

Chapter 24: Disclosure of Information obtained during a CAAP Investigation

24.1 Introduction & Definitions

24.1.1 This chapter provides guidance to all staff on the consideration of information obtained during a CAAP investigation where there is a related criminal prosecution.

24.1.2 For the purposes of this chapter, the following words and phrases have the following meanings:

<i>CAAP investigation</i>	Complaint against the police that has been reported to the Criminal Allegations Against the Police Division
<i>CAAP complainer</i>	Person who has made the complaint against the police – this can be either the accused in the related case or another party
<i>CAAP Case Preparer</i>	Person within the Criminal Allegations Against the Police Division who has been allocated the CAAP case for precognition
<i>Material Information</i>	Information that might materially weaken the prosecution case or materially strengthen the defence case
<i>Prosecuting Office</i>	The PF Office where the related criminal prosecution is being prosecuted/ precognosed
<i>Related Criminal Prosecution</i>	Criminal case arising from the same set of circumstances as those being investigated as part of the complaint against the police.
<i>Relevant Information</i>	Any information that appears to have some bearing on the related criminal prosecution, on any person being investigated, or on the surrounding circumstances unless it is incapable of having any impact on the case.

24.1.3 This guidance applies to those circumstances where the CAAP complainer is also the accused in the related criminal prosecution. It equally applies where the CAAP complainer is not the accused in the related prosecution but the prosecution bears directly on the same set of facts and circumstances as the CAAP case.

24.1.4 There will be circumstances where the guidance will differ depending on whether the complainer is the accused in the related criminal prosecution but

this will be expressly stated in the guidance. If no difference is expressly stated, then the guidance will apply equally whether the complainer is also the accused or not.

24.2 The Law

24.2.1 Our system of investigating complaints against the police has proceeded on the basis as set out by the court in **McLeod v Tiffney** (1994 J.C. 77; 1994 S.L.T 531) and endorsed in **Normand v Ramage** (2005 S.C.C.R 446) that information obtained from the complainer *at interview* must be kept entirely separate from all persons involved in the prosecution of the complainer, where that complainer is also the accused in an related criminal prosecution.

24.2.2 As stated by Lord Justice General (Hope) at page 539 in **McLeod v Tiffney**, *“the essential point is that all information which is obtained in this way [through interview of the complainer] must be kept entirely separate, so that it is not disclosed to anyone except those involved directly in the investigation. Nobody involved in the investigation must take part in the trial of the person who has made the complaint”*.

24.2.3 **McLeod v Tiffney** was determined before the Crown’s obligations of disclosure were crystallised. It is essential therefore that **McLeod v Tiffney** is applied having regard to the Crown’s obligations of disclosure.

24.2.4 The Crown’s obligation of disclosure provides that all information which meets the materiality test is disclosable 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.

24.2.6 The accused’s right to a fair trial in terms of Article 6 of the Convention is unqualified and, as recognised by Lord Coulsfield in his Report on the Disclosure of Evidence in Criminal proceedings, information whose disclosure is necessary for a fair trial must always be disclosed. Accordingly, the principles set down in **McLeod v Tiffney** must be applied only insofar as they do not interfere with the obligation of disclosure.

24.2.7 Further, the Court, in **McLeod v Tiffney**, considered the disclosure policy then applied by the Crown in relation to information obtained during a CAAP investigation; namely, that, where there was information beneficial to the accused, irrespective of whether the accused was the complainer, a co-accused or any other individual, the Regional Procurator Fiscal would disclose that information to the complainer and to the relevant District Procurator Fiscal. The Court was satisfied with this approach.

24.3 The Policy

24.3.1 It is essential that the approach adopted in relation to information obtained or generated during a CAAP investigation ensures that the accused receives a fair trial

and is consistent with the 6 Core Principles of Disclosure. In particular, the 1st and 2nd Core Principles **must** be applied in relation to such information:

1. **The Crown is obliged to disclose all material information (subject to any public interest immunity considerations). This relates to statements, but it also relates to all information of which the Crown is aware;**
2. **“Material” means 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. (i.e. disclosable information);**

24.3.2 It is essential therefore that there is process whereby all **relevant information** from the complaints investigation is provided to the prosecutor or Case Preparer in the related prosecution in order that they can ensure compliance with the Core Principles of Disclosure by disclosing any of this relevant information which is also **material information**.

