

## **Chapter 37: Considering Information for Disclosure in Solemn Proceedings**

### **37.1 Overview**

37.1.1 When considering information for disclosure in any solemn case, it is essential that this is done in conjunction with the schedules of relevant information prepared and submitted by the Reviewing Officer.

37.1.2 The schedules must be used by the case preparer as follows:

- i) Ascertain whether information has been correctly classified as either sensitive or non-sensitive;
- ii) Confirm that all information purporting to have been submitted by the police or other investigating agency has in fact been received;
- iii) Where the information listed has not been submitted, determine whether there is sufficient information contained with the schedule to make a determination on the appropriate disclosure action;
- iv) If there is insufficient information to make determination, request submission of the relevant information;
- v) Determine the appropriate disclosure action;
- vi) Record the appropriate disclosure action for all information listed on the schedule;

Annex L provides a flowchart setting out the process to be followed by the case preparer when considering the schedules.

37.1.3 Each of these steps must be carried out in order to ensure that the Crown properly carries out its disclosure obligations in solemn proceedings. By carrying out this process, the Crown will be better placed to satisfy the Court that it has disclosed all relevant and material information to the defence.

37.1.4 On some occasions, it will not be possible to identify the schedule as being incorrectly completed until the stage at which the information itself is actually being considered for disclosure.

37.1.5 Once the case preparer has identified the appropriate disclosure action, the schedules should be passed to the appropriate member of administrative staff to implement. Thereafter, the "date disclosed to the defence" column should be completed by the Fiscal Officer and the non-sensitive schedule should then be disclosed to the defence. Full guidance in relation to the business processes is contained in the Case Processing Manual. It is essential that the business processes detailed there are followed as these have been designed to ensure that the Crown is in a position to satisfy the court, if requested, that there is a full audit trail and record of all information disclosed to the defence.

### **37.2 Ensuring that the Schedules have been accurately completed**

37.2.1 As only the non-sensitive schedule is disclosed to the defence, it is essential that information is listed in the correct schedule. If the information is listed in the sensitive schedule when it is in fact non-sensitive and this is not amended, the Crown will not have carried out its disclosure obligations correctly or effectively.

37.2.2 It is essential that the defence is advised of all non-sensitive relevant information that the Crown has not disclosed, as where the defence considers that the prosecutor has failed to disclose an item of information which is disclosable in terms of the materiality test (Criminal Justice and Licensing (Scotland) Act 2010 section 121), namely 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

the defence may apply (under the Criminal Justice and Licensing (Scotland) Act 2010 section 128(2)) to the Court for a ruling on whether the information in question falls within the realms of the test. Guidance on applications for such rulings can be found in Chapter 39 of this Manual.

37.2.3 Where the case preparer believes that information has been wrongly classified, then they should consult their solemn legal manager first. If the manager agrees with this assessment, the case preparer should discuss this with the Reviewing Officer to ascertain why they classified the information in the way that they did. If, after this discussion, the case preparer remains satisfied that the information has been inappropriately classified, the schedules should be returned to the Reviewing Officer, with a covering letter (or e-mail) clearly specifying what corrections are required, e.g. *On assessment, the SIO Policy Log is not sensitive information. Accordingly, please delete this from the sensitive schedule and add it to the non-sensitive schedule. Thereafter, please resubmit both these schedules as a matter of priority*".

### **37.3 Reconciling what has been submitted with what has been received**

37.3.1 Where the investigating agency have submitted any item of information to the PF Office, the date of submission will be entered into the appropriate column in the schedule. If there is no date of submission entered for an item of information, then it has not been submitted. After receiving the schedules, the case preparer (or an appropriately identified member of administrative staff) should check all information held by the PF Office against the schedules to confirm that all the information listed in the schedules as having been submitted to the PF Office has in fact been received there.

37.3.2. If the schedule identifies information as being submitted, but it has not been received by the PF's Office, then the case preparer (or administrative member of staff) should **immediately** contact the Reviewing Officer to arrange for a copy to be submitted, or (where it was the original that was purported to have been submitted) to assist in locating that item of information.

