

Updated standing instructions for all SFO trial counsel.

Disclosure

Applicable law

1. The SFO adheres to the provisions of:
 - The Criminal Procedure and Investigations Act 1996 ('CPIA 1996');
 - The CPIA Code of Practice issued under S.23(1) CPIA;
 - The Attorney General's Guidelines on Disclosure (December 2020); and
 - Part 15 of the Criminal Procedure Rules 2020
2. Counsel is expected to be familiar with these documents and to comply with their provisions (in so far as they are applicable) at all times. Counsel is also required to have read the chapter of SFO's operational handbook on Disclosure.
3. Upon receipt of their instructions, counsel is required to confirm to their instructing lawyer:
 - that they have read these documents;
 - that they understand the duties imposed by the documents; and
 - that they understand the specific instructions detailed below.

General Obligations

4. Upon receipt of instructions, counsel is required to inform themselves fully about the disclosure process applicable to the case upon which they have been instructed. This specifically includes gaining an understanding of:
 - The volume of material that has been gathered during the course of the investigation;
 - The sources of the material gathered during the investigation;
 - What further lines of enquiry have been identified;
 - The approach the case team have adopted, or propose to adopt, to reviewing electronic material; and
 - The approach the case team have adopted, or propose to adopt, with regard to the scheduling of unused material.
5. Counsel must therefore ensure that they have received all relevant information and documentation from the case team including:
 - The Disclosure Strategy Document
 - Any Disclosure Management Documents (DMDs)
 - The investigation plan
 - Copies of all unused material schedules (if in existence at the time of instruction)
6. Upon receipt of this material counsel should advise on:
 - Whether there are any additional lines of enquiry that should be followed;
 - Whether they are satisfied with the disclosure strategy and approach to reviewing electronic material. If they are not satisfied they should set out their concerns along with details of any additional action they consider is required; and

- Whether there is any additional information or action in respect of disclosure which is required
7. Thereafter, and for the duration of their instruction, counsel is required to keep sufficiently abreast of developments in respect of disclosure so they can, unprompted, bring to the case teams' attention any deficiencies which they identify or concerns they have as soon as possible.
 8. Counsel is also required to advise the case team on disclosure issues whenever advice is sought and to ensure that they have all relevant documentation.

Initial disclosure

9. If counsel is instructed prior to initial disclosure being provided they are required to review the proposed schedule of non-sensitive unused material and satisfy themselves that the prosecutor has correctly applied the disclosure test to the items listed on the schedule.
10. Additionally counsel should review the prosecutor's decisions on any sensitive material, including potential public interest immunity (PII) issues.

Defence Statements & continuing disclosure

11. Counsel is required to review any defence statement and advise appropriately, including on:
 - whether it fulfils the statutory criteria under s.6A CPIA 1996;
 - whether any disclosure requests are made properly; and
 - whether the prosecutor's proposed response is appropriate.
12. Thereafter counsel is required to assist the prosecutor discharge their duty of continuing review whenever assistance is sought. This includes ensuring that all material which ought to be disclosed to the defence is disclosed, and keeping disclosure decisions under review.

Public Interest Immunity

13. Counsel may be instructed to make an application for PII. In accordance with *R v H and C* [2003] UKHL 3, such applications should be rare and in the event that one becomes necessary counsel will receive further specific instructions from the case team.

Disclosure Management Documents

14. It is established SFO practice to provide a DMD in all cases. This is now a requirement pursuant to paragraph 96 of the Attorney General's Guidelines on Disclosure 2020. It is anticipated that DMDs will be drafted by a member of the case team (normally the disclosure officer) however, counsel is required to provide such assistance in the drafting of the DMD as may be required.

15. Additionally, as the DMD is a living document which should be amended in light of developments on the case, counsel is required to keep this matter under review and advise:

- when they consider an amendment is necessary; and
- what the terms of that amendment should be.

Disclosure of material

16. Counsel is reminded that any requests for disclosure from the defence should be made in accordance with the statutory regime and by the making of an application in accordance with s.8 CPIA 1996. Any defence attempts to obtain disclosure on an ad-hoc basis outside of this framework should therefore be resisted.

17. Counsel is also reminded that there is no room for counsel-to-counsel disclosure and so there should be no disclosure of any used or unused material to the defence outside recorded service by the SFO.

Multiple counsel

18. Where multiple counsel are instructed by the SFO as trial counsel it may make sense for one of them to take the lead in respect of disclosure issues. However, any such arrangement should be explained to the case team in advance and is subject to their approval. Additionally, even if such an arrangement is agreed upon, all counsel will still be required to:

- comply with the obligations on Prosecution advocates set out in the Attorney General's Guidelines on Disclosure;
- ensure that any advice represents the views of all instructed counsel and is only provided after all counsel have had an opportunity to properly consider the matters upon which the advice is sought; and
- remain sufficiently aware of disclosure issues pertaining to the case such that they can advise on matters and/or represent the SFO at any hearing in the absence of counsel taking the lead on disclosure.