

**POLICE SERVICE OF NORTHERN IRELAND
GUIDANCE ON PUBLIC INTEREST IMMUNITY
IN CIVIL PROCEEDINGS AND INQUESTS**

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1. Introduction

1.1 This document sets out internal guidance on PSNI’s approach to and handling of public interest immunity (PII) issues connected with the disclosure of sensitive material in civil proceedings and inquests.¹ The principles set out in this guidance are also capable of applying in the context of public inquiries (see section 22 of the Inquiries Act 2005). However, PII is rarely claimed in inquiry proceedings because of the scope for closed material procedures and separate legal advice should therefore be sought before such a claim is made in a public inquiry.

1.2 For these purposes:

- (1) “material” refers not only to specific documents, but also to the fact of their existence or non-existence, the information they contain, summaries or “gists” of their contents and other related evidence or information;
- (2) “disclosure” embraces the full process of stating that a document exists or has existed (also known as “discovery”), producing the original or a copy for inspection, providing a hard or soft copy and onward disclosure or publication through public hearings, judgments or rulings;
- (3) in so far as necessary in connection with facts and material pre-dating 4 November 2001, references to “PSNI” should be read as incorporating the RUC.

1.3 This guidance is a public document, it has been shared in draft with the Northern Ireland Office (NIO), Northern Ireland Policing Board (NIPB) and regulators and it supersedes:

- (1) paragraph 16 of the undated PSNI note “Sensitive information management in Northern Ireland inquests”;
- (2) paragraphs b and 7 of the PSNI statement “Public Interest Immunity Process -

¹ For the avoidance of doubt, the rules of law governing the withholding of evidence or documents on the grounds of PII apply to inquests as they apply to civil proceedings in a court in Northern Ireland (see section 17B(3) of the Coroners Act (Northern Ireland) 1959).

Noah Donohoe Case” published in answer to a written question from NIPB member Gerry Kelly dated 3 February 2022;

- (3) any other references in previous guidance or statements to the former practice whereby PSNI sought a certificate from central government ministers in support of all its PII claims.

1.4 This guidance will be kept under review and updated in the light of relevant experience and legal developments.

2. Scope

2.1 This guidance does not apply to:

- (1) disclosures and material subject to section 56(1) of the Investigatory Powers Act 2016 (IPA) (exclusion of interception-related communications and conduct from legal proceedings);
- (2) disclosures to judicial or quasi-judicial authorities, official inquiries or special advocates within a statutory or non-statutory closed material procedure or other confidential and private forum, including for the purposes of allowing a determination of relevance or a related PII claim;
- (3) disclosures in the context of criminal proceedings (as to which see currently PSNI Service Instruction SI0323 “Disclosure” dated 18 April 2023);
- (4) disclosures outside the context of legal proceedings including:
 - (a) unrestricted disclosures to members of the public or the media made in the performance of ordinary police functions or under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or the UK GDPR and Data Protection Act 2018;
 - (b) restricted disclosures to operational partner agencies or persons or bodies performing official audit, governance, investigatory, oversight or

regulatory functions made subject to appropriate requirements and obligations as to confidentiality, onward disclosure and security clearance and accreditation.

2.2 Disclosures of the above kind are subject to separate legal considerations and guidance.

3. Public interest immunity (PII)

3.1 The doctrine of PII is a part of the substantive law of evidence and of constitutional law and it operates as an exclusionary rule preventing the disclosure, admission or use in legal proceedings of material where this would cause real and serious damage or harm to the public interest. The test can also be formulated in terms of a real risk of serious harm or prejudice to an important public interest and references in this guidance to damage or harm should be construed accordingly.

3.2 PSNI is under a legal obligation to claim PII whenever it arises irrespective of whether non-disclosure and exclusion would be to its advantage or disadvantage, but the final decision on PII will always rest with the relevant court or tribunal determining the claim or any related appeal or judicial review.