37.3.3 In addition, if the case preparer (or administrative member of staff) identifies any additional item of information that has **not** been listed in any of the schedule the Reviewing Officer should be contacted to confirm that the item of information is in fact relevant information in relation to the proceedings. If it is not relevant, it should be returned to the investigating agency as it has been submitted in error. If the item of information is relevant, the case preparer must

confirm the classification of the information (i.e. sensitive or non-sensitive) and should then return that corresponding schedule to the Reviewing Officer for the item of information to be properly listed on the schedule. Again, this should be accompanied by a covering letter (or e-mail) setting out the nature of the amendment required.

37.3.4 Where the responsibility for reconciling what has been submitted with what has been received is delegated to an appropriately identified member of administrative staff, it remains the responsibility of the case preparer to ensure that this process has been carried out.

#### **37.4 Information listed on the Schedule which has not been submitted**

37.4.1 After the reconciliation process has been completed, the case preparer must consider all entries in the sensitive and non-sensitive schedules where the item of information listed has **not** been submitted to the PF Office to determine whether the information needs to be submitted for consideration for onward disclosure to the defence.

37.4.2 Where the Reviewing Officer has identified that item of information as being potentially exculpatory (i.e. may materially weaken the prosecution case or materially strengthen the defence case), it **must** always be submitted to the case preparer for consideration.

37.4.3 Where the Reviewing Officer has identified the item of information as **not** being potentially exculpatory (i.e. will not materially weaken the prosecution case or materially strengthen the defence case), the case preparer should then consider the description and relevance entry in respect of this item of information to ascertain whether there is sufficient information contained there to make a determination on the materiality of that item of information.

37.4.4 If the case preparer is satisfied, from that description that the information is **not** material, then no further action is required and the disclosure action "ND" for "Not Disclosable" should be entered into the "disclosure action" column of the schedule. As a matter of best practice, a comment should be entered into the "comment" column to the effect that the decision was taken without actually viewing the item of information.

37.4.5 If the case preparer takes the view, from the description and relevance entry, that the information **may** be material, 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 (and therefore disclosable), then the Reviewing Officer should be contacted immediately and arrangements made for that item of information to be submitted in order that a full assessment of its materiality can be considered. Under section 118(3) of the Criminal Justice and Licensing (Scotland) Act 2010 provides that "as soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that further information that the prosecutor specifies in the requirement"

37.4.6 If the case preparer is **not** satisfied that the description and relevance section of the schedule provides sufficient detail to take a preliminary view on the materiality of that item of information, then they should immediately contact the Reviewing Officer and (i) arrange for the item of information to be submitted (in

order to avoid any delay in determining its disclosability) and (ii) where the information is listed on the non-sensitive schedule, arrange for the schedule to be returned and then resubmitted with a more detailed "description and relevance" entry.

37.4.7 Where the case preparer has arranged for the submission of any item of information, either because there is a preliminary assessment that it may be material or because there is insufficient detail about the item in the schedule to make such a preliminary assessment, the case preparer should then consider that item of information, along with all other items of information submitted in respect of the case, in order to determine the appropriate disclosure action.

37.4.8 Although the process listed above in this section should be carried out by the case preparer, this **must** be done in close consultation with the appropriate solemn legal manager.

### **37.5 Determining the Appropriate Disclosure Action**

37.5.1 The case preparer should then consider each item of information in his/her possession to ascertain, firstly, whether it is disclosable. **An item of information will be disclosable if it meets the materiality test, i.e. is 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.**

Practitioners are reminded that Section 116 of the Criminal Justice and Licensing (Scotland) Act states that information in relation to criminal proceedings is material of any kind given to or obtained by the prosecutor in connection with the proceedings. For appellate cases, information is material of any kind which was given to or obtained by the prosecutor in connection with the appellate proceedings or the earlier proceedings.

