

SI0323

Disclosure

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This Service Instruction outlines Police Service of Northern Ireland specific Disclosure advice in support of the Disclosure Standards for Northern Ireland as agreed with the Public Prosecution Service. This is in line with Service Policy 0116 – Criminal Justice; and the legislation contained within the Criminal Procedure and Investigations Act (CPIA) 1996.

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1. Introduction

The aim of this instruction is to ensure that Police Officers and Police Staff carry out their duties in respect of criminal justice matters, abiding fully in accordance with the disclosure principles set down in the [Criminal Procedures and Investigation Act \(CPIA\) 1996](#) and policy to ensure that all persons have access to a fair trial as enshrined in [Article 6 of the European Convention on Human Rights](#).

Detecting crime and securing the necessary evidence for bringing offenders to justice are core functions of the Police Service. Preparing a prosecution file that can be considered and directed upon by the Public Prosecution Service (PPS) is the next critical step in the delivery of criminal justice.

The founding principle of the criminal justice system is that a person is innocent until proven guilty. Every person has a fundamental right to a fair trial. To help guarantee a fair trial an individual has a right to be provided with any material which could assist them in defending themselves. They have a right to an open and honest prosecution which reveals any weakness in the case against them.

Investigators must apply their minds to disclosure from the very outset of the case and not view disclosure as a secondary task to be undertaken only once they have completed their investigation.

Disclosure of unused material is vital if there is to be a fair trial, which is in the interests of the complainant, the accused and the whole community.

As Police Officers and Police Staff we have a duty to ensure we deal with disclosure in an appropriate, just and fair way, compliant with the right to a fair trial.

Defendants must not be deprived of information which may assist them in defending against a criminal charge. When disclosure goes wrong, it can have significant consequences for both the Police and Prosecution Service but more importantly, justice is denied.

2. Roles and Responsibilities

Criminal investigations can be complex with the investigators completing their

enquiries to understand what offences may have been committed and by whom.

It is important to understand that when a file is submitted to the PPS we are not only putting forward our best case against a suspect, rather we are putting forward our best investigation to allow a fair trial to take place.

This is a subtle shift in understanding and when put into practice strengthens our investigations and maintains the fundamental right of any suspect. For further information see:

- [Criminal Procedures and Investigations Act 1996](#);
- [Information Commissioners Office](#); and
- [Gillen Report](#).

Relevant Material

In most cases, the Investigating Officer will also be the Disclosure Officer unless a separate Disclosure Officer has been appointed in complex cases. The Disclosure Officer must examine all unused material seized during an investigation and ensure it is recorded on a disclosure schedule where appropriate. The test to be

applied to scheduling is relevance which is defined as:

“Anything that appears to have some bearing on any offence under investigation, or any person being investigated, or on the surrounding circumstances unless it is incapable of having any impact on the case”.

All relevant material must be scheduled.

The Investigating Officer (IO) / Disclosure Officer’s (DO) has the responsibility to:

Record	Where material is not in a durable format, we should create one, e.g. food stuffs, can be photographed.
Retain	Retain all material in a durable format.
Reveal	You must reveal to the PPS both USED and UNUSED material.
Review	You must continually review all material throughout the life of

	the investigation. A non-relevant item today may be relevant tomorrow.
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Relevant Material – The 3 Areas you need to Consider

To Decide	
<p>Relevancy: Whether to include the item on the schedules.</p>	<p>Material of any kind or type, including objects and information obtained during an investigation which may be relevant.</p> <p>NB: If it appears to have some bearing on the case, an offence or a person being investigated it should be regarded as ‘relevant’ – until determined otherwise.</p>
<p>Sensitivity: Whether the item needs to be listed on the sensitive schedule.</p>	<p>Material which the Disclosure Officer believes could give rise to a risk of serious prejudice to an important public interest, for example:</p> <ul style="list-style-type: none"> • Intelligence; • National Security intelligence; • Security Agency Information; • CHIS or undercover Police identities; • Police methodology; • Material related to a child or young person and supplied by a local authority; and • Covert Investigative Methods.

	We must ensure that the PPS are aware of such material.
<p>Disclosure:</p> <p>Whether the material needs to be brought to the Prosecutor’s attention by listing it on the Disclosure Officer’s report.</p>	<p>Material which could reasonably be considered capable of undermining the prosecution case, or assisting the accused for example:</p> <ul style="list-style-type: none"> • Conflicting witness accounts; • Alibi evidence; • Evidence that indicates that another may have committed the offence; • False allegations; and • Police disciplinary records. <p>NB: The PPS are the final arbiters in this test.</p>

3. Sensitive Disclosure

Revelation of intelligence and covert methodology to the PPS in criminal procedures is only undertaken by the [Sensitive Criminal Trial Disclosure Unit](#).

Where there is relevant intelligence and / or covert methodology connected to their case in an investigation, the IO should:

- List the intelligence document on their sensitive disclosure schedule on NICHE; and

- Send an e-mail to the Sensitive Criminal Disclosure Unit, at the earliest opportunity, informing them that the case involves intelligence and / or covert methodology.

NB: The IO does not need to contact the Sensitive Criminal Disclosure Unit regarding any other type of sensitive material.

The Investigating Officer **MUST NOT** reveal the intelligence document(s)

and / or its contents to the PPS themselves as this is the role of the Sensitive Disclosure Unit.