3.3 PSNI's approach to PII mirrors the approach adopted by central government in 1996 which provides that:²

- (1) there should be the maximum disclosure consistent with protecting essential public interests (see also §6.38 and recommendation 37 of the Patten Report, "The presumption should be that everything should be available for public scrutiny unless it is in the public interest - not the police interest - to hold it back" (Report of the Independent Commission on Policing For Northern Ireland, "A New Beginning: Policing In Northern Ireland" (September 1999));

² See *Hansard HC Deb*, 18 December 1996, volume 287, cols 949-950 and *Hansard HL Deb*, 18 December 1996, volume 576, cols 1507-1508: [Public Interest Immunity \(Hansard, 18 December 1996\) \(HC\)](#); [Public Interest Immunity - Hansard - UK Parliament \(HC\)](#); [Public Interest Immunity \(Hansard, 18 December 1996\) \(HL\)](#); [Public Interest Immunity - Hansard - UK Parliament \(HL\)](#).

- (2) PII should only be claimed:
 - (a) if disclosure would cause real and serious damage or harm to the public interest;
 - (b) in connection with the bare minimum of documents or parts of documents for which the claim of real and serious damage or harm can be seen to be clearly justified;
 - (c) by reference to the contents and not the class or general nature of any document;
- (3) the above tests should be rigorously and restrictively applied;
- (4) damage or harm of the required kind could be direct and immediate or indirect or longer-term and it could relate to the safety of an individual (such as an agent or informant) or the national security or economic interests or international relations of the United Kingdom;
- (5) PII claims must clearly explain the nature of the relevant damage or harm to the public interest and clearly identify the way in which it could be caused by disclosure and they must do so openly (insofar as this is possible without causing such damage or harm);
- (6) even if disclosure would cause real and serious damage or harm to the public interest, PII should not be claimed if and to the extent that the interests of justice outweigh the public interest in withholding the material in question.

3.4 PSNI follows the principles set out above and, before it claims PII, stages 1-3 below must be satisfied and stage 4 below must also be addressed (references in this guidance to numbered stages should be construed accordingly):

- (1) Is there a *prima facie* legal duty to disclose the material in question (see part 4 below)?

- (2) If so, would disclosure damage or harm the public interest (see part 5 below)?
- (3) If so, does the public interest in non-disclosure outweigh the public interest in disclosure (see part 6 below)?
- (4) If so, can steps be taken to avoid or mitigate the effects of a PII claim (see part 7 below)?

3.5 It should always be borne in mind that the exclusion of material of central importance from disclosure, admission and use in legal proceedings pursuant to a PII claim can have a conclusive effect on the administration of justice by making a fair and just determination of those proceedings impossible. This is sometimes referred to as a “*Carnduff v Rock* type situation” in civil proceedings and a “*Litvinenko* type situation” in inquests - after cases where proceedings collapsed and had to be permanently stayed by reason of a PII claim connected with critical issues, coupled with the non-availability of a closed material procedure.

4. Stage 1: Search for and identification of potentially relevant / disclosable material

- 4.1 At the outset of any case, consideration should be given to the possible engagement of potentially sensitive issues so that the disclosure of related material can be avoided in advance of documentary disclosure, e.g. by way of correspondence between the parties, pleadings or preliminary hearings.
- 4.2 In civil proceedings, this exercise will also enable consideration to be given to the engagement and disclosability of sensitive material and the possible scope for seeking a closed material procedure in lieu of a related PII claim, e.g. under Part 2 of the Justice and Security Act 2013. Where this is not an option or is not appropriate and a documentary disclosure exercise is required, potentially relevant material in the possession, custody, power or control of PSNI will need to be identified and its disclosability established.
- 4.3 A duty to disclose may arise as a matter of law (including under the duty of candour in public law proceedings) or pursuant to procedure rules, a direction or order of a court

or tribunal or, in the case of inquests, a communication from the coroner's legal team. If sensitivity attaches to only part of the relevant material and this can be redacted or withheld on grounds of, e.g. relevance, legal professional privilege or a statutory bar, there will be no need to redact or withhold on PII grounds.

4.4 Part 10 below addresses the approach to take when the disclosure of sensitive information would cause real and serious damage or harm to the public interest and be incompatible with a legally protected Convention right under articles 2-3 or 8 of the ECHR.

5. Stage 2: Identification of material whose disclosure would cause real and serious damage or harm to the public interest

5.1 It must be assessed by PSNI that disclosure would cause real and serious damage or harm to the public interest or, put another way, a real risk of serious harm or prejudice to an important public interest. Where PSNI is the originator or "information owner" in connection with disclosable material, it will take the lead on the assessment of damage or harm. When it comes to this assessment, the level of classification or protective marking on a document may indicate a possible sensitivity but it will not be decisive of this or necessarily indicate a risk of damage or harm of the requisite kind.