37.5.2 Information will materially weaken or undermine the prosecution case or materially strengthen the defence case where:

- (a) It points to the conclusion that no crime has been committed or that no crime was committed on the date(s) or at the place(s) libelled;
- (b) Contradicts evidence (real or oral) on which the Crown case will rely;
- (c) It may cast doubt on the credibility or reliability of the Crown witnesses;
- (d) It may be inconsistent with scientific or other expert evidence on which the Crown will rely or with inferences that may be drawn from such evidence;
- (e) It may point to another person as the perpetrator; or
- (f) It may reduce the degree of seriousness of the offence.

37.5.3 If the case preparer assesses the information as being non-disclosable, then they should enter the disclosure action "ND" for "Not Disclosable" into the "disclosure action" column of the schedule.

37.5.4 If the case preparer assesses the information as being disclosable, the following must be considered:

- i) Whether there are any reasons that it would not be in the public interest to disclose the information, notwithstanding the disclosability of that item of information;
- ii) Whether there is any reason why information should be withheld meantime;
- iii) Whether there is any non-material information contained within the item of information which should be redacted prior to disclosure; and
- iv) Whether the information should be disclosed by provision of a copy of the information or by access only.

#### Public Interest Reasons for Non-Disclosure

37.5.5 As set down in Chapter 25 of this Manual, there may be **exceptional** cases where there is information which in terms of the materiality test, is material and **ought** to be disclosed **but** for good public interest reasons should not in fact be disclosed. This may be because the information is covered by public interest immunity or raises Convention Rights issues, such as where there is a threat to the life or limb of a witness or other persons.

37.5.6 Such information will only ever be listed in the sensitive or highly-sensitive schedules.

37.5.7 Where the case preparer identifies that there is a potential public interest reason for withholding disclosable information, this should be drawn to the attention of the appropriate solemn legal manager, who will in turn consult the Federation Head, Federation Functional Lead (PF/Asst PF High Court/ Sheriff and Jury/ Summary) Head or Deputy Head of SOCD). As set down in Chapter 25, if the Federation Head, Federation Functional Lead (PF/Asst PF High Court/ Sheriff and Jury/ Summary) agrees that there is a good reason to withhold the information, then a report will be prepared for the attention of the Director of Serious Casework seeking Crown Counsel's instructions on the withholding of the information.

37.5.8 Similarly, if the information is contained in a Highly Sensitive schedule submitted directly to the Federation Head, Federation Functional Lead (PF/Asst PF High Court/ Sheriff and Jury/ Summary) Head or Deputy Head of SOCD) as appropriate in terms of security clearance., and s/he considers the information to be disclosable but considers there to be a good reason not to disclose the information, then s/he will prepare a report for the attention of the Director Of Serious Casework seeking Crown Counsel's instructions on the withholding of the information.

37.5.9 If, in either situation, Crown Counsel agrees that the information must be withheld, then the information **must not** be disclosed meantime and consideration given to applying for a Non-disclosure order. Where it was listed in the sensitive schedule, the case preparer will then enter "PII" in the "disclosure action" column and will insert the date that Crown Counsel's instructions were received in the comment column. If CCI do not include full instructions in terms of non-disclosure orders, the case preparer must discuss the matter in full with the appropriate Solemn Legal Manager with a view to re-report to the DSC's Office seeking full instructions regarding any application for a non-disclosure order. Where the information was listed in the highly sensitive schedule, the Federation Head, Federation Functional Lead (PF/Asst PF High Court/ Sheriff and Jury/ Summary) Head or Deputy Head of SOCD) as appropriate in terms of security clearance will have responsibility for entering this information into the

schedule and liaising with DSC's officer regarding any application for a non-disclosure order. Full details on the non-disclosure orders available in such circumstances and how to handle applications to the Court for such orders is contained within Chapter 25 of this Manual.

#### Withholding the Information meantime

37.5.10 As set down in section 13.2 of this Manual, witness statements may be withheld meantime where the Crown proposes to disclose a statement but further steps are necessary before disclosure is made, e.g. the Crown may seek to precognose a vulnerable/child witness prior to the disclosure of their statement.

