

Chapter 15: Witness Statements: Redaction

15.1 General Principles

15.1.1 The prosecutor's entitlement to redact information prior to disclosure has been placed on a statutory footing under section 161 of the Criminal Justice and Licensing (Scotland) Act 2010. The Crown may redact any witness statement to obscure information of a non-disclosable/confidential nature contained within the statement, provided that the information redacted does not fall within the parameters of the materiality test i.e. information which is likely to

- materially weaken or undermine the evidence that is likely to be led by the prosecutor;
- materially strengthen the defence case; or
- form part of the evidence to be led by the prosecutor in the proceedings against the accused.

15.1.2 Any such redaction of a witness statement must be obvious on the face of the statement. The relevant text should be blackened out. Under **no** circumstances should the text simply be deleted from the disclosable copy of the statement so that the redaction is not apparent on the face of the document.

15.1.3 There are various types of information within a statement that may require to be redacted. These are considered further below. However, the question of redaction must always be considered in light of and subject to the Crown's obligation of disclosure in terms of the materiality test as detailed in paragraph 15.1.1 above.

15.1.4 In any case of doubt, staff should consult the appropriate legal manager.

15.1.5 Care must be taken to read the entirety of the statement, as it may be that references are made in section 3 of the statement to information which should be redacted and this may not be obvious.

15.1.6 Where statements have been obtained from defence witnesses and these are being disclosed to the defence, the same principles of redaction apply.

15.2 Personal Details

15.2.1 Before disclosing any statement, any personal data that is not relevant to the case should be redacted.

15.2.2 The Full Name of a witness should **not** be redacted unless redaction is considered necessary in order to ensure the anonymity of a witness to whom such disclosure may represent a risk to life, health or security, or in order to avoid prejudicing ongoing investigations or proceedings. This will be highly exceptional (see case of **HMA v Giovanni Mola** (2007 SCCR 124)).

15.2.3 The Age of a witness should **not** be redacted.

15.2.4 The Date of Birth of a witness should **not** be redacted.

15.3 Address of a Witness

15.3.1 The address inserted in **Section 1** should generally not be redacted. There is a presumption that the police officer taking the statement will have canvassed this issue with the witness and, accordingly, the address given in **Section 1** will be the address the witness is willing to have disclosed to the defence.

15.3.2 Where there are concerns that the police are inserting addresses into **Section 1** of the National Standard Statement (NSS) without first canvassing the issue with the witness, the Federation Head should arrange for this to be addressed at a local level.

15.3.3 Redaction of the address should only be necessary where:

- (i) The witness is the victim of an offence of a sexual nature;
- (ii) Where the witness fears reprisals or intimidation;
- (iii) Where the witness is speaking to matters arising from his/her employment (such witnesses should be designated and cited at their places of employment); or
- (iv) The witness otherwise indicates that their address should not be disclosed.

15.3.4 The address inserted in **Section 4** of the NSS should never be disclosed.

15.3.5 Where the home address of a witness is not to be disclosed, particular care should be taken when checking the statements of other witnesses and in particular the statement of the police officer who took the statement from the witness, as the officer may make reference in **Section 3** of his or her own statement to attending at the home address of the witness to take their statement. **Section 2** should also be checked to ensure that it does not contain details of an address which should not be disclosed.

15.4 Telephone Numbers

15.4.1 These should always be redacted unless:

- (i) The information is already known to the accused, for example in a domestic matter; or
- (ii) It is essential to proving the charge.

15.4.2 Telephone numbers of witnesses should only be noted in the confidential section of the statement.

15.5 Occupation

15.5.1 This should not be redacted unless:

- (i) Redaction is considered necessary in order to ensure the safety of a witness, for example where the complainant is the victim of a housebreaking (thus the accused knows their address) and their occupation is a police officer, COPFS employee, prison officer etc.;
- (ii) Disclosure of the occupation may lead to the location of the workplace and that information is irrelevant to the offence.

15.6 Place of Work

15.6.1 This should be redacted unless it is relevant to the offence.

15.6.2 This information should normally only be noted in the confidential section of the statement.

15.7 Next of Kin/ Family History Details

15.7.1 There is a presumption that this information should be redacted.

15.7.2 This information should normally only be noted in the confidential section of the statement and should not be disclosed unless the defence advance a case that is based upon such features in any way.

15.8 Medical Information

15.8.1 This should be redacted unless it is directly material to the cases, for example where there are injuries sustained by a complainant in an assault case, or where it is relevant to explaining the behaviour of a witness.

15.8.2 Again, this position should be reviewed if the defence advance a case that is based upon such features in any way.

15.9 Where & When a Statement was taken and by Whom

15.9.1 This should not be redacted unless the information is not disclosable, with reference to the points above, for example, if it would reveal a private address. The police should use general descriptions like "Witness Business Address" or "Witness Home Address" rather than give the actual addresses.

15.10 Security Information

15.10.1 The police will occasionally record information that could potentially reveal security aspects of domestic or business premises. This information may be relevant to the crime but very often it is not and disclosure would be inappropriate.