24.3.3 To ensure that this process is properly adhered to and to assist in ensuring that the CAAP complainer is not unduly prejudiced the following Core Principles of CAAPs Disclosure must also be adopted and applied:

1. **Criminal Allegations Against the Police Division must consider all information obtained or generated during the CAAP investigation and identify all information that may be relevant to the related criminal prosecution and thereafter provide that information to the prosecutor along with an assessment of the materiality of each item of information;**
2. **Where there is no co-accused involved in the related criminal investigation, any precognition of the complainer (where the complainer is the accused in the related criminal prosecution) must not be provided to the prosecutor;**
3. **Where there is a co-accused involved in the related prosecution and the complainer is to be precognosed in relation to the complaint, the Case Preparer must first warn the complainer that any information obtained during the precognition which is relevant to the related criminal prosecution will be provided to the prosecutor and *may* be disclosed to all defence parties;**
4. **The prosecutor (or Case Preparer) in the related criminal case must then assess all relevant information provided by the CAAP Case Preparer and disclose all material information (subject to any public interest considerations), including any information already assessed as material by the Criminal Allegations Against the Police Division, in compliance with the 1st and 2nd Core Principles of Disclosure;**
5. **Statements, obtained during the CAAP investigation, of witnesses that Crown intends to call at trial in the related criminal prosecution fall to be disclosed in terms 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 and will only be disclosable where they contain material information;**

24.3.4 Further guidance in relation to the application of these principles is detailed throughout this chapter.

24.3.5 Criminal Allegations Against the Police Division must ensure that information obtained during a CAAP investigation is properly considered and disclosed to the Prosecuting Office in any related prosecution so that relevant and material information can be disclosed to the accused's legal representative by the Prosecuting Office. Annex N provides a summary of the steps to be considered and highlights who has responsibility for each step.

24.4 Establishing the Existence of a related Criminal Prosecution

24.4.1 In order to ensure that the core principles set out above are appropriately applied, Criminal Allegations Against the Police Division must first establish whether there is a related criminal investigation or prosecution. This will usually be recorded in the case papers along with the relevant police, or PF, reference number.

24.4.2 Where there is a related criminal case, Criminal Allegations Against the Police Division must ensure that the Prosecuting Office is made aware of the existence of the CAAP case in order that this fact can be clearly marked in the case papers. This ensures that the Case Preparer or the prosecutor of the related criminal case is aware that there may be relevant information held in the CAAP case and that the core principles stated above apply.

24.4.3 If the related criminal case has not yet been reported to the PF Office, Criminal Allegations Against the Police Division should proactively arrange for the related prosecution report to be submitted as a matter of priority.

24.4.4 If, for any reason, there is a delay in the submission of the related prosecution report and, in the interim, the investigation into the complaint against the police has been concluded, then the Criminal Allegations Against the Police Division must ensure that they are advised by the Reporting Officer when the report is submitted in order that they can adhere to the core principles above.

24.4.5 It should be noted that Criminal Allegations Against the Police Division will investigate Criminal Allegations (including Counter Corruption Cases) made against Police Officers in Scotland acting in the course of their duty, cases against off duty officers will continue to be reported to local ICP teams and dealt with locally

24.5 Precognition of the CAAP Complainer - Warnings

24.5.1 On receiving a CAAP complaint for precognition, Criminal Allegations Against the Police Division, **must** first determine whether the complainer should be precognosced. If the complainer is to be precognosced, then consideration **must** be given to providing the complainer with a warning that information obtained during the interview may be disclosed.

24.5.2 In terms of the core principles detailed above, such a warning is only required where the related prosecution involves multiple accused **and** the complainer is an accused in the related prosecution. Where a warning is required, the following steps should be taken:

1. The initial letter inviting the complainer to attend for interview should clearly specify that any information obtained during the precognition that related to any outstanding related charge against the complainer would be provided to the prosecutor and, where it materially weakened the prosecution case or materially strengthened the defence case, it would be disclosed to all defence parties involved in the prosecution. The letter must also clearly specify that the complainer may wish to seek legal advice prior to attending and that the complainer is entitled to delay attending for interview until after resolution of the related criminal case.
2. If the complainer then attends for interview, the same warning should be given by the Case Preparer in person, prior to commencing the substantive interview.
3. If it has been confirmed that the complainer wishes to continue the interview, then they should be asked to sign a waiver confirming they have been advised that any information elicited during the interview will be provided to the prosecutor and, if material, will be disclosed to all defence parties. The waiver should further state whether the complainer has sought legal advice prior to signing.
4. If the complainer refuses to sign the waiver, then Criminal Allegations Against the Police Division may review the decision to precognosce the complainer. If the precognition is deemed necessary, then the interview should be postponed until after resolution of the criminal case.