37.5.11 Where the case preparer does consider it appropriate to withhold a statement meantime, s/he must confirm this course of action with the appropriate solemn legal manager first.

37.5.12 Information may also be marked as "WM" for "withhold meantime" where it is not practicable for the information to be disclosed immediately, e.g. if it is a production that is at the forensic laboratory for analysis, the defence may not be able to access/ view that production until after that analysis is completed.

37.5.13 Where information is being withheld meantime, then the case preparer should enter the disclosure action "WM" for "withhold meantime" into the "disclosure action" column of the schedule. In addition, the case preparer should detail in the "comments" column the action upon which disclosure is dependent, e.g. *disclose after precognition of witness*.

37.5.14 Thereafter, it is essential that the case preparer ensure that a structured review process is in place to ensure that the information is disclosed as soon as practicable. If, for example, disclosure is dependant on a particular action the date of which is known, such as the precognition of a witness, then the decision must be reviewed as soon as this date is passed. If disclosure is dependant on an action for which no specified date is known, e.g. forensic analysis being completed, the case preparer must regularly review the decision to determine whether the action is completed and the information can be disclosed.

37.5.15 Once the period for withholding the information has expired, the case preparer should consider whether it is now appropriate to disclose the information. If it is now appropriate to disclose, the disclosure action should be updated on the schedule. If it is listed on the non-sensitive schedule, then that updated version of the schedule should also be disclosed to the defence.

#### Redaction of Non-material sensitive information

37.5.16 As set down in Chapters 15 and 29 of this Manual, all items of information disclosed to the defence (subject to those items of information suitable for automatic disclosure as detailed in Chapter 32), must first be considered to ascertain whether there is any confidential or sensitive information contained within it that is non-material and therefore not disclosable.

37.5.17 Further, any redaction of a piece of information, e.g. witness statement, criminal history record or copy production, must be obvious on the face of it and should comply with the redaction guidance set down in Chapters 15, 19 and 29 of this Manual.

37.5.18 Any final decision on the redaction of witness statements or productions in solemn proceedings must be taken by a legal member of staff. Accordingly, case preparers must consult the appropriate solemn legal manager in relation to any redaction decisions. Once the level of redaction has been approved and a redacted copy prepared, the case preparer should then consider the appropriate method of disclosure. A comment should also be entered into the comments section confirming that it is a redacted version that has been disclosed.

37.5.19 Where a redacted version of a production is being disclosed, then a redacted copy, suitably certified in terms of Schedule 8 of the 1995 Act, should also be lodged as a production. Further guidance in relation to lodging redacted manuscript witness statements is contained in section 6.6 of this Manual.

#### Method of Disclosure

37.5.20 As stated by the Appeal Court in **Thomson v Burns** (2009 SLT 645), the Crown is under a duty to disclose information, which can be recorded in many forms. The Crown will satisfy this obligation by providing the *information* as opposed to the document/item in which the information is held, e.g. where something is elicited at precognition which is disclosable, the obligation is to disclose that piece of information and not the precognition itself. The only exception to this is where the form is considered to be a class of information that is always disclosable, e.g. witness statements, as stated in **Sinclair v HMA**. Further, there is no obligation on the Crown to create information in a particular form for the purposes of disclosure. Section 160 of the Criminal Justice and Licensing (Scotland) Act 2010 provides that the prosecutor may disclose the information by any means.

37.5.21 As recently highlighted in **Hanif v HMA** (2009 SCCR 38), the Crown can discharge its disclosure obligations either by provision of a copy of the information or by offering the facility of inspection of the information in advance of trial.