Any request from the PPS for a 'form of words' for the intelligence should be made directly to the Sensitive Disclosure Unit. The Investigating Officer MUST NOT draft their own form of words.

4. Third Party Material

The CPIA only imposes disclosure duties on Investigators and Prosecutors but not on any other third party (General Practitioners (GPs), Hospital Authorities, Social Services Departments, Psychiatrists, Counsellors, the Criminal Injury Compensation Scheme, etc.).

There is a difference between the provision of third party details and obtaining third party material.

There are two avenues by which third party material may be obtained:

1) The Investigator may obtain third party material if they deem it a reasonable line of inquiry (see [Chapter 7 – Disclosure](#)

[Management Documents](#)) in the particular circumstances of a case. This may be obtained through the consent of the third party or by statutory power (e.g. warrant) if appropriate.

The Investigator / Disclosure Officer will:

- Review all of the material;
- Highlight extracts that may meet the test for disclosure; and
- Send it to the Prosecutor.

The Prosecutor will then review the material and apply the disclosure test prior to providing it to the Defence and only information which meets the test will be released.

They will redact any sensitive personal information, (to protect the subject matter's [Article 8 ECHR](#) rights), unless providing it is essential for their disclosure obligations.

If the information is acutely sensitive, the Prosecutor may then consider making an application for Public Interest Immunity (PII).

2) The Defence may seek to obtain third party material if the Investigator has not

proactively sought it as a reasonable line of enquiry.

In cases involving sexual offences and serious violence to the person the Investigator must obtain details of relevant third parties and provide them to the Prosecutor. These will in turn be provided to the Defence who may make an application for a Court Order requiring the third party to disclose the material to the Court.

If the Order is granted the third party will supply the material to the Court for review.

Any material determined by the Court to require disclosure will be provided to the Defence and also to the Prosecutor.

[Crown Court Practice Direction \(No. 2 of 2019\)](#); and

[Hume & Anor R v \[2005\] NICC 30](#).

5. Data Protection Considerations

During an investigation any personal information gathered relating to victims, witnesses and suspects must be treated

according to the 6 principles of the [Data Protection Act 2018](#).

Special Category Data

Special Category Data needs more protection because it is sensitive and includes:

- Personal data revealing racial or ethnic origin;
- Political opinions;
- Religious or philosophical beliefs;
- Trade Union membership;
- Genetic and biometric data;
- Data concerning health; and
- Data concerning a person's sex life or sexual orientation.

You can only process or share this information if it is strictly necessary for Law Enforcement purposes, e.g. if the special category information is relevant to the offence or offending.

In the case where Special Category Information is obtained in the course of

investigation and is not relevant to the offence under investigation, it must be redacted from the investigation papers prior to submission to the PPS or another body.

Material should not be sent to any third party without being redacted where appropriate.

6. Recording / Sharing / Redacting Personal Data

Personal Data may be recorded on a Notebook, Body Worn Video (BWV), the Occurrence Enquiry Log (OEL) or Control Works log, etc.

As a Data Controller the PSNI must have a lawful purpose to share 'Personal Data' with the PPS or with any other Third Party. Any sharing of Personal Data needs to be:

- Lawful;
- Proportionate;
- Justified; and
- Documented – i.e., their decision making and assessment of the Risk must be documented in a retainable retrievable manner in for example the OEL, Policy Book, Crime Investigating Log, etc.

Any difference of opinion on applying redactions to a document between an Investigator and a Prosecutor should be considered in line with the Prosecutor's disclosure test. Investigators can refer to the Central Disclosure Unit for advice.

7. Disclosure Management Documents

A Disclosure Management Document (DMD) is used to clearly outline what has been considered to be a reasonable line of inquiry in a Police investigation. The DMD is currently in use in Major Investigation Team (MIT) and Public Protection Branch (PPB) Investigations and may be rolled out across other offences in the future.

The DMD must explain to the Defence and the Court what the PSNI (as part of the investigation):

- Has done;
- Are doing; and

- Do not intend to do.

When it has been served on the Defence (by the Prosecution) it allows them the opportunity to identify any additional lines of enquiry, not previously undertaken, that they consider to be reasonable.

The IO should start the completion of the DMD at the outset of the Investigation.

The Investigating Officer (IO) should set out the enquiries undertaken in these 3 areas:

Reasonable Lines of Enquiry

This could include but is not limited to house to house enquiries, suspect interview, CCTV, witness interviews, medical evidence, photographs, etc.

Electronic Material

All items of digital material seized during the investigation will be listed here. The digital material must be recorded if it has been seized, whether or not it was downloaded or viewed. A full explanation

of the method of download, results, contents of download, etc., should be presented. The IO should also provide a rationale for not examining particular devices, or if parameters were set during examination they should be outlined here. Social media enquiries will also be noted here.

Third Party Material

The IO should supply the details of any third parties that hold information relating to the investigation, what information they hold and what steps have been taken to secure this information. Any third party material already obtained should be listed here.

8. Discipline Disclosure (Form 17/23)

All Officers and Investigators (acting as IO and / or witness) have a personal responsibility to make the PPS aware of any ongoing and / or existing relevant:

- Discipline matters;
- Criminal convictions; and

- Disciplinary outcomes.

This must be completed via a Form 17/23.

Professional Standards Department will be responsible for submission of a Form 17/23 for any Officer suspended or repositioned without access to Police computer systems.

Appendix A – Contact Us

Service Instruction Author

Central Disclosure Unit

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