

## **Chapter 33: Disclosure and VIA**

### **33.1 Introduction**

33.1.1 In all cases where there is VIA involvement, irrespective of the extent to which they are involved, it is important to remember that any communication with witnesses and information obtained from them is subject to consideration for disclosure.

33.1.2 Guidance in relation to the application of the provisions of the Vulnerable Witnesses (Scotland) Act 2004 is contained within Chapter 22 of the Book of Regulations.

33.1.3 Further guidance can also to be found within Crown Office Circulars 3/2005, 5/2006, 3/2007 and 14/2008.

### **33.2 Vulnerable Witness Summary Report**

33.2.1 A Vulnerable Witness Summary Report is usually prepared by VIA staff during their discussions with vulnerable witness to ascertain the applicability of special measures. Although VIA staff should restrict their discussions to the information required for completion of the Vulnerable Witness Application, it is entirely feasible that the witness will provide information that may require to be disclosed to the defence in terms of the materiality test under section 121(3) of the Criminal Justice and Licensing (Scotland) Act 2010, i.e. information which would materially weaken or undermine the evidence that is likely to be led by the prosecutor in the proceedings against the accused; would materially strengthen the accused's case; or is likely to form part of the evidence to be led by the prosecutor

33.2.2 VIA staff will inform the witness at the time of these discussions that there is a duty on the prosecution to disclose information that is relevant and material to the defence i.e. meets the materiality test outlined at paragraph 33.2.1 above.

33.2.3 The Vulnerable Witness Summary Report should not be disclosed to the defence as a matter of routine. There remains, however, a duty to disclose any information within the report that meets the materiality test, i.e. information which would materially weaken or undermine the evidence that is likely to be led by the prosecutor in the proceedings against the accused; would materially strengthen the accused's case; or is likely to form part of the evidence to be led by the prosecutor. Accordingly, should the Vulnerable Witness Summary Report disclose: (a) any alteration or inconsistency by a witness on a material matter; or (b) information which either undermines the Crown case or materially assists the defence case, this must be disclosed to the defence in advance of trial in order to fulfil the Crown's disclosure obligations .

33.2.4 Any disclosure issues relating to the Vulnerable Witness Summary Report should be included in the Disclosure Page of the Precognition. Guidance in relation to completion of the Disclosure Page can be found in Chapter 31 of this Manual

33.2.5 Further details of the use and applicability of the Vulnerable Witness Summary Report are contained in Crown Office Circular 14 of 2008: Vulnerable Witnesses (Scotland) Act 2004: Adult Vulnerable Witnesses in Summary Cases.

### **33.3 VIA interviews**

33.3.1 Where a witness has been interviewed by a member of VIA staff it is important to note that any information obtained as a result of this interview must be recorded and included within the vulnerable witness report. This information must be considered to determine whether there is any information which falls to be disclosed in terms of the materiality test, i.e. information which would materially weaken or undermine the evidence that is likely to be led by the prosecutor in the proceedings against the accused; would materially strengthen the accused's case; or is likely to form part of the evidence to be led by the prosecutor. It is the responsibility of VIA to bring this information to the attention of the Case Preparer or the summary legal manager in order that they can assess the disclosability of the information.

33.3.2 Where information is obtained at or immediately prior to the case calling in court then this should be passed to the legal member of staff in court who must consider whether such information falls to be disclosed to the defence. Where the material is disclosed in court, then this should be clearly recorded in the Disclosure Court Minute Sheet in solemn proceedings or in the case papers if the case is proceeding summarily.

33.3.3 Where contact with the witness is by telephone, any information obtained by VIA staff also falls to be considered for disclosure purposes as it would if it were a personal interview.

33.3.4 Where there is any doubt as to whether information is material and disclosable this must be referred to the relevant legal manager for consideration who, if necessary, will seek Crown Counsels Instructions.

#### **33.4 Consideration and Disclosure of Information to the Defence: Responsibilities of staff**

33.4.1 Where information is obtained during the processes referred to above that may be material, VIA staff **must** bring this to the attention of the Case Preparer in solemn proceedings or the summary legal manager in all summary cases.

33.4.2 Thereafter, it is the responsibility of the Case Preparer in consultation with and under the supervision of the solemn legal manager to determine whether the information must be disclosed to the defence in terms of the materiality test, i.e. information which would materially weaken or undermine the evidence that is likely to be led by the prosecutor in the proceedings against the accused; would materially strengthen the accused's case; or is likely to form part of the evidence to be led by the prosecutor. In summary proceedings, this responsibility will lie with the Summary Legal Manager.