5.2 Most PII claims by PSNI are concerned with the protection of vital police equities and interests connected with individuals, intelligence and operational effectiveness, i.e. PSNI's ability to perform its public interest functions of preserving public order, preventing and detecting crime and protecting life, the vulnerable and property. Like all police services, PSNI also has primary responsibility for discharging the state's positive operational obligations under articles 2-3 of the ECHR to protect life and to counter real and immediate risks of life-threatening, physical or psychological harm.

5.3 In particular, PSNI will tend to encounter PII issues in the context of its involvement in:

- (1) counter-extremism and counter-terrorism;
- (2) combating serious and organised crime;

- (3) covert policing and intelligence gathering in connection with (1) and (2) above, including through the exercise of powers under the Police Act 1997, Regulation of Investigatory Powers Act 2000 (RIPA) and IPA.

5.4 In practice, the following heads of damage or harm are key, although this should not be seen as an exhaustive list:

- (A) Sources: Information relating to persons providing or having provided information or assistance in confidence (also known as agents, informants, covert human intelligence sources or “CHIS”)

Disclosure of such information may: jeopardise the personal safety or security of such an individual, their family members or another person misidentified, resulting in an increased risk of death or serious harm; lead to a loss of trust and confidence of the individual and impair their ability or willingness to continue providing information or assistance; damage trust and confidence in PSNI and its ability to protect and keep secret the identities and involvement of such individuals more generally; or reduce the number of individuals willing to undertake or continue undertaking such a role and thereby undermine the ability of PSNI or partner agencies to carry out their functions effectively.

- (B) Identities: Information relating to the identity, appearance, deployment and/or training of current and/or former members of PSNI or partner agencies undertaking secret or covert work

Disclosure of such information may: jeopardise the personal safety or security of such an individual, their family members or another person misidentified, resulting in an increased risk of death or serious harm; lead to a loss of trust and confidence of the individual or their colleagues and impair their ability or willingness to continue performing their roles; damage trust and confidence in PSNI and its ability to protect and keep secret the identities and involvement of those undertaking secret or covert work more generally; or reduce the number of individuals willing to undertake or continue undertaking such roles and thereby undermine the ability of PSNI or partner agencies to carry out their

functions effectively.

- (C) Operations: Information relating to secret or covert activities, intelligence, intentions, interests, investigations, operations, plans or targets of PSNI or partner agencies

Disclosure of such information may compromise, facilitate the compromise of or undermine past, present or future operations or related matters.

- (D) Methodologies: Information relating to secret or covert capabilities, equipment, methods, techniques and systems available to or deployed or used by PSNI or partner agencies

Disclosure of such information may: compromise, facilitate the compromise of or undermine past, present or future operations or related matters; facilitate the taking of evasive or counter-measures or otherwise undermine operational effectiveness; or jeopardise the safety of personnel engaging or engaged in the deployment or use of such capabilities, methods, techniques or equipment whether in the past, present or future.

- (E) Organisations: Information relating to the organisation of or roles within secret or covert branches of PSNI or partner agencies

Disclosure of such information may reveal the nature and extent of operational capabilities and impair or risk impairing operational effectiveness.

5.5 The disclosure of information falling within one of the above categories is capable of causing real and serious damage or harm to the public interest, but this will not necessarily be the case and it will not suffice simply to identify that such information exists:

- (1) There must be a separate case-specific assessment of, first, the nature and degree of any risk of damage or harm occurring and, secondly, the consequences of its eventuation. Both the risk and the consequences must be assessed as “real” and “serious” in order to found a claim for PII.
- (2) Consideration must be given to the means by which damage or harm might

occur and it must be borne in mind that it might be produced indirectly:

- (a) by a mosaic or jigsaw effect (the risk that disclosure of one piece of information could cause damage when read together with another);
 - (b) by giving rise to misunderstandings or erroneous inferences or deductions which themselves create risk.
- (3) Where the concern is with a risk of harm to one or more individuals as a result of unlawful third party action, consideration must be given to whether this risk could be avoided or reasonably mitigated by way of police action or intervention, the giving of personal protective security advice or the taking of related measures.
- (4) Consideration must also be given to whether disclosure or non-disclosure would be consistent with previous disclosures and whether the relevant material is currently confidential or is already in the public domain by reason of some prior official or authoritative publication.³
- (5) Each assessment must be reasoned and, as part of this, each risk and each set of consequences must be the subject of separate analysis. If different persons, groups or interests might be at risk, separate consideration must be given to the nature and degree of the risk to, and the consequences of its eventuation for, each of them.