37.5.22 Where the accused is represented, information capable of being copied will be disclosed to the defence by the provision of a copy of the item of information [See Chapter 11 for guidance on the transmission of information to the defence]. Where the information is sensitive, then it may be more appropriate to provide a facility for inspecting the information, either at the PF Office or the investigating agency office. There is further guidance in relation to those productions where copies should not be provided in Chapter 6 of this Manual, e.g. visual recordings of child witness interviews; DVDs from Video Identification Parades; and indecent images of children. Where information is disclosed to the accused's agent, there is an assumption that the agent will show that information to the accused (**R v Botmeh and Alami** [2001] EWCA Crim 2226; 2008 46 E.H.R.R. 31).

37.5.23 Where the accused is unrepresented, and therefore not subject to Article 11 of the Law Society Code of Conduct in Criminal Work, it is anticipated that there will be a greater use of disclosure by access to the information rather than by provision of copies. Paragraph 23.6.9 of this Manual lists all the information that should only ever be disclosed to the unrepresented accused **by access** to that information.

37.5.24 If in doubt about the appropriate method of disclosure, or where the information is particularly sensitive, the case preparer should consult with the appropriate solemn legal manager.

37.5.25 If disclosure is to be by provision of a copy of the item of information, then the case preparer should enter "D" for "disclose to the defence" into the "disclosure action" column. If disclosure is to be by access to the information, "DA" for "disclose by access" should be entered here. In addition, the case preparer should insert a comment regarding where the access will be facilitated (e.g. police office, PF Office) and contact details of the appropriate person who will organise this (e.g. Reviewing Officer; case preparer).

37.5.26 Where disclosure is by access, the comments column should be updated after this has been facilitated to show that the information has now been viewed and the date on which this occurred.

## **37.6 Recording the Appropriate Disclosure Action**

37.6.1 As stated above, it is the case preparer's responsibility to complete the "disclosure action" and "comment" columns on the schedules. Guidance on how this should be done is contained in the Case Processing Manual.

## **37.7 Information obtained directly by the Case preparer**

37.7.1 As highlighted in section 16.12 of this Manual, the case preparer may obtain information directly from source, rather than instructing the Reporting Officer to obtain it. Examples might include:

- Medical records;
- Social work records;
- Housing records;
- Photographs or sketches provided directly by a witness;
- Judicial examination tapes;
- Post mortem reports

37.7.2 It is imperative, when considering whether to request such records, that careful consideration is given to the Policy on Obtaining and Disclosing Sensitive Personal Records in the Investigation and Prosecution of Sexual Crime Cases.

37.7.3 In order for the scheduling process to be effective, such information must be listed on a schedule. Accordingly, where the Crown obtains information directly from source, the case preparer **must** list this information on one of two Crown schedules of relevant information:

- i) Non-sensitive Crown schedule; or
- ii) Sensitive Crown schedule.

37.7.4 Accordingly, at each of the key milestones in relation to disclosure of schedules, the case preparer should consider whether s/he has obtained any information directly which does not appear on any of the police schedules. If such information does exist then the case preparer should:

- i) Consider whether the information is sensitive or non-sensitive (based on the guidance provided in chapters 34 and 35 of this Manual);

- ii) If the information is non-sensitive, prepare a Crown non-sensitive schedule, the template for which is stored in FOS templates [template DISCCROWNNS.DOC refers], and add the information to the schedule (*if the schedule has already been created, any additional information can be added to the existing schedule*);
- iii) If the information is sensitive, prepare a Crown sensitive schedule, the template for which is stored in FOS templates [template DISCCROWNSS.DOC refers], and add the information to the schedule (*if the schedule has already been created, any additional information can be added to the existing schedule*);
- iv) Consider the appropriate disclosure action, following the guidance in section 37.5 above and record this disclosure action on the schedule;
- v) Pass the schedule to an appropriately identified member of administrative staff to implement the disclosure actions and disclose the Crown non-sensitive schedule (or any updated version of it) to the defence.

Note: In relation to all Forensic Reports the Reviewing Officer will obtain a copy and will enter it on to a schedule. There is no requirement, therefore, for the forensic report to be listed in any Crown schedule.

