

There is also a duty on the police to provide the CPS with information that may mitigate the seriousness of an offence. The investigator must inform the prosecutor as early as possible whether any material weakens the case against the accused.

A party must disclose documents that are, or were in the past, in its control. This means that in addition to having to disclose any documents that are in the actual physical possession of a party, a party must also disclose documents that have been lost or have been disposed prior to litigation. Those documents must be described and an explanation given of the circumstances in which they were lost or disposed of.

In practical terms, a reasonable search will often involve the retrieval of any relevant files held in a central filing system, by individual staff or from archives or storage, the retrieval of any relevant electronic records and the retrieval of diaries if they are likely to be relevant to any of the issues. The extent of the search which must be made will depend on the circumstances of the case and has to be proportionate to the value of the claim.

When Does the Duty to Disclosure Arise?

Giving disclosure is normally done by each party preparing a list of the documents it is disclosing and serving it on the opposing party. The list of documents must be in a prescribed form and will include the disclosure statement (see below). The list is in three parts:

1. Documents presently in the disclosing party's control which that party does not object to being inspected.
2. Documents presently in the disclosing party's control which that party objects to being inspected.
3. Documents that have been in the disclosing party's control but are no longer the list will give each document a reference number, will specify its date and will give a concise description.

Not everything that is revealed to the CPS will be disclosed to the defence. Generally, a Prosecutor's duty to disclose unused material to the defence is triggered by: A not guilty plea in the magistrates' court, or: -

- A committal, i.e. the service of evidence in an indictable only case sent to the Crown Court under section 51(1) Crime and Disorder Act 1998 or on transfer of a case for trial to the Crown Court.

A person making a false disclosure statement without an honest belief in its truth faces the prospect of contempt of court proceedings. Therefore, it is important that the duty of disclosure is fully understood and complied with.

1.14.4

The duty of disclosure continues as long as proceedings remain, whether at first instance or on appeal.

1.14.5

All of the unused material is revealed to the prosecutor by way of schedules on forms MG6B, C, D, and E

There is an agreement between the CPS and ACPO that crime reports and incident logs will be revealed to the CPS as a matter of routine.

Information must be recorded at the time it is obtained / seized, or as soon as is practicable after that, material must be recorded in a durable or retrievable form.

If it is not practicable to retain the original record, e.g. because it forms part of a larger record which is to be destroyed, the information must be transferred accurately to a durable and easily retrievable form. Photocopies are acceptable. Details of relevant phone calls concerning a case must also be recorded.

Continuing Duty: -

The duty of disclosure continues until the proceedings are concluded. If after serving its list a party becomes aware of further documents that should have been disclosed, it must notify the opposing party by preparing and serving a supplemental list of those documents.

Disclosure Forms: -

1.14.8

There are four different types of disclosure forms as follows: -