasonable care and the onus of establishing it lies on the accused. As a result, information regarding whether

proceedings are "active" as defined in paragraph two, should be given to the media on request.

4. Prior to proceedings becoming active publication of information with the intention of prejudicing the proceedings may render the publisher liable to prosecution for attempting to pervert the course of justice. The charge of attempting to pervert the course of justice could also be brought against the person who gave the prejudicial information to the press for publication. In such a case the prosecution would have to prove criminal intent and this may be contrasted with the position under the strict liability rule.
5. In cases either of contempt or attempt to pervert the course of justice, the fact that the source of the offending material was the police will not be allowed as an excuse or mitigating factor. Where the offending or prejudicial information has emanated from police sources, the court may even take the view that it would be improper to allow conviction of the accused who has suffered prejudice therefrom.
6. In the course of delivering the Opinion in the case of *Hall* the Lord Justice General said: -

"It is a matter for consideration whether after an individual has been arrested and has been charged with a crime it is desirable for the police to be disseminating information relating to the crime or to the individual concerned."

Similarly, in the course of delivering the Opinion in a case involving the *Glasgow Herald Newspaper (High Court of Justiciary, 24 October 1979)* the Lord Justice General said: -

"Before leaving this case we think it desirable to mention that we were informed by Counsel for the Respondents that the offending material which, on publication, constituted the admitted contempt of Court, was mainly derived from a Press Association release which was, in turn, derived from information supplied by Police sources South of the Border. We have had occasion before to question the wisdom of the provision of such information by the Police to the Press at least at any time after a person to whom it relates has been arrested on criminal charges."

It is therefore essential that the police are extremely careful in the type and extent of information which they release to the media at each and every stage of an investigation. It is not possible to give styles for every eventuality and police officers must use their judgement and good sense to ensure that any statement issued is not in any way prejudicial. In reaching such decisions, police officers would be well advised to keep in mind what is stated in the final paragraph of these "guidelines."

7. The police can be under considerable pressure from the media to make statements during the course of an investigation, and it is suggested that the undernoted guidelines be followed:

(a) Where a crime has been discovered and someone has been arrested

In this type of case the media should in the first place be told no more than the bare minimum, for example, "The dead body of Mrs. A B (address) was found at (locus) on (time and date). A man has been arrested in connection with this death and a report will be submitted to the Procurator Fiscal." The name of the deceased should only be given after the next of kin have been informed. Before any statement which goes beyond the above is made to the media its content must be approved by the Procurator Fiscal.

The proceedings are of course now "active" because someone has been arrested. The media may approach the police stating that they wish to publish and asking if proceedings are active. They should be advised that they are. The media may also ask for the identity of the person arrested for their information (whether or not for publication) in order to ensure that what they publish does not prejudice that person. It is considered unlikely that there could be any substantial risk of the course of justice being seriously impeded or prejudiced in the event that the media published the name of the person arrested. Accordingly if the media ask for a name, it should be given unless there is an operational reason for not doing so, e.g. fear that accomplices may destroy evidence if it becomes known that a certain person has been arrested. It should be stated, if a name is given, that the reason for doing so is that they may ensure that they comply with the 1981 Act. Where the name of the arrested person is given, no further details of the charge should be given other than that which is suggested above.

In all cases the police should note the information requested and information given.

(b) Where a crime has been discovered and the police have evidence which identifies the culprit as being a known person

An example of what might be said in this case is: "The dead body of Mrs. A B (address) was found at (locus) on (time and date). The death is being treated as criminal but so far there has been no arrest. A report will be submitted to the Procurator Fiscal." If you wish to add something like "Intensive investigation is proceeding" there could be no objection to that. In a case of this nature where it is believed that the media are aware of the identity of the person against whom the police have evidence, a warrant for his apprehension should be sought with the utmost expedition and the media informed that it is anticipated that a warrant will be granted (without naming the person in respect of whom

the warrant is sought) before they will be ready to publish. If for any reason a warrant is not granted as anticipated, the media may be so informed.

After the warrant has been obtained, the media should be advised that proceedings are active. If the media also ask for the identity of the person named in the warrant the information should be given unless as in (a) above, there is an operational reason for not doing so. No details of the charge(s) contained in the warrant should be given. If for any reason the police wish the identity or photograph of a person named in a warrant to be published (e.g. because of suspected danger to the public) the appropriate Procurator Fiscal must be consulted before any such step is taken.

(c) Where a crime has been discovered and the culprit is unknown

This is the most difficult type of case. The police may want the help of the media but at the same time they should not unnecessarily disclose important evidence to them. There would appear to be no need to state, for example, that a dead woman's hands were tied behind her back by her tights (the knowledge of this fact by an accused might be vital in showing that his confession is credible unless he could claim to have read it in a newspaper). On the other hand there may be a need to describe her companion when she left a public house in the hope that a member of the public will come forward with evidence of identification. While publicity may lead to the discovery of fresh information, the likelihood of its doing so must be carefully weighed against the possibility of prejudice in later legal proceedings. Because of this possibility persons who are likely to be witnesses in the case should be discouraged from talking to the media. Such conversation may well affect the witness's account or recollection in vital respects.

(d) Where a crime has been discovered and a person is detained in terms of section 14 of the Criminal Procedure (Scotland) Act 1995

In this situation if the media ask for information they may be told that a person (without identifying him) has been detained. It should be stressed to the media representatives that while this does not make proceedings active, it should put the media on their guard and serve as a warning that proceedings may become active soon.

(e) Where an incident has been the subject of police investigation

This occurs frequently in the case of sudden death, which the police are obliged to investigate and report to the Procurator Fiscal. A brief statement may be given to the media at a certain point. If a police officer judges it wise to add something like; "There would appear to be no suspicious circumstances," there would be no objection to that.

8. Criminal proceedings cease to be "active" principally when the accused is sentenced or acquitted. However, proceedings will become active again if a written intimation of appeal is lodged and, before any statement is made in such circumstances, the appropriate Procurator Fiscal or Crown Office should be consulted to ascertain whether an appeal has been lodged.
9. In all matters and at all stages of an investigation Police Officers should not hesitate to contact the appropriate Procurator Fiscal in cases where they wish guidance.

17.44 AFTER FIRST APPEARANCE

The Lord Advocate takes the view that where a person is charged on Petition, if a request is made by the press for information, notwithstanding the fact that the proceedings are in private, they should be informed of the name and address of the person and the fact that he has been charged with a certain crime and whether or not he has been released on bail. Precise details of the charge should not be given, the nomen juris being sufficient, but in a case of murder or assault, where there is considerable public interest, the name or names of the victims should be given. In rape cases or crimes of a similar nature, however, the identity of the victim must not be revealed without both Crown Counsel's instructions and the consent of the victim.

