

Chapter 1: Introduction

1.1 Disclosure is a vitally important aspect of criminal procedure. The principal purpose of disclosure is to secure the fair disposal of criminal proceedings and ensure that justice is done. Non-disclosure of material information may prejudice the fairness of a trial. It would be incompatible with the Article 6 rights of the accused, and could – if a conviction is secured – result in an appeal being successful. It can also result in judicial criticism of the Crown – see, for example, **PF Glasgow v Von & Hume** ([2008] HCJAC 9).

1.2. The Privy Council in **McDonald v HMA [PC]** (2008 S.L.T. 993) recognised that the Crown have addressed the problems that were identified in **Holland** (2005 S.C. (P.C.) 3) and **Sinclair** (2005 S.C. (P.C.) 28) “*with great care and attention to detail*” (para 33). It was further commented that the Crown had shown “*a commendable determination...to eliminate the problems as far as it is humanly possible to do so, and to put in place new systems to minimise the risk of error in the future*” (para 34).

1.3. It is clear that the Crown has set itself a high standard in relation to complying with disclosure, and while the positive opinions expressed in **McDonald v HMA [PC]** recognise and commend this work, it is essential that Procurators Fiscal should not become complacent and should continue to live up to the standard so highly praised by Lord Hope.

1.4 More importantly, it should be noted that the Privy Council has reviewed the current system of disclosure and is satisfied that it is compatible with an accused’s Article 6(1) Convention rights (**McDonald v HMA [PC]** para 61).

1.5 Part 6 of The Criminal Justice and Licensing (Scotland) Act 2010 places the law surrounding disclosure on a statutory footing and replaces any equivalent common law rules about disclosure. All common law rules about disclosure of information by the prosecutor in connection with criminal proceedings are abolished in so far as they are replaced by or are inconsistent with Part 6 of the Act (s. 166 Criminal Justice and Licensing (Scotland) Act 2010).

1.6 This Manual is designed to ensure that Procurators Fiscal and their staff are aware of the Crown’s disclosure obligations to the defence and that those obligations are fully and consistently implemented to a high standard.

1.7 The instructions contained in this manual **must** be followed by **all** members of COPFS staff in order to ensure a consistent approach to disclosure. Any derogation from, or variation of, these instructions must be agreed by the Director of Serious Casework. Consistency in this area is vital.

1.8 These instructions apply to all Crown prosecutions and appeals.

1.9 Copies of cases referred to in the manual can be accessed in the Knowledge Bank.