24.6 Identifying Information relevant to the Criminal Prosecution

24.6.1 When preparing a CAAP precognition (or afterwards, if the related prosecution report is not submitted until after conclusion of the CAAP case), Criminal Allegations Against the Police Division **must** identify all information obtained or generated during the CAAP investigation that **may be relevant** to the associated criminal prosecution.

24.6.2 Information is **relevant** if it appears to have some bearing on any offence under investigation or any person being investigated or on the surrounding circumstances, unless it is incapable of having any impact on the case. Relevant information is not, therefore, restricted to **material** information.

24.6.3 Any statements obtained during the complaint investigation from witnesses that the Crown intends to call in the related criminal case fall within the class of information set out in **Sinclair v HMA** and will therefore always be both **relevant** and **material** information.

24.6.4 Statements obtained during the CAAP investigation which are taken from witnesses that the Crown does **not** intend to call at the related criminal prosecution will need to be considered on an individual basis to determine relevance.

24.6.5 Any information regarding findings of guilt against any police officer at a misconduct hearing who is (or is likely to be) a witness in the related criminal prosecution, either for the Crown or the defence, **will always be relevant**.

24.6.6 Where there is **no** co-accused involved in the related criminal prosecution **and** the complainant is the accused in the related prosecution, the precognition of the complainant will **never** be relevant. Statements obtained from the complainant by the police at the initial stages of their complaint, however, should be considered for relevance in the same way as any other information obtained or generated during the CAAP investigation. Similarly, **where the related criminal case does contain multiple accused or the complainant is not an accused in the related prosecution, the precognition from the complainant must be considered for relevance in the usual way.**

24.6.7 **All relevant information must be passed to the prosecutor or Case Preparer in the related criminal prosecution**, who will then assess the information for disclosure to the defence, applying the materiality test. To assist the prosecutor (or Case Preparer), Criminal Allegations Against the Police Division should make a preliminary assessment of the relevant information to determine materiality, as detailed in section 24.7 below.

24.6.8 After providing the prosecutor with all relevant information, Criminal Allegations Against the Police Division must keep revelation under review. Further guidance on this is contained in section 24.16 below.

24.7 Identifying Information Material to the Criminal Prosecution

24.7.1. Although the final decision on the materiality of information must rest with the prosecutor, Criminal Allegations Against the Police Division should make a preliminary assessment of the materiality of each item of information from the CAAP investigation that has been identified as being relevant.

24.7.2 Information will be disclosable if it meets the materiality test. Further guidance on the materiality test is contained in Chapter 2 of this manual.

24.7.3 Any statements obtained from witnesses that the Crown intends to call in the related criminal case will always meet the materiality test as set out in **Sinclair v HMA**.

24.7.4 Any information contained within the remaining statements obtained during the CAAP investigation will only be disclosable where it meets the materiality test laid down in statute 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...

24.7.5 If the Head of the CAAP Division identifies information that is relevant and material to the criminal prosecution but considers that there is an important public interest justification for non-disclosure, then a report should be submitted to the

Director of Serious Casework for Crown Counsel's opinion on withholding the information, as set down in Chapter 25 of this Manual. The prosecutor must still be advised of this information, however, in order that any decision can be kept under review.

24.8 Providing Relevant Information to the Prosecutor

24.8.1 Once the Criminal Allegations Against the Police Division has identified the relevant information, copies of this information should be provided to the prosecutor, along with a note setting out which of this information has initially been assessed as being material. Different procedures should be applied depending on whether the related prosecution is proceeding on petition or on summary complaint.

Related Solemn prosecutions

24.8.2 Where the related criminal case has been marked for solemn proceedings, the information should be passed to the Case Preparer allocated the associated case. In addition, the Case Preparer should be provided with a copy of a schedule listing each item of information, summarising why it is relevant and confirming whether the information has been assessed as being material information. Further guidance in relation to the schedule is contained at 24.9 below.

24.8.3 In addition, the relevant solemn legal manager should be advised that information from a CAAP investigation has been passed to the Case Preparer.

Related Summary prosecutions

24.8.4 Where the related criminal case has been marked for summary proceedings, the information should be passed to the Summary Legal Manager who has responsibility for associating it with the criminal case papers and identifying the person who will be conducting the trial.