No other information should be given.

Intimation to the press that proceedings have been dropped against a person charged on petition, may only be given with the express prior instructions of Crown Counsel, and always bearing in mind that such communication may bar the Crown from future proceedings: *Thom v HMA 1976 SLT 232*. It should be noted that any decision intimated to a person who may communicate it to the accused such as his agent or Member of Parliament may also bar the Crown from future proceedings: *HMA v Stewart 1980 JC 88*

17.45 CHILDREN

The prohibition on the press in publishing details of children is dealt with in paragraph 16.26.

17.46 PHOTOGRAPHS AND CCTV FOOTAGE

The copyright of images recorded for policing purposes is owned by the Chief Constable of the appropriate force and other images in the control or possession of the police are the copyright of the organisation or individual who recorded them. The consent of the owner of the copyright is required prior the images being published.

The police have issued guidelines in relation to the release of video footage and still photographs. In particular, images of criminal incidents will only be released at the

conclusion of criminal proceedings and that the release will be subject to the approval of the Procurator Fiscal/Crown Office and will conform to the Lord Advocate's guidelines in respect of the Contempt of Court Act 1981.

There are certain categories of material that is considered inappropriate to disclose. This includes the following:

- Distressing material, for example, someone being murdered.
- Material depicting any person other than the accused without the consent of that person.
- Material from a private CCTV system without the agreement of the owner.
- Material depicting dangerous driving or other crimes if it is likely to lead to copycat activity.
- Material depicting children.

Chief Constables have been advised by the Scottish Executive that there is no objection to publicity being given to photographs or descriptions of (1) deceased persons (2) crime loci (3) stolen property (4) burgled safes (5) cars used in crimes (6) weapons (7) person who are merely missing or missing on account of suspected loss of memory.

Similarly, there is no objection to the use of recent incidents to illustrate matters in connection with crime prevention or accident prevention, provided care is taken to avoid showing any person or object, the identification of which would be relevant in a trial and also to avoid implying that, for example, a motorist was guilty of a crime or offence.

Chief Constables are however advised that in deciding what information it is permissible to publicise, they should if necessary consult the appropriate Procurator Fiscal. Procurators Fiscal should, therefore, ensure that they liaise closely with the police on this matter and if necessary, consult Crown Counsel.

CCTV systems record data and therefore require to comply with Data Protection legislation. Copyright holders will require to have regard to any obligations imposed by the Data Protection Act 1998 prior to releasing images to the press. For that reason, Procurators Fiscal cannot authorise or instruct the release of CCTV footage. In response to any request the Fiscal should advise only whether there is any objection on legal grounds or that it would be inappropriate to give the nature of the material. Thereafter the decision to permit the release should be referred to the person who owns the copyright. In most cases this will be the Chief Constable of the particular Force.

Any requests to release photographs or video recordings prior to the conclusion of criminal proceedings should be reported to the Deputy Crown Agent.

17.47 PHOTOGRAPHS ETC OF SUSPECTS

The publication of photographs, descriptions, artist sketches, identikit likenesses etc, should not be used as a general rule as a means of tracing an accused person since it might be prejudicial as regards evidence of identification.

The police have been informed that they may not publish such matters without the sanction of the Lord Advocate, which should be sought through the Procurator Fiscal.

If a dangerous criminal is at large and the police ask permission from the Procurator Fiscal to publish a photograph, the latter should communicate immediately with the Crown Office for the instructions of Crown Counsel with a draft of the proposed press release.

17.48 UNIDENTIFIED DEAD BODIES

The Secretary of State has instructed Chief Constables that they should exercise their own discretion. Descriptions of unidentified dead bodies should be carefully prepared and should give full and accurate particulars. Besides supplying information to the press, consideration should be given to the possibility of disseminating information to other police forces.

17.49 WARRANTS FOR SEIZURE OF MATERIAL FROM THE MEDIA

Procurators Fiscal should refer to Chapter 2 at Section 10 of the Practice Manual in this regard.

17.50 KIDNAPPING AGREEMENT WITH THE MEDIA

The Association of Chief Police Officers in Scotland has agreed a procedure with representatives of media groups for implementing a voluntary news blackout in cases of kidnapping/abduction where life is at stake. A copy of the agreement is attached. The following media groups have accepted the agreement:

Scottish Daily Newspaper Society;
Scottish Newspaper Publishers Association;
Press Association in Scotland.

The Scottish Broadcasting Editors who represent television and radio interests have not formally accepted the agreement but have agreed to continue to give due consideration to police requests for a blackout in appropriate circumstances.

In terms of the agreement, which is contained at Annex 2 to this Chapter, the police will call a news conference under embargo as soon as possible after requesting a blackout. Before holding the news conference the police will consult with their local Procurator Fiscal as to the disclosure of information at the news conference. Any information disclosed at this time is likely to be published or broadcast when the blackout ends therefore it is important that the police do not disclose to the media any evidence which may prejudice later criminal proceedings.

When the life of a victim is no longer at risk, the police will meet representatives of the media for a de-briefing. The police have agreed to encourage the victim to attend the de-briefing for a photo-call and to read a prepared statement. This represents a significant departure from existing practice whereby persons who are likely to be witnesses are usually discouraged from talking to the media. The victim's attendance at the de-briefing would not involve a "question and answer" session.

It has been agreed that where the victim is willing to read a prepared statement, its terms will be cleared with the Procurator Fiscal in advance. By this stage, persons may be in custody or a warrant may have been issued. Proceedings would therefore be "active" for the purposes of the Contempt of Court Act. Accordingly, the media, and those supplying information to the media, must be careful that any publication does not create a substantial risk that the course of justice in the proceedings will be seriously impeded or prejudiced.

Even if the culprit is still unknown, the benefits of publicity, which may lead to the discovery of fresh information, must still be weighed against the possibility of prejudice in later legal proceedings. The disclosure of important evidence by either the police or the victim is unlikely to be justified. In the case of the victim, any prepared statement should normally be confined to such matters as an expression of relief at being released, thanks to the media for co-operating in the news blackout, etc.

When an approach is made by the police for guidance in connection with the provision of information under this agreement, Procurators Fiscal should communicate immediately with Crown Office for the instructions of Crown Counsel.

ESCAPED PERSONS

17.51 CRIMINAL PROCEEDINGS IN CASES OF ESCAPE FROM CUSTODY

The range of crimes under the broad heading of escape from custody extends from prisonbreaking where force is used to break out to an attempt to defeat the ends of justice by failing to return from home leave. In serious cases, the accused should continue to be placed on petition and the case thereafter reported to Crown Counsel for instructions.