6. Stage 3: Balancing the public interest in disclosure and non-disclosure

- 6.1 The answer to this question depends on the outcome of the “*Wiley* balancing exercise” which gets its name from caselaw. Before PII is claimed, it must be assessed that the the public interest in disclosure or admission for the purpose of doing justice in the proceedings is outweighed by the public interest in avoiding the damage or harm to the

³ The prior disclosure of material will always be an important and relevant consideration but it will not necessarily be decisive or preclude a PII claim, particularly if it was accidental, contained or limited in some way.

public interest identified at stage 2. The public interest in the administration of justice engages not only the achievement of a fair and just outcome, but also the open justice principle and the importance of justice being seen to be done. In this regard, PSNI must pay particular regard to the need to secure the support and co-operation of local communities and the public scrutiny principle expressed in recommendation 37 of the Patten Report (see respectively section 31A of the Police (Northern Ireland) Act 2000 and §3.3 above).

6.2 It is well-established that the court or tribunal in question will be well placed to assess the relevance and importance of sensitive material to the determination of the issues in a given case and (therefore) the public interest in disclosure.

6.3 Where relevant, the following should be explicitly factored into any assessment of the impact of non-disclosure on the public interest in the administration of justice:

(1) if a contemplated PII claim would bring about a *Carnduff v Rock* or *Litvinenko* type situation by excluding vitally important material and issues, the impact of non-disclosure will necessarily need to be assessed as extremely serious and detrimental (see §3.5 above);

(2) if a case is part of a series or group of connected cases and the protection of particular information in the case at hand would have an adverse impact in other cases, this could also make the overall impact on the administration of justice more severe.

7. **Stage 4: Identification of steps which would avoid or mitigate effects of a PII claim**

7.1 In certain limited circumstances, it might be possible to avoid a PII claim through the use of confidentiality rings and private hearings, e.g. if the other party is already privy to the relevant material or the risk of onward disclosure can be effectively managed.

7.2 If this is not possible, consideration must be given to the scope for mitigating the effects of a PII claim through the use of admissions or clarificatory statements relating to withheld matters and/or ciphers or gists of withheld material. In this regard, PSNI should again attach particular weight to the public scrutiny principle expressed in §6.38

and recommendation 37 of the Patten Report (see §3.3 above).

- 7.3 While stages 3-4 of the PII process can engage similar considerations and overlap to some extent, it is important to be clear that stages 1-3 must each be satisfied in order for anything less than full disclosure to be justified and that mitigating measures should not enter the equation unless and until that point has been reached.

8. Process for claiming PII

- 8.1 The point at which a formal PII claim, including supporting evidence and submissions, needs to be made varies:

(1) Civil proceedings

The usual course is as follows: the relevant material is overtly withheld or redacted on PII grounds at the disclosure or discovery stage, without reliance on supporting evidence and submissions; the recipient decides whether to accept or challenge the non-disclosure or redactions; and, in the event of challenge, which is routine, a formal PII claim is prepared and submitted for determination by the court or tribunal. In exceptional circumstances, confirmation that otherwise disclosable material is or has been held by PSNI might itself cause real and serious damage or harm to the public interest and need to be withheld. If so, it may be necessary to make an *ex parte* application to the court for a prospective order authorising omission from a list of documents. Lawyers will need to advise on such situations on a case-by-case basis.

(2) Inquests

The usual course is as follows: all potentially relevant PSNI material is disclosed to and reviewed by the coroner and/or the coroner's legal team who will identify what is disclosable; and a formal PII claim is then made in support of non-disclosure or redactions prior to onward disclosure of redacted, ciphered or gisted material to the other properly interested persons.

