

Chapter 4 (Disclosure): Update

4.1 Initial details of the prosecution case

The Criminal Procedure Rules have been amended as regards disclosure by the prosecution of 'initial details' of their case. The provisions are now to be found in Part 8 of the Rules:

8.1.

This Part applies in a magistrates' court.

8.2.

- (1) The prosecutor must serve initial details of the prosecution case on the court officer—
 - (a) as soon as practicable; and
 - (b) in any event, no later than the beginning of the day of the first hearing.
- (2) Where a defendant requests those details, the prosecutor must serve them on the defendant—
 - (a) as soon as practicable; and
 - (b) in any event, no later than the beginning of the day of the first hearing.
- (3) Where a defendant does not request those details, the prosecutor must make them available to the defendant at, or before, the beginning of the day of the first hearing.

8.3.

Initial details of the prosecution case must include—

- (a) where, immediately before the first hearing in the magistrates' court, the defendant was in police custody for the offence charged—
 - (i) a summary of the circumstances of the offence, and
 - (ii) the defendant's criminal record, if any;
- (b) where paragraph (a) does not apply—
 - (i) a summary of the circumstances of the offence,
 - (ii) any account given by the defendant in interview, whether contained in that summary or in another document,
 - (iii) any written witness statement or exhibit that the prosecutor then has available and considers material to plea, or to the allocation of the case for trial, or to sentence,
 - (iv) the defendant's criminal record, if any, and
 - (v) any available statement of the effect of the offence on a victim, a victim's family or others.

8.4

- (1) This rule applies where—
 - (a) the prosecutor wants to introduce information contained in a document listed in rule 8.3; and
 - (b) the prosecutor has not—
 - (i) served that document on the defendant, or
 - (ii) made that information available to the defendant.
- (2) The court must not allow the prosecutor to introduce that information unless the court first allows the defendant sufficient time to consider it.

The duty of initial disclosure now applies to *all* cases (not just those involving offences that are triable in a magistrates' court). Moreover, what constitutes "initial details" has been extensively redefined (see r.8.3). An amended version of *Criminal Practice Direction 3A* makes it clear that the information disclosed under Part 8 should be sufficient to enable the defendant to make an informed decision on plea and for the court, where relevant, to decide whether the case is suitable for summary trial (see paras 3A.4 and 3A.12). Rule 8.4 emphasises the importance of the prosecution supplying the initial details that are required by Part 8.

4.2 Disclosure of prosecution evidence

In *R v R* [2015] EWCA Crim 1941, the Court of Appeal gave detailed guidance on disclosure in cases where there is a large volume of material. The Court set out a number of key principles:

- The prosecution is and must be in the driving seat at the stage of initial disclosure;
- The prosecution must then encourage dialogue and prompt engagement with the defence;
- The law is prescriptive of the result, not the method;
- The process of disclosure should be subject to robust case management by the judge, utilising the full range of case management powers;
- Flexibility is critical.

Consequences of non-disclosure

In *R v Embleton* [2016] EWCA Crim 1968, Macur LJ (at [37]), citing cases that included *R v Garland* [2016] EWCA Crim 1743, said that where a defendant appeals against conviction on the ground of non-disclosure by the prosecution:

the first question for this court is whether the material withheld from the defence was material which ought to have been disclosed. If the answer is yes, the second question is whether, in the light of such non-disclosure, the appellate court considers that the conviction is unsafe.

4.4.3 Disclosure of expert evidence

The Rules about disclosure of expert evidence are now set out in Part 19 of the Criminal Procedure Rules. Rule 19.3(1) provides that:

A party who wants another party to admit as fact a summary of an expert's conclusions must serve that summary—

- (a) on the court officer and on each party from whom that admission is sought;
- (b) as soon as practicable after the defendant whom it affects pleads not guilty.

4.5 Public interest immunity

4.5.2 Procedure for determining public interest immunity claims

The procedure where the prosecution seek permission to withhold material from the defence on the basis of PII is unchanged but is now to be found in rule 15.3 of the Criminal Procedure Rules.