Since persons who have escaped from lawful custody have thereby committed an offence and may commit further offences, the rules below will apply.

Where a convicted persons has escaped from prison, or detention centre, or the like, the Procurator Fiscal should not give any details of the offence for which that person was convicted, but should refer the person making the inquiry to the Directorate of Strategy and Corporate Affairs, Branch 5 Communications, Carlton House, Scottish Executive.

If a person has escaped from a mental institution the person making the inquiry should be referred to the Public Policy Health Unit, Division 1, Branch 4 Saughton House, Scottish Executive.

Where an untried prisoner has escaped from such a place or from police custody, care must be taken to avoid implying that he is guilty of a particular offence. Where however, an escapee has not been convicted, but has been detained in a mental institution having been assessed as being a serious risk to the public, the police have been advised by the Justice Department that there is no objection to publishing his description and photograph. However, Procurators Fiscal must ensure that they are also consulted in such cases before publication, bearing in mind that such a person may subsequently be found to have recovered from his mental illness and that criminal proceedings may be taken.

Amended instructions have been issued to Chief Constables regarding Escapes from Custody. A copy of the relevant part of the amended Police Circular is attached at Annex 1 for your information.

Chief Constables are required to obtain through the Procurator Fiscal the sanction of the Lord Advocate before any photograph or other means of identification is published (see paragraph 15 of the police circular).

17.52 MINISTERIAL CORRESPONDENCE: MEMBERS OF PARLIAMENT

On a regular basis, MPs and MSPs write to the Lord Advocate with complaints or queries often on behalf of their constituents. A formal acknowledgement is sent by Crown Office to the MP or MSP on the day on which his letter is received and every effort is made to send a full reply within the 17 day time limit which has been agreed by the Scottish Executive and the Scottish Parliament. If the necessary investigation of the complaint cannot be completed within that period, interim replies are sent at regular intervals until the investigation is completed and a final reply can be sent.

To assist preparation of a draft reply for the Lord Advocate's consideration, Procurators Fiscal will be asked to suggest a line of approach to be adopted and, where appropriate, to offer a draft reply. This should help to ensure that the reply sent properly addresses the issue(s) raised and adequately takes account of the Procurator Fiscal's interests and explanations.

Requests to Procurators Fiscal for information and assistance will also routinely ask for a report on the circumstances, all relevant documentation and previous convictions and, where appropriate, the court depute's report.

A reply will then be drafted in the Crown Office for the Lord Advocate to send to the MP or MSP. It should be borne in mind that the MP or MSP may publish the Lord Advocate's reply and/or give a copy of it to his constituent. He may also seek to raise the matter in Parliament. A copy of the Lord Advocate's reply will be sent to the Procurator Fiscal and Regional Procurator Fiscal.

MSPs and MPs will sometimes write to the Prime Minister, the First Minister, Justice Minister or some other member of the government concerning matters for which the Lord Advocate has ministerial responsibility. In such cases, the letter (or such part of it which is relevant to the Lord Advocate), will be sent to the Lord Advocate for reply. It is the role of the MSP to represent their constituent's interests on matters of criminal investigation and prosecution. Prosecution of crime, criminal law and procedure are devolved matters. Any reply to an MP should encourage the MP in future to advise his or her constituents to refer such matters to their MSP.

When Procurators Fiscal receive letters direct from MPs or MSPs requesting information regarding the disposal of cases, dates of trials or other routine factual information which may be given to the public in general, they may reply direct to the MP or MSP. In all other cases, the enquiry must be sent to Crown Office with a report as soon as possible, for the Lord Advocate to reply to the MP or MSP.

17.53 GENERAL REQUESTS FOR INFORMATION BY MSPs, MPs, POLITICAL PARTIES ETC

From time to time Procurators Fiscal may receive requests for information for use in a debate in the House of Commons or Scottish Parliament or at a parliamentary election from MSPs or MPs, political parties, candidates or their agents.

It is important that nothing should be done which might suggest that the resources of offices were being used to assist a political organisation. On the other hand offices should be prepared to supply parliamentary candidates and the political parties with factual information which is not confidential, provided that its extraction would not require a substantial use of official time. A useful criterion is whether the information would be extracted for the purposes of a reply to a parliamentary question.

In providing information to candidates or their agents or to the political parties, the following procedure should be observed: -

- (a) Requests that can be dealt with immediately by reference to information that is available to the general public may be dealt with by quoting the information or by referring the enquirer to the published material, whichever is the more

convenient. A copy of the reply or a note of any information given orally should be sent to the Crown Office.

- (b) Requests for factual information which is not published but is not confidential and can be extracted without undue labour should be referred to Crown Office. Enquirers who ask for such information orally should be told that they will receive a written reply from the Crown Office as soon as possible (including not only candidates but also all members of the public or organisations).
- (c) Enquirers, who ask orally for information which could not be made available without considerable labour or which is confidential or has policy implications should be told that their request presents some difficulties and be asked to write to the Crown Office about it; in any case where this is done the Crown Office should be informed.

All staff are reminded of the particular importance of not taking any action or communicating any information which could lead to political debate during an election campaign without consulting the Crown Office in advance.

17.54 REGIONAL AND DISTRICT COUNCILLORS

Procurators Fiscal should treat requests for information by local authority elected members in the same way as requests from MPs and MSPs as laid down in paragraphs 17.52 and 17.53.

17.55 OTHER MINISTERIAL CORRESPONDENCE

The Lord Advocate also receives correspondence direct from the public, or from organisations and bodies with complaints, or with requests for information. These are dealt with in the same way as requests from MP's except that the reply is usually sent by an official and not by the Lord Advocate.

Should Procurators Fiscal be requested by the Crown Office to make a report, or should they themselves receive such queries, the matter should be dealt with in the same way as correspondence from MPs and MSPs.

17.56 GIVING EVIDENCE TO THE SCOTTISH PARLIAMENT

The Power to Call for Witnesses and Documents - Sections 23-27

The Parliament or one of its committees is given wide powers to call people to give evidence and to require the production of documents. Any person can be invited to attend the Parliament and it is likely that in most instances invitations shall be made for their attendance before the Parliament proceeds to issue a summons. (See Article 2.6 The Scotland Act (Transitory and Transitional Provisions) (Standing Orders and

Parliamentary Publications) Order 1999 No 1095. The Parliament's formal power to summon a person before it can be exercised only in relation to matters within the Parliament's own competence and can be exercised to require any person to attend the Parliament's proceedings for the purpose of giving evidence or to produce documents which are in their custody or control, whether or not they own them (Section 23(1)).