- 8.2 Approval for the making of a PII claim must be given by the Chief Constable (or, if unavailable, the Deputy Chief Constable or other senior officer nominated by the Chief Constable) but it will be for the relevant court or tribunal to determine the level at which

any formal PII claim by PSNI and any supporting evidence needs to be authorised. The default and expected position is that the Chief Constable should personally approve all PII claims made by PSNI and, at the appropriate point, swear an affidavit in support. That said, there may be exceptional circumstances where evidence from a disclosure manager or other senior officer or submissions by counsel may be accepted as sufficient, particularly in connection with ancillary, subsidiary or supplemental matters, e.g. as to the extent of particular redactions or gists, or unforeseen but obvious points of sensitivity (see §9.1 below).

8.3 When being asked to approve a claim for PII, the Chief Constable will usually need to be provided with and consider:

- (1) a briefing note on the background to the case: (a) summarising the key facts and issues and (if necessary) providing a chronology and dramatis personae; and (b) outlining his or her role in deciding whether to claim PII and cross-referring to this guidance;
- (2) a marked up copy of the relevant raw material for review or, if too voluminous, a representative set of sample documents;
- (3) a copy sensitive schedule identifying the information subject to PII, the grounds for each proposed redaction and any proposed admissions, ciphers or gists;
- (4) counsel's advice on the application of PII and on each of stages 1-4.

8.4 Depending on the type of proceeding and the stage reached, draft affidavit evidence in support of the PII claim will also need to be produced for approval by the Chief Constable. This could take the form of a draft OPEN affidavit (possibly with a CLOSED schedule or annex) or draft OPEN and CLOSED affidavits. The evidence should confirm the PII claim and its justification and clarify whether the entirety of the documents or a sample set have been reviewed. The draft evidence should also meet the standards mandated by the courts and be the product of "a scrupulous process of preparation and checking, designed to ensure the complete accuracy of the whole content".

8.5 Where relevant, the briefing note, counsel's advice and the draft evidence should expressly:

- (1) deal with the scope for ciphering or gisting any redacted information and be cautious about categorical statements to the effect that this would not be feasible or possible - in accordance with the principles set out in part 3 above, ciphering and gisting of relevant information should be applied to the maximum extent possible in order to mitigate the adverse effects of non-disclosure;
- (2) flag if a PII claim is likely to bring about a *Carnduff v Rock* or *Litvinenko* type situation by excluding vitally important material and issues (see §§3.5 and 6.3 above);
- (3) flag if a case is part of a series or group of connected cases and the protection of particular information in the case at hand would have an adverse impact in other cases (see §6.3 above);
- (4) (if and insofar as relevant) factor (2) and/or (3) above into the analysis of the *Wiley* balancing exercise.

8.6 As part of the approval process, relevant officers, disclosure managers and lawyers should attend or be available to consult with the Chief Constable, answer questions and clarify or amend as necessary.

8.7 Although unlikely to arise in practice, any uncertainty about or disagreement with legal advice must be escalated and resolved through discussions involving senior managers and lawyers. In this regard, dialogue is essential to ensure full understanding on both sides of, first, PSNI's instructions and, secondly, the views of instructed counsel and solicitors. Particular weight is likely to attach to:

- (1) PSNI's assessment of the consequences and impact of disclosure on police equities, interests and operational effectiveness and the public interest in non-disclosure;

- (2) counsel’s assessment of the role and importance of the relevant material to the proceedings in question, whether it is of central or peripheral relevance, the consequences and impact of non-disclosure for the administration of justice and the public interest in disclosure.

8.8 Although PII is usually claimed at the disclosure stage, it is not confined to documentary material and, in practice, most PII claims expressly extend to written and oral evidence about or exploration of related matters.

8.9 As referred to above, PSNI discontinued the former practice of routinely seeking a ministerial certificate in support of all its PII claims in March 2024. Since then, such certificates have not formed an automatic part of or otherwise been used to approve or support all PII claims by PSNI, albeit that they may still have a role to play (see part 11 below).

9. Determination of claims for PII

9.1 As already mentioned, the final decision on any claim for PII will always rest with the relevant court or tribunal, subject to any appeal or judicial review. In the context of related CLOSED proceedings, it is not uncommon for the court or tribunal to give an indication of decisions it is “minded to” take and/or to propose amendments or alternatives when it comes to redactions or gists. Counsel will need to deal with these as and when they arise, in liaison with their instructing solicitors and clients, and it may be necessary to be pragmatic about concessions, particularly on smaller points which PSNI would not realistically pursue to a higher court.