15.10.2 Where such information is contained within a statement, and is irrelevant, it should be redacted. This category will include, for example, information on where a witness stores valuables or keys. It can also include dates where the witness will be on holiday, which should normally be contained within **Section 5** of the NSS.

15.10.3 Care should also be taken where the witness does not wish a home address to be disclosed. The police may do so inadvertently by including details of the witness's movements that refer to the address indirectly in the body of the statement, e.g. *"I called in to the Jet garage across the road from my house"*. If the visit to the garage was by way of general background but not directly relevant to the facts of the case, this part should be redacted if the witness has indicated that the home address should not be disclosed.

15.10.4 Security information regarding other witnesses in the case should also be redacted.

15.11 Operational Information

15.11.1 A witness statement may sometimes reveal information about an ongoing Police operation which, if it were to be known to the accused, may prejudice that operation.

15.11.2 An example would be a witness statement that disclosed what the accused had said to a witness about his involvement in the crime, e.g. his movements or his involvement with a production. It may be necessary, prior to redaction, to check with the Reporting Officer whether or not the line of enquiry that this information may have produced has been completed or whether it would be necessary to consider withholding or redacting the statement until such time as that has been done.

15.11.3 Another common example is where the police have been engaged in surveillance operations that implicate the accused but are not necessarily needed to prove the case against the accused. In those circumstances, the revelation of the existence of the details of the surveillance may prejudice a larger operation of which the case in point may only be a small part.

15.11.4 It is also relevant to consider whether or not disclosure of operational information that might place a member of the public, who is not a witness, at risk, e.g. disclosure of an observation point in a member of the public's home.

15.11.5 If the information is not relevant to the case against the accused, then it is not disclosable in terms of the materiality test as detailed in paragraph 15.1.1 above and the information may properly be redacted. If it is relevant to the case against the accused but does not fall within the Crown's obligation of disclosure (e.g. because any relevance which it might have would be wholly incriminatory of the accused), the Crown may redact the statement to obscure that information. If there is any doubt about what information should be redacted the appropriate legal manager should be consulted.

15.11.6 If the information would fall to be disclosed under the materiality test as detailed in 15.1.1 above, the Crown has two options:-

(i) to discontinue proceedings; or

(ii) to seek a non-disclosure/non-notification order/exclusion order as appropriate. Full guidance on these orders can be found in Chapter 25 of this Manual.

15.11.7 If the Crown is not prepared to discontinue proceedings, it is not entitled unilaterally to withhold the information from the defence. The question of whether the information is disclosable (i.e. material) can be decided by the Court. However if the summary/solemn legal manager deems the information to be disclosable but considers that disclosure would not be in the public interest the matter should be referred initially to the functional lead (High Court/Sheriff and Jury/Summary) and then the Federation Head,. Thereafter the matter should be reported to the Director of Serious Casework for the attention of Crown Counsel with an appropriate recommendation, for a decision as to how the issue should be addressed.

15.11.8 Where Crown Counsel considers that it is not in the public interest to disclose the information to the accused, Crown Counsel may consider it best that the information be withheld and that an application for a non-disclosure order be made to the court.

15.11.9 If the Court has ruled that the information is disclosable in terms of the materiality test, then careful consideration requires to be given as to whether or not to disclose a redacted version (removing any sensitive and immaterial information). Under no circumstances should a non-redacted version of be made available. It is important however to note that a Court ruling that information is disclosable, is not per se a ruling to disclose the information.

15.11.10 In circumstances where the Crown continues, following a Court Ruling that the information is disclosable, to be of the view that it is not in the public interest to disclose the information (even in a redacted form) a report should be submitted to the Director of Serious Casework for Crown Counsel's Instructions as to whether or not the case merits risking the Crown being held to have breached it's disclosure obligations. It should be remembered that breach of the Crown's disclosure obligations will not always result in an unfair trial in terms of Article 6 ECHR. This approach should only be followed in exceptional circumstances.

15.12 Issues of Materiality and Admissibility

15.12.1 Issues of materiality and admissibility should not be considered as part of the redaction process. Thus potentially irrelevant material such as hearsay evidence or statement of opinion should be disclosed unless there is any other reason to withhold or redact it. **In no case should information which is likely to be of real importance to any undermining of the Crown case, or to any casting of reasonable doubt on it, or which is of positive assistance to the accused be redacted.**

15.13 Review of Decisions

15.13.1 Any decision to redact information should be reviewed: (a) if the defence request access to the redacted information; or (b) if it becomes apparent, in light of any new information or other developments in the case, that the appropriateness of the redaction should be revisited.

15.13.2 Any such review of a decision to redact information should be taken by the appropriate Legal Manager, depending on the type of case. If there is any doubt about what information should be redacted / disclosed, the matter should be reported to the Director of Serious Casework for Crown Counsel's instructions.

15.14 Copies of Redacted Statements

15.14.1 Where a statement has been redacted, a file/hard copy of the redacted statement must be retained for audit purposes.