The power of the Parliament's committees and sub-committees to summon witnesses and documents can only be exercised when such power has been expressly authorised by a standing order or by a special resolution of the Parliament (Section 23(8)).

Reference to documents in Section 23 includes anything in which information is recorded in any way (Section 126(1)) and thus includes all forms of electronic storage of information, extracts and/or copies (Section 26(5) and Section 1 12(1)). A summons issued under Section 23 of the Act will take the form of a notice in writing from the Clerk to the Parliament sent by registered post or recorded delivery under Section 24.

When an individual appears to give evidence before the Parliament, the presiding officer or other member authorised by standing orders may administer an oath or solemn affirmation (under the Oaths Act 1978) and may require the witness to take the oath or solemn affirmation. Failure to take the oath when required to do so is a criminal offence under Section 26(4).

Procurators Fiscal should note that the power to call for witnesses and documents by the Parliament is restricted to matters within the competence of the Parliament or in relation to which the Scottish Ministers exercise functions. A further limitation on the Parliament's power is that the power can be exercised in relation to people outwith Scotland only in connection with their discharge of functions relating to these matters. Accordingly, Ministers of the Crown in the United Kingdom Government and those in Crown employment can be summoned only in relation to their discharge of functions relating to devolved matters or the functions of Scottish Ministers but they cannot in such circumstances be summoned if the function in question is one exercisable in Scotland by a Minister of the Crown as well as by a Scottish Minister or where Ministers of the Crown act with the agreement of or after consultation with the Scottish Ministers. **The power to summons cannot be exercised in relation to the discharge of functions relating only to reserved matters.**

In order to preserve the independence of the judiciary the Parliament cannot use its power to summon a judge of any court nor members of any tribunal in connection with their discharge of their functions (see Section 23(7)).

Further Restrictions on the Power of the Parliament to Call for Witnesses and Documents

Under Section 23(9) Parliament may not use its power to require any person to answer any question or produce any document if he or she would be entitled to refuse to answer or to produce it in court proceedings in Scotland. Obviously, the main areas in which witnesses will be permitted to refuse to answer under this ground are those covered by the privilege against self-incrimination, privileges to protect communications between husband and wife and between lawyer and client in relation to litigation and those areas covered by public interest immunity.

Summons of Procurator Fiscal

A very significant restriction on the Parliament's power to summon individuals or call for documents relates to circumstances surrounding the handling of a specific criminal prosecution. Under Section 23(10) Procurators Fiscal are entitled to refuse to answer or produce documents relating to the operation of the criminal prosecution system in any particular case, where authorised by the Lord Advocate to do so on the basis that providing the answer or document might prejudice that case or would otherwise be contrary to the public interest.

Section 27 of the Act provides a similar exemption for the Lord Advocate and the Solicitor General themselves.

While standing orders will regulate the manner in which such summons are produced, in the event that a Procurator Fiscal or any other member of the department receives either an invitation or a summons under Section 23 to attend the Parliament or produce any document, the matter should be reported immediately by telephone to the Head of the Policy Group at Crown Office. This should be followed by a full report to Crown Office marked for the attention of the Head of Policy

Procurators Fiscal should note that the exemption from answering any question or producing any document under Section 23(10) relates only to particular cases concerning the operation of the system of criminal prosecution. The exemption does not apply in relation to investigation of deaths in which there is no element of criminality. Neither does the exemption extend to prosecution policy generally or to management. Accordingly, Procurators Fiscal may receive a summons in relation to their deaths investigation function and may well be obliged to answer questions in Parliament in respect of the nature of the Procurator Fiscal's investigation into the same.

Although no exemption applies in respect of such instances, Procurators Fiscal should nonetheless report immediately by telephone in such cases along with a report. The Policy Group at Crown Office will also liaise with the Clerk to the Parliament about such summonses.

Under Section 25, any person to whom a notice under Section 24(1) has been given who

- a) refuses or fails to attend proceedings as required by the notice,

- b) refuses or fails, when attending proceedings as required by the notice, to answer any question concerning the subject specified in the notice,
- c) deliberately alters, suppresses, conceals or destroys any document which he is required to produce by the notice, or
- d) refuses or fails to produce any such document,

is guilty of an offence liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding 3 months.

Subsection 3 of Section 25 provides that it is a defence for a person charged with an offence under Section 25 to prove that he had a reasonable excuse for the refusal or failure. Commission of an offence under Section 25 by a body corporate which is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity will render such individual as well as the body corporate guilty of the offence under Section 25.

In the event of a receipt of a report against an individual under Section 25 of the Scotland Act 1998, the Procurator Fiscal at Edinburgh will be responsible for consideration of proceedings. Should any report be received by any other Procurator Fiscal in the country, the report should be forwarded immediately to the Procurator Fiscal at Edinburgh for his consideration.

17.57 THE OMBUDSMAN

The Parliamentary Commissioner or the Commissioner for Local Government has no authority to investigate criminal matters. It sometimes occurs, however, that a complaint of maladministration also involves allegations of criminal conduct. In such circumstances the Crown Office will liaise with the Commissioner with a view to ensuring that his enquiries do not prejudice any criminal inquiry.

If a Procurator Fiscal receives a request for information from a Commissioner, he should thereafter communicate immediately with Crown Office.

17.58 PUBLIC INTEREST IMMUNITY: CONFIDENTIAL COMMUNICATIONS

Where it appears to Procurators Fiscal that Public Interest Immunity ("PII") may be claimed by the Lord Advocate in civil proceedings which have been brought to their attention the matter should be reported immediately to the Head of the Policy Group at Crown Office. Where an issue of public interest immunity arises or appears likely to arise in a criminal case, again, without delay, the case should be reported to the

Deputy Crown Agent. PII should be considered on receipt of a court summons, petition for commission and diligence for the recovery of documents, applications under the Administration of Justice (Scotland) Act 1972 for the production and recovery of documents or any other interlocutor or order seeking the production of documents. Examples of categories of information that may attract a claim of PII include the identity of informants or surveillance techniques, disclosure of matters of national security, disclosure of police operational strategies, and police reports. Reference is made to paragraph 17.22.