24.8.5 Only deputies who have received the mandatory training on *Disclosure and CAAP* cases should conduct the trial, both at summary and solemn level. The appropriate trial deputy must be identified at an early stage in proceedings, whether the case is being tried summarily or before a Sheriff and Jury.

24.9 Schedule of Relevant Information obtained from a CAAP Investigation

24.9.1 Where the related prosecution is proceeding on petition, Criminal Allegations Against the Police Division should prepare a schedule listing all relevant information from the associated complaint against the police investigation that is being provided to the Case Preparer of the related prosecution. Style template DISCCAPSCHEDULE.DOC must be used.

24.9.2 This schedule is separated into 2 sections: one which is completed by Criminal Allegations Against the Police Division and one which is completed by the related prosecution Case Preparer or Summary Legal Manager where applicable.

The section to be completed by Criminal Allegations Against the Police Division includes the following columns:

- Material Type
- Description and Relevance
- Where held
- Sensitivity
- Assessment of materiality

24.9.3 Criminal Allegations Against the Police Division must complete this section in respect of each individual item of information from the CAAP case.

24.9.4 The **material type** column should be used to give a brief indication of what type of information the entry relates to, e.g. witness statements; police casualty surgeon's report; CCTV footage, etc.

24.9.5 The **description and relevance** column should be used to provide a brief summary of what the information contains, providing an indication as to why the information is relevant and, if appropriate, why it is material.

24.9.6 The **where held** column should be used to state where the item is currently held. This should relate to the location of the original document and not to any photocopy or electronic version that has been generated, unless the original has never been obtained.

24.9.7 The **Sensitivity** column should be used to highlight whether the item of information is sensitive or non-sensitive, having regard to the guidance on sensitive and non-sensitive information, contained in chapters 34 and 35 of this Manual. **It is essential that information is accurately assessed for sensitivity, as this is crucial to whether or not the existence of the information will be disclosed to the defence.**

24.9.8 The **Assessment of materiality** column should be used to confirm whether or not Criminal Allegations Against the Police Division has assessed the information as being material. It is important that this column is accurately completed as if the entry states that the item of information is material it **will** be disclosed to the defence in the related prosecution. If Criminal Allegations Against the Police Division has submitted a report to the Director of Serious Casework for Crown Counsel's opinion on the non-disclosure of a material item of information, on the grounds of public interest immunity, this should be clearly recorded here.

24.9.9 If when assessing an item of information as being material, Criminal Allegations Against the Police Division forms a particular view on the method of disclosure, e.g. considers that it should be by access only, this should be recorded in the **Disclosure Action** column of the schedule before it is passed to the prosecutor/ Case Preparer in the related case, who should then follow that instruction.

Role of the Prosecutor/Case Preparer in Related Prosecution

24.10 Assessing Relevant CAAP Information for Materiality in relation to the Related Prosecution

24.10.1 If a prosecution case has been marked as having a related CAAP case, the Case Preparer, in solemn cases, or the prosecutor allocated the trial, in summary cases, **must** ensure that they receive all information from Criminal Allegations Against the Police Division that is relevant to the criminal prosecution.

24.10.2 Once the Case Preparer/prosecutor has received all such relevant information, they should then consider whether it is disclosable in terms of the materiality test. In doing so, the Case Preparer/prosecutor will apply the same principles as if it were relevant information received from the investigating agency, i.e. determining whether it is 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 .

24.10.3 To assist in this process, Criminal Allegations Against the Police Division will have already carried out a preliminary assessment of the relevant information to identify the material information. As ultimate responsibility for disclosure lies with the prosecutor, a further separate assessment must also be carried out by the Case Preparer or prosecutor, in close consultation with the appropriate legal manager.

24.10.4 Any statements obtained from witnesses that the Crown intends to call in the related criminal case will always meet the materiality test (**Sinclair v HMA**). Any information contained within the remaining statements obtained during the CAAP investigation will only be disclosable where it meets the materiality test as laid down in statute 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.

24.10.5 Any information assessed as being material by Criminal Allegations Against the Police Division **and** any other information assessed as being material by the prosecutor/ Case Preparer should then be disclosed to the defence in the usual way, subject to any public interest immunity considerations, as set down in Chapter 25 of this Manual, and subject to the principles of redaction set down in Chapters 15 and 29 of this Manual.

24.10.6 As with all other relevant information obtained or generated in respect of the criminal case, the disclosure (or non-disclosure) of relevant information from the CAAP investigation **must** be kept under review throughout the life of the case and beyond. Further guidance on this is contained in section 24.16 below.