9.2 In conjunction with the issue of this guidance, PSNI has decided to maintain a central written record of any cases where it makes a PII claim which is refused or substantially cut-back by the relevant court or tribunal, including on appeal or judicial review. This will be done for monitoring purposes and any such cases should be notified to the Head of Legacy and Disclosure and the Head of Legal Services.

10. Interaction of and overlap between PII and the protection of Convention rights

10.1 In certain circumstances, the disclosure of information could cause real and serious

damage or harm to the public interest and be incompatible with the Convention rights of a living individual under the ECHR, possibly for the same reason.

- 10.2 In this regard, section 6 of the Human Rights Act 1998 makes it unlawful for public authorities - including PSNI and courts and tribunals - to act or fail to act incompatibly with Convention rights including under article 2 (right to life), article 3 (prohibition of torture and inhuman and degrading treatment) and article 8 (right to respect for private and family life). As well as negative obligations, articles 2-3 confer positive obligations to take reasonable steps to protect life and to avoid risks of life-threatening or serious physical or psychological harm. Article 8 confers some positive obligations and prohibits interferences with privacy which cannot be justified as being in accordance with the law and necessary in a democratic society.
- 10.3 Strictly speaking, in cases where section 6 of the Human Rights Act 1998 coupled with one of the above Convention rights makes it unlawful for PSNI or a court or tribunal to disclose sensitive material, there cannot be a legal duty to disclose, the *Wiley* balancing exercise becomes otiose and a claim for PII is unnecessary. In practice, however, it will often make sense for non-disclosure arguments on PII grounds and under the Human Rights Act 1998 to be advanced and determined together and in the alternative, rather than consecutively. This will allow the court or tribunal to understand any areas of interaction or overlap between the two grounds, form a comprehensive assessment, balance all competing considerations and structure its decision and reasons accordingly. The appropriate approach for PSNI to take in any given case should be formulated in the light of legal advice and the final decision on the effect of the Human Rights Act 1998 and PII will rest with the relevant court or tribunal.
- 10.4 Furthermore, there could be circumstances where public confirmation that Convention rights are in play would itself risk harm to a living individual and/or the public interest, i.e. by revealing that PSNI holds sensitive material pertaining to such an individual who must necessarily be connected with the underlying facts. This could itself justify a claim for PII and this possibility must always be borne in mind and, as necessary, raised with the relevant court or tribunal on a confidential and private or CLOSED basis as part of an overarching PII claim.

11. Engagement with national partners

11.1 This will be necessary in cases where an operational partner agency such as HMRC, MI5, MOD or NCA or a body such as PPSNI or PONI:

- (1) is the originator or “information owner” in connection with disclosable material which is (also) held by PSNI;
- (2) is in a better position than PSNI to offer an assessment in relation to any aspect of stages 1-3 by reason of its institutional competence, expertise, experience or responsibilities;
- (3) has a meaningful equity or interest in apparently sensitive material which it might wish to protect, e.g. as a recipient or correspondent or in cases where there is or was operational cooperation or concurrence between PSNI and the partner agency in connection with the underlying facts.

11.2 Conversely, there may be cases where a partner agency involved in legal proceedings consults PSNI about a disclosure exercise or possible PII issue it is dealing with. In such situations, the principles set out in this guidance should be followed by PSNI with necessary modifications.

11.3 In cases falling within at least one of the categories set out at §11.1 above, PSNI should refer to and follow any applicable information-sharing protocols, consult the relevant partner and provide such briefing as is necessary together with an indication of PSNI’s position.

11.4 Particularly close liaison with central government (esp. MOD, MI5 and NIO) is needed in the national security context where PSNI’s work includes:⁴

- (1) national security law enforcement relating to terrorism, proscribed

⁴ See also Annex E to the St Andrews Agreement of October 2006 on the transfer of lead responsibility for national security intelligence in Northern Ireland from PSNI to MI5 in October 2007.

organisations, terrorist fund-raising, espionage, sabotage and state threats and the prevention and detection of offences under the Terrorism Acts 2000 and 2006, Counter-Terrorism and Border Security Act 2019 and National Security Act 2023;

- (2) the exercise of powers relating to port and border controls, terrorism related serious crime prevention orders and notification and foreign travel restriction orders under the Terrorism Act 2000, Serious Crime Act 2007 and Counter-Terrorism Act 2008;
- (3) the exercise of covert policing powers on national security grounds in connection with property and equipment interferences, directed and intrusive surveillance, the conduct and use of covert human intelligence sources and applications for interception warrants under the Police Act 1997, RIPA and IPA.