Public interest immunity is claimed by the Lord Advocate and in civil proceedings is normally claimed by a certificate at his hand. In criminal proceedings it is claimed orally or by incidental application or minute of notice where procedurally appropriate, because the Crown is a party to the proceedings. Procurators Fiscal should be aware of the decision in McLeod v HMA 1998 SCCR 77 (A1/1998) in relation to confidential communications and disclosure to the defence generally. The Scottish authorities on disclosure were assessed in McLeod together with the authorities on the subject issuing from the European Court of Human Rights. The High Court reaffirmed the right of the Lord Advocate to claim PII. It was stated:

“In future it will only be where the Crown raise a public interest objection to recovery on specific grounds, relating to the actual document in question, that the court will need to decide whether the public interest in securing a fair trial requires it to order production of the document despite that objection. It can be expected in reaching that view, the court will continue to attach weight to which it has hitherto attached to the expression of view by the Lord Advocate as to the public interest in maintaining confidentiality of any document.”

ANNEX 2**VOLUNTARY AGREEMENT BETWEEN THE MEDIA AND THE POLICE IN CASES OF KIDNAPPING/ABDUCTION WHERE LIFE IS AT STAKE**

1. This agreement relates solely to cases of kidnapping where human life is at stake, It applies to all police forces in Scotland and all news outlets are urged to observe it.
2. Broadcasters and newspaper editors will consider each request for a news blackout on its merits and the duration of the restriction will be open to review by them.
3. In the event of an editor not accepting a blackout, notice of intention to publish will be given to the police.
4. Any request for a delay in reporting specific items of information will be made only by the Chief Constable or Deputy Chief Constable. The justification for each request will be explained at the time.
5. Requests from the police to activate the agreement will be made to individual editors or their nominated deputy. A message left, for instance, with an organisation's Press Office will not be deemed sufficient.
6. In addition, the police will ask the Press Association to convey the request to all its subscribers in the UK and Ireland.
7. Requests made verbally must be confirmed immediately in writing and be signed by the Chief Constable, or his Deputy. The written request will contain details of arrangements for a news conference under embargo to be called by police as soon as possible and certainly within 12 hours. If the news conference is to be held before written confirmation is issued, invitations and details of time and place will be given by telephone or telex. Where appropriate Forces may "fax" such written requests to other Forces asking them to deliver the letter on their behalf.
8. While editors are considering the request they will maintain the news blackout.
9. The events on which reporting is being delayed will be as limited as possible, and restricted to items which could place in peril the life of the victim.
10. The delay, if requested, could extend to reporting what the police are about to do to free the victim.

11. The request for a delay in reporting specific information will cover a specific period; may be extended by agreement; will seek to take into account the time schedules of the media interests concerned; and will be lifted as soon as possible.

12. Before any such agreement as is proposed is put into effect the police will consult with their local Procurators Fiscal as to the disclosure of information at Press Conference.

13. If a news blackout is agreed and after the first conference, further news conferences will be called every 24 hours, or more regular intervals of 12 hours if appropriate.

14. During a news blackout, the police will consult the media should they see a need for editors to restrict news gathering or photographic activities.

15. When the life of the victim is no longer at risk the police will immediately inform the media. A senior officer will meet representatives of the media as quickly as possible after the incident for a de-briefing in which he will give as much information as possible consistent with the limitations of the Lord Advocate's Guidelines. He will explain the reasons for the reporting delay and the results if any achieved by it. It will be open to editors to request a meeting with the Chief Constable as necessary.

Every effort will be made where appropriate to encourage the victim to attend this de-briefing for a photo-call and to read a prepared statement.

16. When the blackout ends, the media may refer in their reports to the fact that the news was withheld.

17. Any notice or letter requesting a restriction will be marked for the personal attention of the named individual.

18. The Association of Chief Police Officers (Scotland) and the Media agree to review the agreement and its operation as soon as possible after the first request for a blackout under the agreement. They also agree to review the agreement and its operation annually. Responsibility for carrying out these reviews will rest with the Crime Committee of ACPO(S) and the Committee of Six appointed by the Media.

17.39 - 17.50 The Press

PART 4: MEDIA RELATIONS

17.39 THE PRESS OFFICER

The Press Officer is available to provide advice to deal with press enquiries and the media.

To ensure that the Department is portrayed in a positive light, contact with the media should not be restricted to responding to inquiries. The Press Office can fulfil an important role in promoting the Department by providing lines in relation to initiatives undertaken by the Department which will be of interest to the media, e.g. work with victims groups and ethnic minority groups.

Procurators Fiscal should advise the Press Office of any local strategies or actions implemented or any other matters that reflect positive enterprises or actions of the Service.

If a Procurator Fiscal is of the opinion that a particular case or decision is likely to generate publicity or provoke press inquiries for whatever reason, the Press Officer should be advised in order to ensure that there is a co-ordinated response between Crown Office and the Procurator Fiscal.

Reporters will often seek comments or information on the same subject from separate sources, for example, the police, the Procurator Fiscal and Crown Office. Clearly it is undesirable that conflicting statements be given. If a Procurator Fiscal receives an enquiry from the press about a matter which he considers the press will also raise with Crown Office he should immediately telephone the Press Office and report briefly the circumstances and what, if anything, he has said to them.

Similarly, if a Procurator Fiscal is made aware of an adverse comment regarding the Department or the particular actions of a member of the Department that may be the subject of a press report, it should be brought to the attention of the Press Officer as soon as possible.

Where a particular case or action does create intense media interest the Procurator Fiscal can redirect media inquiries to the press office once a response has been agreed. In cases which are likely to attract intense media interest, it may be appropriate for the Press Officer to attend at court. Procurators Fiscal should liaise with the Press Office regarding such cases.

The Press often make inquiries in relation to occurrence reports submitted by the police. In general, confirmation can be given that the Fiscal is aware of the police investigation and that it is under consideration. Any particular difficulty should be brought to the attention of the Press Officer.

The Press Officer should be notified of any request for the release of photographs or CCTV footage and of the decision of the Procurator Fiscal. Reference is made to paragraph **17.46**.

17.40 GENERAL RELATIONSHIP WITH THE PRESS

It is useful to maintain a helpful relationship with the press. It can be helpful to them if, on occasion, information is given "off the record" so that they are aware of, for example, the reasons why the Procurator Fiscal does not wish certain information to be published. Great care must always be exercised in such circumstances and a knowledge of the individual reporter concerned is helpful in deciding whether information beyond what ought to be published should be given. Some newspapers tape record telephone calls dealing with such matters. The media should not be given such information without good reason.

Any press releases or statements other than routine press inquiries should, wherever possible, be cleared with the Press Officer in advance. A copy of any formal press statement must be retained and it is advisable to note details of any informal conversation which may later be reported including the times and dates. This will also ensure that the same answer is given to all press inquiries. Routine inquiries include information as to whether a particular person has appeared on petition and the nature of the charges.

