

## **Chapter 12: List of Witnesses**

### **12.1 General Practice**

12.1.1 The general practice adopted by the Crown on disclosure of lists of witnesses is set out in the Crown Practice Statement on Disclosure in High Court Cases. This applies to disclosure of lists of witnesses in Sheriff and Jury and Summary cases as well.

12.1.2 In Summary cases, the Crown should, where the accused's representative has confirmed in writing that they act for the accused, provide them with a provisional list of witnesses within 14 days of the pleading diet.

12.1.3 In Solemn cases, the Crown should, where the accused's representative has confirmed in writing that they act for the accused, provide them with a provisional list of witnesses within 14 days of first appearance.

### **12.2 Addresses of a Witness**

12.2.1 When sending out the list of witnesses to a defence agent, the witness's home address can be disclosed except where:

- i) The witness is vulnerable;
- ii) The witness has requested that his/her home address not be disclosed; or
- iii) The PF has any concern that would justify the witness's home address to be withheld.

Home addresses should not be disclosed to an unrepresented accused.

12.2.2 Covering letters DISCLOSOLLET and LOWLET2 should be used, which clearly specify that the list of witnesses is provided on the understanding that the home addresses of the witnesses will not be made known to the accused.

12.2.3 Witnesses who are witnesses in the course of their employment should be designated as being care of their place of employment.

### **12.3 Withholding details of a Witness**

12.3.1 The obligation is to issue a **provisional** list of witnesses. It may be necessary to withhold disclosure of the details of some witnesses temporarily pending further steps. The Crown Practice Statement on Disclosure in High Court Cases specifically permits this, subject to those details being provided as soon as practicable. This exception will apply principally in the case of vulnerable witnesses as set out in the Precognoscer's Handbook.

### **12.4 When to withhold**

12.4.1 It may be appropriate to withhold details of vulnerable witnesses to ensure that they are given a full explanation of the precognition process and the court procedure that may follow thereafter, prior to them being questioned by the defence in circumstances where they have no such understanding. Details of when a witness would be considered vulnerable are contained in Crown Office Circular 5 of 2006: Vulnerable Witnesses (Scotland) Act 2004. Procurators Fiscal should also exercise their discretion in this regard in respect of other witnesses where appropriate.

12.4.2 This is particularly relevant in the case of child witnesses where the child or his or her carers should be advised of the possibility of defence precognition before details are provided to the defence.

12.4.3 Issues of operational security should also be borne in mind. There may be witness details which, for reasons in the public interest, or related to Article 8 issues, such as where there is a threat to the life or limb of a witness or other persons, it is appropriate to withhold, until such time as the outstanding issues have been resolved. In this event, an early FOS BU date should be fixed in order to ensure this position is reviewed for the purpose of disclosure.

12.4.4 If it is not clear from the initial police or other investigating agency report whether a witness is of relevance to the case (because his or her involvement is not specified in the narrative or analysis sections) then such details should be withheld pending receipt of full statements. It should be borne in mind that the list of witnesses is a **provisional** list and that in most cases it will be the disclosure of statements that will be of material interest to the defence.

12.4.5 In any case where a decision is taken to withhold the details of a witness temporarily then any further work e.g. liaison with the witness, liaison with the police or precognition must be completed as a matter of urgency, and the details must be released as soon as practicable thereafter. As this is likely to apply almost exclusively to vulnerable witnesses, this is in keeping with best practice and is consistent with the terms of the Case Marking Instructions Chapter 4.10.2 regarding prevention of delay. It is essential that an early FOS BU is created where witness details are withheld in order to ensure that this position is reviewed for the purpose of disclosure.

12.4.6 In exceptional circumstances it may be necessary to withhold the details of a witness *completely* on public interest grounds and this is recognised in the Crown Practice Statement on Disclosure in High Court Cases. Although it may be possible to advise the defence that this has been done it should be borne in mind that the very disclosure that information has been withheld may allow the defence to identify the nature of the evidence, e.g. that of an informant, with a consequential risk to security. Details of a witness should only be withheld on public interest grounds on the explicit instructions of the functional lead for High Court / Sheriff & Jury / Summary/ ICP (depending on the forum of the case), or a senior legal manager expressly authorised to act on his or her behalf in that regard. The relevant functional lead or senior manager will only give such instructions after the matter has been reported to the Director of Serious Casework for the attention of Crown Counsel, and the receipt of explicit instructions. Chapter 25 of the Disclosure Manual has further information on the withholding of sensitive and intelligence information.

## **12.5 Additional Witnesses**

12.5.1 Where, after the provisional list of witnesses has been disclosed to the defence, the Crown identifies, during the course of its preparation or investigation of the case, any further witnesses who are relevant to the case against the accused and who have not been previously intimated to the defence, it will provide to the defence details of these as soon as practicable, subject to the same qualifications as apply to the provisional list of witnesses.