



## Informing Progress - Shaping the Future

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### **Attorney General's Guidelines on Disclosure 2024 in the UK**

This detailed analysis aims to delve deeper into the nuances of these guidelines, dissecting key issues and drawing comprehensive conclusions on their implications for the legal landscape in the UK.

#### **Scope and Purpose of the Guidelines**

The preamble of the guidelines articulates their overarching purpose: to uphold the right to a fair trial by providing meticulous guidance on the disclosure process in criminal cases. They serve as a roadmap, delineating the responsibilities of both the prosecution and the defence in disclosing material that is relevant to the case. Moreover, they underscore the paramount importance of proportionality, efficiency, and consistency in the disclosure process to ensure justice is served.

#### **Principles of Disclosure**

At the core of the guidelines lie the enduring principles of disclosure. These principles dictate that both the prosecution and the defence have a duty to disclose material that is relevant to the case, irrespective of its potential impact on the outcome. This encompasses material that may bolster the defence's case or cast doubt on the prosecution's evidence. The guidelines underscore the fundamental tenets of transparency and fairness in the disclosure process, which are essential for upholding the rule of law.

#### **Proactive Approach to Disclosure**

A notable departure from previous practices is the emphasis on a proactive approach to disclosure. Prosecutors are urged to engage in early and ongoing dialogue with the defence to identify relevant material and address any potential disclosure issues promptly. This proactive stance aims to prevent delays and ensure that both parties have access to the

necessary information at the earliest opportunity. By fostering open communication and collaboration, this approach seeks to enhance the efficiency and effectiveness of the disclosure process, thereby safeguarding the right to a fair trial.

### **Digital Disclosure Challenges**

In an era dominated by digital technology, the guidelines confront the unique challenges posed by digital evidence. The proliferation of electronic devices and online platforms has led to an exponential increase in the volume and complexity of digital material in criminal cases. Prosecutors are tasked with effectively managing this digital deluge, ensuring its integrity, relevance, and accessibility to both parties. Moreover, they are reminded of the need to remain vigilant against potential issues such as tampering, manipulation, or fabrication of digital evidence, which could compromise the integrity of the judicial process.

### **Sensitive Material and Public Interest Immunity**

The guidelines provide comprehensive guidance on the handling of sensitive material, including issues of national security, privacy, and public interest immunity (PII). Prosecutors are reminded of their duty to disclose material even if it is subject to PII, balancing the imperative of transparency with legitimate concerns for national security or other sensitive matters. Moreover, they are encouraged to engage in constructive dialogue with the relevant authorities to address any concerns regarding the disclosure of sensitive material. This ensures that the interests of justice are upheld while safeguarding essential national interests.

### **Disclosure Management Documents (DMDs)**

A noteworthy innovation introduced by the guidelines is the concept of Disclosure Management Documents (DMDs). These documents serve as a repository for recording the disclosure decisions made throughout the course of a case. By documenting the rationale behind these decisions, DMDs enhance transparency and accountability in the disclosure process. Moreover, they facilitate review by the court, providing a comprehensive record of the disclosure process and any challenges encountered along the way. This ensures that the disclosure process is conducted in a systematic and transparent manner, minimising the risk of errors or omissions that could undermine the integrity of the judicial process.

### **Training and Resources**

Recognising the paramount importance of equipping legal professionals with the requisite knowledge and skills to navigate the disclosure process effectively, the guidelines underscore the need for training and resources. Prosecutors are encouraged to stay abreast of developments in disclosure practice, seeking guidance and support where needed. Moreover, they are urged to collaborate with relevant stakeholders, including law enforcement agencies, forensic experts, and digital specialists, to enhance their understanding of the challenges associated with disclosure in the digital age. This ensures that prosecutors are well-equipped to fulfil their disclosure obligations competently and effectively, thereby contributing to the fairness and efficiency of the criminal justice system.

## **Balancing Rights: Fair Trial vs. Right to Private and Family Life**

A crucial aspect of disclosure is the delicate balance between the right to a fair trial, enshrined in Article 6 of the European Convention on Human Rights (ECHR), and the right to private and family life, protected under Article 8 of the ECHR. While the right to a fair trial necessitates disclosure of relevant material to ensure a fair and transparent judicial process, the right to privacy mandates protection against unwarranted intrusion into one's private affairs. Striking this balance requires careful consideration of the specific circumstances of each case, with due regard to the principles of proportionality and necessity. The guidelines provide guidance on navigating this intricate balance, ensuring that disclosure is conducted in a manner that respects and upholds both sets of rights, thereby fostering a judicial process that is not only fair and transparent but also respectful of individuals' privacy and dignity.

### **Definitions and Application**

The guidelines provide clear definitions of key terms and concepts related to disclosure, ensuring consistency and clarity in their application. Definitions include what constitutes "material" that must be disclosed, the threshold for relevance, and the scope of obligations for both prosecutors and defence counsel. This clarity helps streamline the disclosure process and minimises the risk of confusion or dispute over what must be disclosed, enhancing the efficiency and fairness of criminal proceedings.

In conclusion, the UK Attorney General Guidelines on Disclosure 2024 represent a seminal contribution to the discourse on disclosure in criminal proceedings.

By reaffirming the enduring principles of transparency, fairness, and proportionality, the guidelines lay the groundwork for a more robust and equitable disclosure process. However, their efficacy hinges on their implementation in practice and the commitment of legal professionals to adhere to their principles.

Moving forward, continued training, resources, and oversight will be essential to ensure that the principles of disclosure are upheld in all criminal cases in the UK, thereby safeguarding the right to a fair trial and upholding the rule of law.

[https://assets.publishing.service.gov.uk/media/65e1ab9d2f2b3b00117cd803/Attorney\\_General\\_s\\_Guidelines\\_on\\_Disclosure\\_-\\_2024.pdf?t](https://assets.publishing.service.gov.uk/media/65e1ab9d2f2b3b00117cd803/Attorney_General_s_Guidelines_on_Disclosure_-_2024.pdf?t)

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