Should it be apparent to the Procurator Fiscal that the press intend to publish matter which will be prejudicial it is proper for the Procurator Fiscal, should the opportunity present itself, to warn the press of the possible consequences, i.e. proceedings for contempt of court if someone has been arrested, or a prosecution for attempting to pervert the course of justice if proceedings have not commenced. The Procurator Fiscal should suggest that the inquirer should consult his own legal adviser.

Where it is considered necessary in the public interest to use the medium of the press to trace a person, either as an accused or as a witness, the decision to do so lies with the Procurator Fiscal, who if he has any doubt, should consult Crown Counsel. Great care should be taken to avoid the dissemination of information which may be prejudicial. The police may want the help of the media, but at the same time they should not disclose important evidence to them. While publicity may lead to the discovery of fresh evidence, the likelihood of its doing so must be carefully weighed against the possibility of prejudice in later legal proceedings. Reference is made to paragraph **17.43**.

Procurators Fiscal must not give interviews to television or radio about any matter falling within their official duties without the prior approval of Crown Office.

17.41 WITNESSES

Persons who are likely to be witnesses in the case should be discouraged from talking to the press although this can not be prevented.

17.42 INQUIRIES BY THE PRESS: CONTEMPT OF COURT ACT 1981

The Contempt of Court Act 1981 introduced "the strict liability rule" whereby conduct may be treated as contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so. The rule applies only to "publications" and only where there is a substantial risk that the course of justice will be seriously impeded or prejudiced. The Contempt of Court Act must be read in conjunction with Article 10 of the ECHR. In addition, the proceedings must be "active" (see Schedule 1 of the Act). Section 3 of the Act provides for a defence of innocent publication but only where the publisher has taken all reasonable care and did not know and had no reason to suspect that relevant proceedings were active.

In this connection, Procurators Fiscal will be approached by the media requesting information on whether proceedings are active. Procurators Fiscal must co-operate with such requests for information and minute case papers accordingly. Accurate recording of requests for information will be important if publication takes place regardless of the fact that proceedings are active.

Except as authorised by these Regulations, or by Crown Counsel in specific cases, no information should be given to the media or any unauthorised person, in particular regarding the failure to obtain evidence or the progress of the investigation, nor should reference be made to any particular clue or production or absence thereof. Procurators Fiscal must **not** inform the media or any unauthorised person that proceedings are contemplated against a named accused before the case has called in the court except in the circumstances mentioned below.

In the event of breach of this instruction, or of publication of matter prejudicial to an accused, a report should be made immediately for the instructions of Crown Counsel, who will consider whether proceedings for contempt of court or attempting to pervert the course of justice are warranted. (See also the Official Secrets Act 1989).

17.43 PRIOR TO FIRST APPEARANCE

Lord Advocate's guidelines have been given to the police and these should also be followed by Procurators Fiscal: -

1. The law in Scotland relating to Contempt of Court is governed by the Contempt of Court Act 1981. The Guidelines are given principally from the point of view of that Act, although other considerations such as defamation and the effect of giving out information on the development of an enquiry have been kept in mind.

2. Publication of information prejudicial to an accused will be treated as contempt under the rule of strict liability, only when criminal proceedings are "active" as defined in the Act occurring on arrest, the granting of a warrant for arrest, the service of an indictment or complaint, or the grant of a warrant to cite. The act embodies in statutory form the law of Scotland as defined in the previous common law, and in particular, the case of *Hall v Associated Newspapers 1978 SLT 241*. The effect of the strict liability rule is that proceedings for contempt may be taken whether or not the publisher intended to impede or prejudice the criminal proceedings. However the strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings will be seriously impeded or prejudiced.

3. One other effect of the strict liability rule is that contempt proceedings may be taken even where the publisher was unaware that proceedings were "active." There is however a defence of innocent publication and distribution available to a publisher but only where he has taken all reasonable care and the onus of establishing it lies on the accused. As a result, information regarding whether proceedings are "active" as defined in paragraph two, should be given to the media on request.

4. Prior to proceedings becoming active publication of information with the intention of prejudicing the proceedings may render the publisher liable to prosecution for attempting to pervert the course of justice. The charge of attempting to pervert the course of justice could also be brought against the person who gave the prejudicial information to the press for publication. In such a case the prosecution would have to prove criminal intent and this may be contrasted with the position under the strict liability rule.

5. In cases either of contempt or attempt to pervert the course of justice, the fact that the source of the offending material was the police will not be allowed as an excuse or mitigating factor. Where the offending or prejudicial information has emanated from police sources, the court may even take the view that it would be improper to allow conviction of the accused who has suffered prejudice therefrom.

6. In the course of delivering the Opinion in the case of *Hall* the Lord Justice General said: -

"It is a matter for consideration whether after an individual has been arrested and has been charged with a crime it is desirable for the police to be disseminating information relating to the crime or to the individual concerned."

Similarly, in the course of delivering the Opinion in a case involving the *Glasgow Herald Newspaper (High Court of Justiciary, 24 October 1979)* the Lord Justice General said: -

"Before leaving this case we think it desirable to mention that we were informed by Counsel for the Respondents that the offending material which, on publication, constituted the admitted contempt of Court, was mainly derived from a Press Association release which was, in turn, derived from information supplied by Police sources South of the Border. We have had occasion before to question the wisdom of the provision of such information by the Police to the Press at least at any time after a person to whom it relates has been arrested on criminal charges."

It is therefore essential that the police are extremely careful in the type and extent of information which they release to the media at each and every stage of an investigation. It is not possible to give styles for every eventuality and police officers must use their judgement and good sense to ensure that any statement issued is not in any way prejudicial. In reaching such decisions, police officers would be well advised to keep in mind what is stated in the final paragraph of these "guidelines."

7. The police can be under considerable pressure from the media to make statements during the course of an investigation, and it is suggested that the undernoted guidelines be followed:

(a) Where a crime has been discovered and someone has been arrested

In this type of case the media should in the first place be told no more than the bare minimum, for example, "The dead body of Mrs. A B (address) was found at (locus) on (time and date). A man has been arrested in connection with this death and a report will be submitted to the Procurator Fiscal." The name of the deceased should only be given after the next of kin have been informed. Before any statement which goes beyond the above is made to the media its content must be approved by the Procurator Fiscal.

