

Chapter 8: Procedures for Requesting & Disclosing Statements and Criminal History Records: General

8.1 Initial Processing of Cases

8.1.1 When reporting a case, the police should allocate all witnesses a witness type: civilian, police or “professional/expert/official”.

8.1.2 Once the police have submitted a case and a legal member of staff has marked it for court proceedings, be it for summary or petition proceedings, the marking depute should then consider the witness types and ensure that the witnesses have been properly categorised. Where necessary, the witness type should be updated.

8.1.3 If a case has been marked for a direct measure, such as a referral to a diversion scheme, or a road traffic conditional offer of a fixed penalty which is subsequently rejected or fails in some way, when processing the case for court, the witness types should be considered and, where necessary, updated.

8.2 Disclosure Timelines

8.2.1 Once a case has been marked for proceedings, statements and criminal history records should be obtained and disclosed at certain stages of proceedings, depending on whether the case is marked for summary or solemn proceedings.

8.2.2 The procedures to follow for summary proceedings are contained in Chapter 9 of this Manual.

8.2.3 The procedures to follow for solemn proceedings are contained in Chapter 10 of this Manual.

8.3 Disclosure to Accused’s Representative

8.3.1 Disclosure of witness statements, previous convictions and outstanding charges should **only be made to the accused’s representative and upon receipt of a signed undertaking confirming that:**

- (a) such material, or any information contained in it, will not be used or disclosed other than for the purpose of the preparation and conduct of any trial or any appeal in the case referred to;
- (b) such material will not be made available to the accused or to any other party without the express agreement in writing of the Professional Practice Department of the Law Society of Scotland; and
- (c) in the event of the accused becoming unrepresented, any such material will be returned to the Crown
- (d) In the event of a change of agency any such material will be transferred on receipt of a mandate to the new solicitor or returned to the Crown

8.3.2 Separate guidance on the disclosure of information to an unrepresented accused is set out in Chapter 23 of this Manual.

8.3.3 Details of the accused’s legal representative must be stored in the PROMIS (the COPFS live, operational database which is used to manage the processing of reports submitted to Procurators Fiscal by the police and other reporting agencies) / FOS (Future Office System – the COPFS system used to process all summary

business and facilitate disclosure processes) database. Both PROMIS and FOS are designed to allow the user to update the legal representative's details. The solicitor must notify the Crown that they act for the accused before disclosure will take place. Guidance on how to update the legal representative's details is contained in the FOS User Guide Manual: Disclosure Processing – Disclosure of Lists of Witnesses and Statements.

8.3.4 If an accused changes his or her legal representative, the solicitor holding information disclosed by the Crown should pass the material on to the accused's new legal representative or they should return the material to the Crown. This is set out in Article 11 of the Code of Conduct in Criminal Work, which governs the use and retention of disclosed information by defence solicitors. Should further disclosure require to be made to the new legal representative, a formal intimation that they now act for the accused should be requested.

8.3.5 If a solicitor ceases to act for the accused and the accused becomes unrepresented, any information disclosed by the Crown should be returned to the Crown, as set out in Article 11. Guidance on the disclosure of information to an unrepresented accused is set out in Chapter 23 of this Manual.

8.4 Disclosure where an indictment is raised without any prior petition

8.4.1 Where the decision is taken to commence solemn proceedings by raising the indictment, without the accused having first appeared on petition, it is essential that the disclosure binders are available to the defence via the Secure Disclosure Website immediately on service of the indictment. This may arise, for example, where there has been extensive pre-precognition of the case or where the accused is a body corporate.

8.4.2 In such circumstances, all information that requires 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

including statements and material criminal history information, should be prepared and ready for upload to the Secure Disclosure Website immediately upon confirmation of who the accused's legal representative will be.

8.4.3 Where it has been confirmed prior to service of the indictment that an agent is acting for the accused in respect of the matter to which the indictment will relate and earlier disclosure of the information referred to above would not jeopardise proceedings, then the agent can be provided with the disclosure material in advance of service of the indictment.