### **37.8 Disclosing Information to the Defence**

37.8.1 It is absolutely crucial to the Crown's disclosure duties that the Crown can satisfy the court, if required, that disclosure has taken place on a specified date (**Murray & O'Hara v HMA** (2009 S.C.C.R 624)). The Case Processing Manual provides full details of the business processes that must be followed when disclosing information to the defence to ensure that there is a clear audit trail and record of all information disclosed.

37.8.2 Once the case preparer has updated the appropriate disclosure action in respect of each item listed on each of the schedules, including any Crown schedules, the completed schedules should be passed to an appropriately identified member of administrative staff to implement these disclosure actions.

37.8.2 Where information is marked to be disclosed to the defence by provision of a copy (i.e. marked "D" for disclosable), the administrative member of staff should arrange for that information to be copied for disclosure. Where it is a redacted version that has to be disclosed, care should be taken to ensure that it is the redacted copy that is copied for disclosure.

37.8.3 Thereafter, all copies of information marked for disclosure should be disclosed to the defence. Guidance on the method of transmission of disclosable information to the defence is contained in Chapter 11 of this Manual.

37.8.4 The "date disclosed to the defence" should be populated as required in each of the schedules. Guidance on how this should be done is contained in the Case Processing Manual.

37.8.5 Where information listed in any of the schedules is marked for "disclose by access", the member of administrative staff should advise the defence by letter that the information is available for viewing. This letter should also provide details of the person the defence should contact to arrange the viewing. Thereafter, the date of that letter should be included in the "date disclosed to the defence" column as the date that item of information has been disclosed. The

style letter for this is available in the FOS templates on the intranet (DISCUBYACCESS)

37.8.6 Thereafter, the **non-sensitive schedule** and any **Crown non-sensitive schedules** should also be disclosed to the defence. Again, this should follow the guidance on the method of transmission set down in Chapter 11 of this Manual.

### **37.9 Undertakings provided by the Investigating agency**

37.9.1 As set down in chapter 16, the Reviewing Officer will provide schedules by the following key milestones:

- 21 days after CFE
- 14 days before the case is reporting to Crown Office
- 14 days before the first Preliminary Hearing or First Diet
- 14 days before the Trial

37.9.2 At the initial key milestone of 21 days after CFE, the Reviewing Officer will also submit a subject sheet confirming that to the best of their knowledge and belief there has been full revelation of all relevant information. If the case only required a non-sensitive schedule, then this subject sheet will also confirm this fact.

37.9.3 If, at any of the further key milestones, no further information has been obtained or generated since the previous schedule has been submitted, then the Reviewing Officer, will submit a further subject sheet again confirming to the best of their knowledge and belief there has been full revelation of all relevant information and there is no further information to reveal.

37.9.4 If, at any of the further key milestones, a further schedule is required, the Reviewing Officer must submit this along with another subject sheet confirming that to the best of their knowledge and belief there has been full revelation of all relevant information.

37.9.5 At each of the key milestones, it is the responsibility of the case preparer to ensure that the subject sheets containing this undertaking have been submitted and to confirm that they have received all schedules submitted by the Reviewing Officer.

### **37.10 Submission & Disclosure of Additional Schedules**

37.10.1 When the Reviewing Officer does submit additional schedule(s), the case preparer must carry out the same process set out above in relation to the new information listed.

37.10.2 In addition, the Reviewing Officer **must** review all previous decisions in relation to disclosure. Where information has been previously marked as being “not disclosable”, it must be considered in the context of the new information received to confirm whether this remains the appropriate disclosure action.

37.10.3 If the disclosure action remains correct, then a note should be inserted into the Disclosure Page to confirm that this review has been carried out.

37.10.4 If the item of information being reviewed is now considered to be material, then the schedule on which that item is listed should be updated and the information disclosed.

37.10.5 If that information was listed in a non-sensitive schedule, then once it has been updated, then the updated schedule should be disclosed to the defence.