The proceedings are of course now "active" because someone has been arrested. The media may approach the police stating that they wish to publish and asking if proceedings are active. They should be advised that they are. The media may also ask for the identity of the person arrested for their information (whether or not for publication) in order to ensure that what they publish does not prejudice that person. It is considered unlikely that there could be any substantial risk of the course of justice being seriously impeded or prejudiced in the event that the media published the name of the person arrested. Accordingly if the media ask for a name, it should be given unless there is an operational reason for not doing so, e.g. fear that accomplices may destroy evidence if it becomes known that a certain person has been arrested. It should be stated, if a name is given, that the reason for doing so is that they may ensure that they comply with the 1981 Act. Where the name of the arrested person is given, no further details of the charge should be given other than that which is suggested above.

In all cases the police should note the information requested and information given.

(b) Where a crime has been discovered and the police have evidence which identifies the culprit as being a known person

An example of what might be said in this case is: "The dead body of Mrs. A B (address) was found at (locus) on (time and date). The death is being treated as criminal but so far there has been no arrest. A report will be submitted to the Procurator Fiscal." If you wish to add something like "Intensive investigation is proceeding" there could be no objection to that. In a case of this nature where it is believed that the media are aware of the identity of the person against whom the police have evidence, a warrant for his apprehension should be sought with the utmost expedition and the media informed that it is anticipated that a warrant will be granted (without naming the person in respect of whom the warrant is sought) before they will be ready to publish. If for any reason a warrant is not granted as anticipated, the media may be so informed.

After the warrant has been obtained, the media should be advised that proceedings are active. If the media also ask for the identity of the person named in the warrant the information should be given unless as in (a) above, there is an operational reason for not doing so. No details of the charge(s) contained in the warrant should be given. If for any reason the police wish the identity or photograph of a person named in a warrant to be published (e.g. because of suspected danger to the public) the appropriate Procurator Fiscal must be consulted before any such step is taken.

(c) Where a crime has been discovered and the culprit is unknown

This is the most difficult type of case. The police may want the help of the media but at the same time they should not unnecessarily disclose important evidence to them. There would appear to be no need to state, for example, that a dead woman's hands were tied behind her back by her tights (the knowledge of this fact by an accused might be vital in showing that his confession is credible unless he could claim to have read it in a newspaper). On the other hand there may be a need to describe her companion when she left a public house in the hope that a member of the public will come forward with evidence of identification. While publicity may lead to the discovery of fresh information, the likelihood of its doing so must be carefully weighed against the possibility of prejudice in later legal proceedings. Because of this possibility persons who are likely to be witnesses in the case should be discouraged from talking to the media. Such conversation may well affect the witness's account or recollection in vital respects.

(d) Where a crime has been discovered and a person is detained in terms of section 14 of the Criminal Procedure (Scotland) Act 1995

In this situation if the media ask for information they may be told that a person (without identifying him) has been detained. It should be stressed to the media representatives that while this does not make proceedings active, it should put the media on their guard and serve as a warning that proceedings may become active soon.

(e) Where an incident has been the subject of police investigation

This occurs frequently in the case of sudden death, which the police are obliged to investigate and report to the Procurator Fiscal. A brief statement may be given to the media at a certain point. If a police officer judges it wise to add something like; "There would appear to be no suspicious circumstances," there would be no objection to that.

8. Criminal proceedings cease to be "active" principally when the accused is sentenced or acquitted. However, proceedings will become active again if a written intimation of appeal is lodged and, before any statement is made in such circumstances, the appropriate Procurator Fiscal or Crown Office should be consulted to ascertain whether an appeal has been lodged.

9. In all matters and at all stages of an investigation Police Officers should not hesitate to contact the appropriate Procurator Fiscal in cases where they wish guidance.

17.44 AFTER FIRST APPEARANCE

The Lord Advocate takes the view that where a person is charged on Petition, if a request is made by the press for information, notwithstanding the fact that the proceedings are in private, they should be informed of the name and address of the person and the fact that he has been charged with a certain crime and whether or not he has been released on bail. Precise details of the charge should not be given, the nomen juris being sufficient, but in a case of murder or assault, where there is

considerable public interest, the name or names of the victims should be given. In rape cases or crimes of a similar nature, however, the identity of the victim must not be revealed without both Crown Counsel's instructions and the consent of the victim.

No other information should be given.

Intimation to the press that proceedings have been dropped against a person charged on petition, may only be given with the express prior instructions of Crown Counsel, and always bearing in mind that such communication may bar the Crown from future proceedings: *Thom v HMA 1976 SLT 232*. It should be noted that any decision intimated to a person who may communicate it to the accused such as his agent or Member of Parliament may also bar the Crown from future proceedings: *HMA v Stewart 1980 JC 88*

17.45 CHILDREN

The prohibition on the press in publishing details of children is dealt with in paragraph [16.26](#).

17.46 PHOTOGRAPHS AND CCTV FOOTAGE

The copyright of images recorded for policing purposes is owned by the Chief Constable of the appropriate force and other images in the control or possession of the police are the copyright of the organisation or individual who recorded them. The consent of the owner of the copyright is required prior the images being published.

The police have issued guidelines in relation to the release of video footage and still photographs. In particular, images of

criminal incidents will only be released at the conclusion of criminal proceedings and that the release will be subject to the approval of the Procurator Fiscal/Crown Office and will conform to the Lord Advocate's guidelines in respect of the Contempt of Court Act 1981.

There are certain categories of material that is considered inappropriate to disclose. This includes the following:

- Distressing material, for example, someone being murdered.
- Material depicting any person other than the accused without the consent of that person
- Material from a private CCTV system without the agreement of the owner.
- Material depicting dangerous driving or other crimes if it is likely to lead to copycat activity.
- Material depicting children.

Chief Constables have been advised by the Scottish Executive that there is no objection to publicity being given to photographs or descriptions of (1) deceased persons (2) crime loci (3) stolen property (4) burgled safes (5) cars used in crimes (6) weapons (7) person who are merely missing or missing on account of suspected loss of memory.

Similarly, there is no objection to the use of recent incidents to illustrate matters in connection with crime prevention or accident prevention, provided care is taken to avoid showing any person or object, the identification of which would be relevant in a trial and also to avoid implying that, for example, a motorist was guilty of a crime or offence.

Chief Constables are however advised that in deciding what information it is permissible to publicise, they should if necessary consult the appropriate Procurator Fiscal. Procurators Fiscal should, therefore, ensure that they liaise closely with the police on this matter and if necessary, consult Crown Counsel.

CCTV systems record data and therefore require to comply with Data Protection legislation. Copyright holders will require to have regard to any obligations imposed by the Data Protection Act 1998 prior to releasing images to the press. For that reason, Procurators Fiscal cannot authorise or instruct the release of CCTV footage. In response to any request the Fiscal should advise only whether there is any objection on legal grounds or that it would be inappropriate to given the nature of the material. Thereafter the decision to permit the release should be referred to the person who owns the copyright. In most cases this will be the Chief Constable of the particular Force.