24.11 Recording Disclosure Decisions in Summary Cases

24.11.1 Any disclosure decisions regarding relevant information from the related CAAP investigation must be carefully recorded on the case papers.

24.11.2 There is no requirement, however, in summary cases to advise the defence of the existence of relevant and non-sensitive information that is not being disclosed.

24.12 Recording Disclosure Decisions in Solemn Cases

24.12.1. When any relevant information from a CAAP investigation is provided to the Case Preparer in the related prosecution, a partially completed schedule listing all relevant information from the CAAP investigation will also be provided.

24.12.2 As detailed in section 24.9 above, Criminal Allegations Against the Police Division will complete the first section of this schedule. At the stage the relevant CAAP information is being considered for disclosure to the defence, the Case Preparer should complete the second section of the schedule. This section comprises 4 columns:

- Disclosure Action
- Comment
- Date Disclosed to the Defence
- Defence Advised of existence

24.12.3 The **Disclosure Action** column should be used to record the appropriate disclosure action of which there are 5 options:

- Disclose to the defence (*by provision of a copy*)
- Withhold meantime (*e.g. pending a particular action such as precognition of a witness*)
- Disclose by access
- Not disclosable (assessed as non-material)
- PII required

24.12.4 The Case Preparer must consider each piece of information and then insert the appropriate disclosure action in this column. Further information on carrying out this process is contained in Section 37.5 of this Manual.

24.12.5 The **comments** column allows the Case Preparer to include any relevant comment in relation to the disclosure action, e.g. if the statement has been redacted, then the Case Preparer can include a comment to this effect; if the disclosure action is “disclose by access”, then the Case Preparer should specify where and by whom this access will be facilitated.

24.12.6 The **date disclosed to the defence** column should be completed by a member of administrative staff at the stage the item of information is disclosed.

24.12.7 The **Defence advised of existence** column should be completed for each item of information that is not being disclosed to the defence. Criminal Allegations Against the Police Division will have assessed the sensitivity of each item of

information and recorded this on the schedule. If an item is sensitive but is not being disclosed to the defence, the defence should **not** be advised of the existence of that item of information. If the item is **not** sensitive and is not being disclosed to the defence, the defence **must** be advised of the existence of the item of information, as detailed in paragraph 24.12.3 below.

24.12.8 This schedule must be included in the precognition behind the Disclosure Page.

24.13 Disclosure to the Defence

24.13.1 Where information obtained or generated during the CAAP investigation is identified as being relevant **and** material it must be disclosed to the defence in the usual way, subject to any public interest immunity considerations as set down in Chapter 25 of this Manual.

24.13.2 In order to ensure that there is a clear audit trail, a production record should be created in the criminal case, for every production or statement disclosed. Further guidance on creating production records can be found in the Case Processing Manual.

24.13.3 **If the case is subject to solemn procedure**, the defence must also be advised of the existence of any **non-sensitive** relevant information from the CAAP case that is not being disclosed. This information can be extracted from the schedule referred to at section 24.9 and 24.12 above. If an item of information is listed in the schedule as having a disclosure action for ND for non-disclosable **and** the corresponding entry in the “sensitivity” column is marked as “non-sensitive”, then the defence must be advised of the existence of this information. This can be done in the form of a letter.

24.13.4 In addition, in all solemn cases, the Disclosure Page should be updated, with the disclosure action in relation to the information obtained/generated during the CAAP investigation.

24.14 Police Misconduct Information

24.14.1 As stated at paragraph 24.6.5 information regarding findings of guilt at a misconduct hearing of any police officer who is (or is likely to be) a witness in the related criminal prosecution, either for the Crown or the defence, will always be relevant. **It will not necessarily follow, however, that the information is *material*.**

24.14.2 Where the related prosecution is proceeding under solemn procedures, the Case Preparer must carefully consider the misconduct information, in close consultation with the relevant solemn legal manager. Regardless of whether the case is a likely High Court case or a Sheriff and Jury case, the Case Preparer **must** seek Crown Counsel’s instructions on disclosure of misconduct information. This should be done by including details of the misconduct behind the witness’s

precognition and/or witness statement in the precognition and then including disclosure (or non-disclosure) recommendations in the Disclosure Page.

24.14.3 Where the related prosecution is proceeding summarily, then the trial depute must carefully consider the misconduct information, in close consultation with the summary legal manager. Any *material* misconduct information should be disclosed. In cases of doubt or sensitivity, a report should be submitted to the Director of Serious Casework for Crown Counsel's instructions on disclosure.