11.5 Material will generally fall within one of the categories set out at §11.1 above if it:

- (1) was supplied by or relates to MI5, MI6, GCHQ or a specialist military unit;
- (2) relates to operational work undertaken by PSNI with the cooperation or concurrence of any of the above.

11.6 That said, PSNI also engages in covert policing and intelligence gathering outside of the national security sphere including in connection with its work in relation to: serious and organised crime; loyalist paramilitary groups and the Paramilitary Crime Taskforce; and the policing of public order, parades and processions. In accordance with §11.1 above, liaison with, e.g. HMRC or NCA may be appropriate in connection with material about or referring to this work.

11.7 When consulting a partner agency about PII issues, PSNI could request or invite the relevant agency to do one or more of the following:

- (1) provide advice or assistance on or support for a PII claim contemplated by PSNI;

- (2) make proposals as to the non-disclosure, redaction or gisting of material on PII or other grounds;
- (3) submit or make its own PII claim, including as an interested party or intervener.

11.8 If and to the extent that a substantive difference on any of stages 1-4 emerges as between PSNI and a partner agency, this should be escalated for bilateral discussion between senior managers and lawyers on both sides and the outcome could be as follows:

- (1) PSNI is neutral as to or supports a more extensive PII claim made by a partner agency, e.g. if ministers claimed PII in order to protect the economy, international relations or a security or intelligence service source or operation;
- (2) PSNI disagrees with or opposes a more extensive PII claim made by a partner agency, e.g. if ministers claimed PII in order to protect police sources or operations and PSNI assessed that this was not necessary;
- (3) a partner agency disagrees with or opposes some or all of a PII claim made by PSNI and considers that its view should be communicated to the relevant court or tribunal.

11.9 Depending on the extent of any common ground or conflicts of interest, the active engagement of a partner agency in connection with a PSNI disclosure exercise or PII claim could take a variety of forms:

- (1) PSNI incorporates or reflects partner agency input within its own PII claim or acts as a conduit for the partner's views to be relayed to the court or tribunal;
- (2) cooperation on the colour-coded marking up of a single set of documents according to respective equities and interests and positions on PII;
- (3) joint representation of PSNI and partner agency by same solicitors and/or counsel, usually at shared expense;

(4) separate representation by different solicitors and/or counsel.

11.10 Engagement of the kind referred to at (1)-(3) above will generally require the partner agency to be fully candid and transparent with PSNI about the nature of and reasons for any sensitivities arising. Cases where this is not possible or there is a disagreement between PSNI and the partner agency are more likely to involve engagement of the kind referred to at (4) above.

11.11 It should always be borne in mind that partner agencies do not necessarily have a right to demand or be given access to or copies of PSNI material. To the extent that engagement with a partner agency would involve the sharing of PSNI information not already disclosed to or held by that partner, it will first be necessary to establish that there is a lawful basis and gateway for this to happen without breaching any obligations of confidentiality owed to third parties or statutory bars. In this regard, articles 6 and 9-10 the UK GDPR, sections 8 and 10 of and Schedule 1 to the Data Protection Act 2018 and section 19 of the Counter-Terrorism Act 2008 may provide potentially relevant disclosure gateways.

11.12 It may or may not be appropriate to share PSNI legal advice with a partner agency. Before this is done, consideration should be given to and, if necessary, advice taken on whether this would involve a waiver of legal professional privilege and/or could be done subject to common interest privilege. Furthermore, it should be borne in mind that PSNI's lawyers cannot advise partner agencies or their ministers outside the context of a joint representation arrangement.

12. Engagement with international partners

12.1 Where An Garda Síochána or another international partner agency is the originator or "information owner" in connection with disclosable material which is (also) held by PSNI, or otherwise has a meaningful equity or interest in apparently sensitive material, the principles set out in this guidance will be relevant, but additional considerations may also come into play.

12.2 In particular, regard should be had to any handling restrictions attaching to underlying

intelligence-sharing or mutual legal assistance arrangements, breach of these might well cause real and serious damage or harm to the public interest in the maintenance of such arrangements or international relations and more specific bespoke advice should be taken from senior managers and lawyers prior to consultation with the partner agency or onward disclosure.

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