Any requests to release photographs or video recordings prior to the conclusion of criminal proceedings should be reported to the Deputy Crown Agent.

17.47 PHOTOGRAPHS ETC OF SUSPECTS

The publication of photographs, descriptions, artist's sketches, identikit likenesses etc should not be used as a general rule as a means of tracing an accused person since it might be prejudicial as regards evidence of identification. The police have been informed that they may not publish such matters without the sanction of the Lord Advocate, which should be sought through the Procurator Fiscal - (although they may warn the public that, for example, a certain type of fraud is being commonly perpetrated).

Where, however, the police consider that to publish a photograph, identikit likeness etc is necessary to ensure the proper investigation of a crime, and the publication of such material is proportionate when balanced against the nature of the offence, then they may request the authority of the Lord Advocate to do so. This should be sought through the Procurator Fiscal, who will send a report for Crown Counsel's instructions through the Deputy Crown Agent. The report should be copied to the Communications department in Crown Office.

The report must contain:

- Details of the alleged offence;
- Information as to the extent of the investigation carried out and any evidence available;
- Efforts made to trace any potential suspects;
- An analysis of the potential impact on the evidence, particularly any identification evidence, should publication take place;

- A draft of the wording to be published, along with the photograph, identikit likeness etc;
- The forum in which publication will take place (eg Crimewatch, local newspaper etc).
- A recommendation from the Procurator Fiscal

In addition, where a dangerous criminal is at large and the police ask permission from the Procurator Fiscal to publish a photograph, the latter should communicate immediately with Crown Office for the instructions of Crown Counsel with a draft of the proposed press release. The report should also describe the available evidence and steps taken to identify and trace the suspect.

17.47.1 REGISTERED SEX OFFENDERS

Where a registered sex offender is classed as missing or wanted by the police, it may be appropriate to release a photograph or description of the offender to ascertain his/her whereabouts. Authority to publish in such situations will be made by the police to the relevant District Fiscal, who should seek Crown Counsel's instructions through the Deputy Crown Agent.

It is likely that on most occasions the police will wish to trace registered sex offenders because they have failed to carry out the notification procedures incumbent upon them in terms of the Sexual Offences Act 2003. As such, a warrant for the arrest of the offender should have been issued at an earlier stage (for contravening the Act), and before any photograph etc is published the District Fiscal must be satisfied that the police have made all possible attempts to locate the offender using their powers under the warrant.

Where the police have made such attempts, and the offender's whereabouts remain unknown, consideration should be given to obtaining Crown Counsel's instructions on publication of the photograph/details. The report to Crown Counsel (which should be copied to the Communications department in Crown Office) should contain

- Details of the offence/s for which the offender is convicted;
- Details of any outstanding warrants (for, as an example, failing to register in terms of the Sexual Offences Act 2003);
- If the offender is wanted for any new offence, other than in terms of the Sexual Offences Act 2003, the impact publication would have on the evidence in that case (particularly the identification evidence);
- A draft of the wording it is proposed to release alongside the photograph;
- Information as to the risk it is believed the offender poses to the public. The police are aware that the Procurator Fiscal is not equipped to carry out a risk assessment of such offenders – and information in this regard must come from the police, through the local offender management unit;
- A recommendation from the Procurator Fiscal.

Where a registered sex offender is missing or wanted by the police, and the police have made efforts to trace him/her without success, there is a presumption in favour of reporting the request for publication to Crown Counsel.

If during their search for the offender the police receive intelligence or obtain evidence to the effect that the offender has left the country, the Procurator Fiscal should discuss this information with the International Co-operation Unit in Crown Office, in order to assess whether a European Arrest Warrant or extradition proceedings are appropriate.

17.48 UNIDENTIFIED DEAD BODIES

The Secretary of State has instructed Chief Constables that they should exercise their own discretion. Descriptions of unidentified dead bodies should be carefully prepared and should give full and accurate particulars. Besides supplying information to the press, consideration should be given to the possibility of disseminating information to other police forces.

17.49 WARRANTS FOR SEIZURE OF MATERIAL FROM THE MEDIA

Procurators Fiscal should refer to [Chapter 2 at Section 10 of the Practice Manual](#) in this regard.

17.50 KIDNAPPING AGREEMENT WITH THE MEDIA

The Association of Chief Police Officers in Scotland has agreed a procedure with representatives of media groups for implementing a voluntary news blackout in cases of kidnapping/abduction where life is at stake. A copy of the agreement is attached. The following media groups have accepted the agreement:

Scottish Daily Newspaper Society;

Scottish Newspaper Publishers Association;

Press Association in Scotland.

The Scottish Broadcasting Editors who represent television and radio interests have not formally accepted the agreement but have agreed to continue to give due consideration to police requests for a blackout in appropriate circumstances.

In terms of the agreement, which is contained at [Annex 2 to this Chapter](#), the police will call a news conference under embargo as soon as possible after requesting a blackout. Before holding the news conference the police will consult with their local Procurator Fiscal as to the disclosure of information at the news conference. Any information disclosed at this time is likely to be published or broadcast when the blackout ends therefore it is important that the police do not disclose to the media any evidence which may prejudice later criminal proceedings.

When the life of a victim is no longer at risk, the police will meet representatives of the media for a de-briefing. The police have agreed to encourage the victim to attend

the de-briefing for a photo-call and to read a prepared statement. This represents a significant departure from existing practice whereby persons who are likely to be witnesses are usually discouraged from talking to the media. The victim's attendance at the de-briefing would not involve a "question and answer" session.

It has been agreed that where the victim is willing to read a prepared statement, its terms will be cleared with the Procurator Fiscal in advance. By this stage, persons may be in custody or a warrant may have been issued. Proceedings would therefore be "active" for the purposes of the Contempt of Court Act. Accordingly, the media, and those supplying information to the media, must be careful that any publication does not create a substantial risk that the course of justice in the proceedings will be seriously impeded or prejudiced.

Even if the culprit is still unknown, the benefits of publicity, which may lead to the discovery of fresh information, must still be weighed against the possibility of prejudice in later legal proceedings. The disclosure of important evidence by either the police or the victim is unlikely to be justified. In the case of the victim, any prepared statement should normally be confined to such matters as an expression of relief at being released, thanks to the media for co-operating in the news blackout, etc.

When an approach is made by the police for guidance in connection with the provision of information under this agreement, Procurators Fiscal should communicate immediately with Crown Office for the instructions of Crown Counsel.

Author: Deputy Crown Agent
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