

Chapter 28: Auditing of Disclosure Practices

28.2 Solemn Cases

28.2.1 Legal Staff and Case Preparers working on Sheriff & Jury and High Court Cases must ensure that there is full disclosure in advance of the first diet/preliminary hearing of all statements, PCOCs and other material likely to be of assistance to the defence, to ensure compliance with the Principles of Disclosure, the Disclosure Manual and, in every potential High Court case, the Crown Practice Statement on Disclosure in High Court Cases and that the Crown's disclosure obligations are fulfilled.

28.2.2 All staff must be wholly familiar with the Principles of Disclosure, the Disclosure Manual and the Crown Practice Statement in order to properly discharge the Crown's disclosure duty and complete all necessary steps in the disclosure process. Staff should alert the Solemn Legal Manager to any difficulty in complying with any part of the COPFS disclosure guidance, or where there have been any material developments that may require the case to be reviewed for the purpose of disclosure.

28.2.3 Support staff working on solemn cases have standard objectives to ensure that there is full disclosure as instructed by the Case Preparer or legal manager and that the procedures for reconciliation and tracking of material disclosed to the defence are followed and the details recorded on COPFS within the Disclosure Page.

28.3 Best Practice for Solemn Legal Managers

28.3.1 Solemn Legal Managers already have responsibility for the strategic direction of a precognition investigation and will usually set this following consideration of the statements in the case. It is best practice for the Solemn Legal Manager to ensure that such an exercise takes place at the earliest opportunity so that consideration can be given at the same time to disclosure issues. It is also best practice to commence identification of evidence that may be the subject of agreement at this point.

28.3.2 The Solemn Legal Manager should therefore carry out the exercise of considering statements in a High Court or Sheriff and Jury case as soon after first appearance as possible, and, as part of that exercise, ensure that issues of (i) strategic direction of a precognition, (ii) agreement of evidence and (iii) disclosure are considered at the outset of the precognition process. The Quality Assurance Checklist for SLMs will assist with this. It may be possible in some offices to commence this exercise at the stage where statements are being considered for the purpose of full committal -this is best practice where it can be achieved. In particular, it is unnecessary to deal with the disclosure of a provisional list of witnesses and of witness statements in two stages, if it is possible to disclose witness statements within 14 days of first appearance.

28.3.3 Investigating agencies should assist the disclosure process by providing quality witness statements that have been the subject of some consideration on the issue of confidentiality, operational security and sensitivity prior to submission to the Procurator Fiscal.

28.3.4 It is best practice for the Solemn Legal Manager to make early contact with the Reviewing Officer in every potential High Court case to ensure that there is a full and mutual understanding of the disclosure issues in the case, in particular, any

matters that may affect the Crown's capacity to disclose witness details, statements and productions in accordance with the Principles of Disclosure, the Disclosure Manual, and the Crown Practice Statement on Disclosure in High Court Cases.

28.4 Summary Cases

28.4.1 Legal staff preparing summary cases for ID or trial or conducting summary trials must ensure that there is full disclosure in advance of the diet of all statements, criminal history records and other material likely to be of assistance to the defence in accordance with the Crown's disclosure obligations and COPFS guidance on disclosure and transmission.

28.4.2 A record of disclosure made must be kept within the case papers and the COPFS electronic record updated.

28.4.3 Administrative staff in offices preparing summary cases for ID and/or trial must ensure that there is full disclosure of all statements, criminal history records and other material as instructed by the Depute.

28.4.4 Administrative staff must ensure that the most up-to-date version of the Publication Report from the Secure Disclosure Website is printed out and placed in the case papers prior to each calling of the case in Court.