### **37.11 When Existing Schedules should be Updated**

#### Schedules prepared and submitted by the investigating agency

37.11.1 After schedules have been considered by the case preparer and the COPFS section completed by the case preparer and the appropriate member of administrative staff, it should only ever be amended for the following reasons:

- i) If the disclosure action is subsequently changed; or
- ii) If the disclosure is by access and that access has now occurred.
- iii) If an additional accused is subsequently added to the case – in this circumstance the recording of the disclosure action in respect of the new accused for each item should be recorded and dated in brackets alongside the new accused's initials on the existing schedule(s) next to the disclosure action for the existing accused.

There are no other reasons whereby a schedule that has been completed would require to be amended.

#### A change in the disclosure action

37.11.2 The disclosure action can change for one of 3 reasons:

- i) The action was originally recorded as “withhold meantime”, but the information is now assessed as being ready for disclosure;
- ii) The case preparer or court depute has reviewed the disclosure decision previously recorded and now considers, in light of new information either from the investigating agency, defence or other source, that the information is now disclosable; or
- iii) The defence have successfully applied to the Court for an order to instruct disclosure.

37.11.3 Where any of these 3 scenarios occur, the case preparer must either update or arrange for the schedule to be updated appropriately.

#### Disclosure by Access

37.11.4 Although, in terms of **Hanif v HMA** (2009 S.C.C.R. 38), the Crown meets its disclosure obligations at the stage it offers the facility to inspect an item of information, it is important that the Crown maintains an accurate record of when this inspection has taken place as this may be significant in any subsequent court hearings in respect of the case, both in the initial case and at any subsequent appeal hearing. Where access has been facilitated by the investigating agency, the reporting officer will submit a subject report confirming that access has been carried out and by whom. A signed receipt from the defence will also be submitted. Both the receipt and the subject report should be

retained. If the defence refuses to sign the receipt, this will be detailed in the subject sheet, along with any reason provided by the defence for refusing to sign.

### Crown Schedules prepared by the Case preparer

37.11.5 Crown schedules should be updated:

- i) If the disclosure action is subsequently changed;
- ii) If the disclosure is by access and that access has now occurred; or
- iii) If the case preparer directly obtains any further information that needs to be recorded on a Crown schedule.

Where the investigating agency obtain additional relevant information after a schedule has been submitted, the Reviewing Officer will prepare an *additional* schedule detailed this additional information. It will not be added to the schedule already submitted. Any additional investigating agency non-sensitive schedules should be disclosed to the defence.

37.11.6 Where, however, the case preparer directly obtains additional information (not through the investigating agency), this should be added to the relevant Crown schedule already prepared. If the Crown non-sensitive schedule has already been disclosed to the defence, then any updated version should also be disclosed.

## **37.12 How to update Existing Schedules**

37.12.1 Guidance on how to update existing schedules is contained in the Case Processing Manual.

## **37.13 Including Schedules in the Precognition**

37.13.1 Copies of all schedules prepared in respect of a case should be included in the precognition behind the Disclosure Page. This will include schedules prepared and submitted by the police and any Crown schedules prepared by the case preparer.

37.13.2 Additionally, copies of all schedules should be included at the start of the disclosure bundles.

37.13.3 Where additional schedules are submitted or prepared, these should be added to the precognition and the disclosure bundles.

## **37.14 The Disclosure Page**

37.14.1 The Disclosure Page should continue to be used in conjunction with the scheduling system to provide an overall summary of all disclosure actions; highlight problems or potential problems and to seek Crown Counsel's instructions in respect of any disclosure issue.

37.14.2 An additional section on schedules has been added to the Disclosure Page providing an overview in relation to the schedules. This should be used to set out a summary of all non-sensitive and sensitive schedules received; the dates received; and to confirm the results of the reconciliation process. Full guidance on completion of this section of the Disclosure Page is contained in Chapter 31 of this Manual.

37.14.3 In multiple accused cases there should be a separate Disclosure Page prepared for each accused.

### **37.15 The Disclosure Checklist**

37.15.1 The Disclosure Reconciliation Checklist should be completed only where the reconciliation inventories are used and should **not** be completed where the scheduling system set down in Chapters 16 and 34-37 is used.