24.15 Requests by Complainers for copies of their Statements/Precognitions

24.15.1 If requested, a copy of any statement given to the police by the CAAP complainer in respect of the complaint against the police **can** be provided to the CAAP complainer. If the prosecutor or Case Preparer does not have a copy of such a statement (i.e. because Criminal Allegations Against the Police Division considers it to be irrelevant), then the request should be passed to the Criminal Allegations Against the Police Division to facilitate.

24.15.2 If requested, a complainer should **not** be provided with a copy of any precognition that has been obtained from him/her as part of the CAAP precognition process. Complainers in criminal proceedings are not provided with copies of their precognitions on the basis that they are confidential and have been filtered through the eyes of the Case Preparer. The same principle should be applied in relation to precognitions provided as part of any investigation into a complaint against the police.

24.16 The Duty to Keep Relevancy and Materiality under Review

24.16.1 In any criminal investigation, the investigating agency must keep relevancy under review in light of any new or additional information obtained during the investigation (Criminal Justice and Licensing (Scotland) Act 2010, sections 118 and 120). Similarly, the Crown must keep materiality under review in light of any new or additional information obtained, including information regarding the line of the accused's defence. Similar obligations will arise in relation to information obtained or generated during the associated CAAP investigation.

24.16.2 The CAAP investigator will provide the trial depute or Case Preparer with all information contained within the CAAP that may be relevant to the associated prosecution (Criminal Justice and Licensing (Scotland) Act 2010, sections 117 and 119). If, once this has initially been done, further information is obtained or generated during the CAAP investigation, then the CAAP investigator must assess this new information and any existing information held previously considered to be irrelevant and provide the trial depute/Case Preparer with any additional relevant information (Criminal Justice and Licensing (Scotland) Act 2010, sections 118 and 120).

24.16.3 If, at any stage of preparing the associated criminal case, the trial depute or Case Preparer obtains any information regarding the nature of the accused's defence

that could not be reasonably anticipated, then the Case Preparer should advise Criminal Allegations Against the Police Division of this new information to enable relevancy to be kept under proper review.

24.16.4 The trial depute or Case Preparer must keep decisions on materiality under review and, in particular, where there is an associated CAAP investigation, must:

- i) Consider any new relevant information submitted by either the reporting/reviewing officer in the criminal investigation and/or the CAAP investigator in the associated CAAP case to determine whether it is disclosable in terms 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.
; and
- ii) Review all previous decisions of non-materiality where new relevant information is submitted from either the reporting/reviewing officer in the criminal investigation and/or the CAAP investigator in the associated CAAP case.

24.16.5 In summary cases, it will be the responsibility of the trial depute, who should be identified at an early stage, to ensure that disclosure is kept under review before and during the trial.

24.16.6 In sheriff and jury cases, the Case Preparer, in close consultation with the relevant solemn legal manager will have responsibility to keep disclosure under review until such stage as the trial depute is identified. This should be done before the First Diet to ensure that the trial depute can also conduct the First Diet. Once the trial depute has been passed the papers for the First Diet, it becomes his/her responsibility to keep disclosure under review up to and during the trial.

24.16.7 In High Court cases, the Case Preparer, in close consultation with the relevant solemn legal manager will have responsibility to keep disclosure under review right up until the trial, at which stage this will become the responsibility of the Advocate Depute conducting the trial.

24.16.8 Any new information identified as relevant must be added to the schedule referred to at section 24.9 above. Any changes to the disclosure position of any item listed in the schedule must also be updated as required.

24.17 Duty of Review where CAAP complainer is convicted prior to submission of CAAP Report

24.17.1 Where the related prosecution concludes before the CAAP case is reported and it resulted in a conviction either of the CAAP complainer or any co-accused, Criminal Allegations Against the Police Division **must** consider whether there is any information within the CAAP case that could have, if known during the trial, materially weakened the prosecution case or materially strengthened the defence case.

24.17.2 Where such information does exist, Criminal Allegations Against the Police Division should submit a report for the attention of the Director of Serious Casework, seeking Crown Counsel's instructions on whether the information should now be disclosed. The report should include a preliminary assessment on the likelihood that, if disclosed earlier, there would have been a real possibility of a different outcome.

24.17.3 Thereafter, Crown Counsel will provide instruction on whether the information should be disclosed to the convicted person or persons.