

## **PROTOCOL FOR THIRD PARTY DISCLOSURE IN PROSECUTIONS OF SEXUAL OFFENCES OR SERIOUS ASSAULTS**

1. The purpose of this protocol is to ensure that third party disclosure applications are made promptly, well in advance of scheduled trial dates and that trial dates are not vacated by reason of late applications. It applies to the following types of cases.

- (a) Rape and any other category of sexual offence;
- (b) serious cases of violence to the person; and
- (b) attempting, inciting or conspiring to commit any of the offences listed above.

2. Defendants' legal representatives must address the issues of third party disclosure early and obtain the relevant information from the prosecution to enable them to draft applications. The procedure provided for in this protocol is designed to ensure that the necessary information is available at an early stage.

3. In those cases to which this protocol applies the officer in charge of the case should, at an appropriate time, (which in any event should be no later than the service of the committal papers) inform the complainant of the matters outlined in the paragraphs that follow. In cases involving young children (less than 14 years old) this information should be provided to their parents. However, in the case of children who are 14 but not yet 18 years old the officer should provide the information to the young person as well as to his/her parents.

4. The officer should explain to the complainant that the defendant's legal advisers may make an application to the court to see their medical notes, and any records from any counsellor they are attending as a result of the incident(s) that are the subject of the charge(s). The complainant should be asked to provide their date of birth (so that the correct medical notes and records can be obtained); the name of the General Practitioner; the hospital (if any) he or she attended; the name of any psychiatrist,

psychologist or counsellor and the name and address of the counselling organisation he or she attended. The complainant should also be asked to provide the address of the relevant office of the Health and Social Services Trust in question if he or she has been involved with social services. The officer should ascertain whether the injured party has made a criminal injury application and whether there has been any social services intervention with the complainant. It should be explained that the purpose of obtaining this information at this stage is only to identify the persons or bodies who might have such material. If the complainant is unwilling to provide the information sought at this stage no pressure should be exerted but it should be tactfully explained that this information may be obtained by other means for the judge to determine if it is relevant to the case.

5. Having obtained the names and addresses of those persons or agencies that may hold material which might be the subject of an application, the officer in charge should proceed as follows: -

(i) The officer should explain to the complainant that he or she is not obliged to agree to the release of material from these sources but that if the court concludes that it is necessary that the defence should have access to that material in order to ensure a fair trial its release will be ordered.

(ii) The complainant should be informed that the court will only order the disclosure of such material as is necessary to enable a fair trial to take place and that, in deciding whether to order the release of the material, the court will take into account the complainant's rights under article 8 of the European Convention on Human Rights and Fundamental Freedoms (the right to respect for private and family life).

(iii) The complainant should then be asked whether he or she is agreeable to the release of the material to the legal representatives of the defendant(s). He or she should be informed that if they are not agreeable to the disclosure of this material an application might be made by the defendants' legal advisers for an order of third party disclosure. The complainant should be told that they are entitled to make representations to the court on such an application. These representations can be made in writing or in person at the time that the application to the court is made

6. The prosecution should then inform the magistrate and the defendant's solicitor at the committal stage (or the judge at first hearing in the Crown Court) (all in writing) of the complainant's date of birth (so that

the correct medical notes and records can be obtained); the name of the General Practitioner; the hospital (if any) he or she attended; the name of any psychiatrist, psychologist or counsellor and the name and address of the counselling organisation he or she attended, together with the address of the relevant Health and Social Services Trust office if the complainant has been involved with social services. The court should also be informed if the complainant has made a criminal injury application at this stage.

7. The solicitor seeking a third party disclosure order on behalf of a defendant should, in the first instance, write to the third party indicating clearly the category of documents sought and the reasons why disclosure is being sought. He or she should ask for confirmation that the proposed third party holds such documents. The letter should then state that an application will be made to the judge, who if he or she makes an order will direct the production of the documents to the court, and not to the solicitor for the defendant, and that only documents which are relevant to the trial will be disclosed by the judge. The third party against whom the order is sought should be informed that they are entitled to appear and object to any disclosure being made.

8. The defence should lodge and serve their application:

(a) in cases where the trial is to be dealt with by a High Court judge no later than 10 working days from arraignment; and

(b) in all other cases no later than 10 working days prior to the arraignment.

In either situation the date of arraignment is included within the 10 working days

9. Third parties should be informed of the time and date of the third party application by the applicant. The applicant should send a copy of the notice and supporting affidavit to the Public Prosecution Service for transmission to the complainant(s) via the officer in charge of the case.

10. Third party disclosure applications shall be heard at the initial arraignment application or as soon thereafter as the court directs.

11. The order, if made, will then issue with a court return date, which will be at least 7 clear working days after the making of the third party disclosure order.

12. The third party disclosure order should be drawn up by the court. The party applying for the order should then obtain a copy of the order and serve it on the third party. Each court office should have and maintain a register recording the date that third party documents are lodged with the court and the date when they are returned to the third parties.