

## **CROWN PRACTICE STATEMENT ISSUED BY THE LORD ADVOCATE IN RELATION TO THE PROVISION OF INFORMATION BY THE CROWN IN HIGH COURT CASES**

### **General**

1. Any disclosure of material pursuant to this practice note will be made in cases which are indicted or are expected to be indicted in the High Court to the Solicitor for the accused (the defence) who has made intimation in writing to the Procurator Fiscal for the district in which the charge or charges against an accused is being investigated that he or she is engaged by the accused for the purpose of his or her defence and has not informed the Procurator Fiscal in writing that he or she has been dismissed by, or has withdrawn from acting for, the accused.
2. The Crown has a subsisting duty to provide to the defence information disclosed during the course of the investigation which is likely to be of material assistance to the proper preparation or presentation of the accused's defence, in accordance with the principles set out in *McLeod v HMA 1998 SCCR 77*.

### **Lists of Witnesses**

3. The Crown will provide to the defence a copy of a provisional list of witnesses within 14 days of first appearance.
4. The provisional list will be a full list of witnesses made known to the Crown, but the Crown may require, exceptionally, to withhold details of individual witnesses where:
  - (i) it proposes to disclose details of the witness but further steps are necessary before disclosure is made. In any such case, the Crown will provide such details as soon as practicable.
  - (ii) the Crown has concluded that disclosure should not be made in the circumstances described in paragraph 7(ii).
5. Where the Crown has, in the course of its preparation or investigation of the case, identified any further witnesses who are relevant to the case against the accused and who have not been previously intimated to the defence, it will provide to the defence details of these as soon as practicable, subject to the same qualifications as apply to the provisional list of witnesses.

### **Statements**

6. The Crown will, within 28 days of first appearance, provide to the defence such copies of witness statements (excluding precognitions) as are then in the possession of the Crown.
7. The Crown may require, exceptionally, to withhold provision of individual statements of witnesses where:
  - (i) it proposes to disclose a statement but further steps are necessary before disclosure is made. In any such case, the Crown will provide copies of such a statement as soon as practicable.
  - (ii) it does not intend to call a witness to speak to the terms or content of a statement and it would not be in the public interest to disclose the statement, for example because of a risk to the life of an individual or individuals, or a

serious risk that other investigations or proceedings would be prejudiced by that disclosure, but where a statement is not disclosed on public interest grounds, the Crown will, where possible, provide a redacted statement as described in paragraph 10 and, in any event, ensure that it complies with its obligations of disclosure in accordance with the principles set out in *McLeod v HMA*.

8. Where the Crown has, in the course of its preparation or investigation of the case, received additional statements from witnesses or statements of any further witnesses who are relevant to the case against the accused and who have not been previously provided to the defence it will provide to the defence copies of these as soon as practicable, subject to the same qualifications that apply to the original provision of copy statements.
9. Where any additional list of witnesses is served under s.67 of the Criminal Procedure (Scotland) Act 1995 the Crown will provide the defence with copies of any statements of the additional witnesses that are available to it at the time of service.
10. In any case where witness statements are provided to the defence it shall be open to the Crown to redact the statement to obscure information of a confidential nature contained within the statement, the disclosure of which the Crown considers not to be necessary for the preparation of the defence (e.g. information tending to identify the home address of a witness who fears intimidation), but any redaction shall be obvious on the face of the statement.

#### **Productions**

11. The Crown will provide to the defence copies of documentary evidence in the case which would appear to be of material assistance to the proper preparation or presentation of the accused's defence, including in particular forensic science reports, as soon as practicable.
12. The Crown will provide to the defence, upon service of the Indictment,
  - (i) a courtesy copy indictment
  - (ii) a note giving details of where and when any previously undisclosed copy productions (so far as they may readily be copied) may be collected by the defence and where and when the productions in the case, including any label productions, may be examined, in each case no later than 7 days after service of the indictment.

#### **Material Developments**

13. The Crown will review regularly during its investigation and preparation of the case, both pre- and post-indictment, any matters which should be brought to the attention of the defence and will advise the defence of material developments in the case as soon as it is practicable to do so without impairing proper investigation by the Crown.

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