

**PROSECUTION CASE  
MANAGEMENT  
AND DISCLOSURE**

**A System for the Effective  
Management and Disclosure of Evidence  
at all Stages of a Criminal Prosecution  
in Jersey**

**Her Majesty's Attorney General's Guidelines**

**To Police and Prosecutors**

**In Force 1<sup>st</sup> August 2006**

## **PROSECUTION CASE MANAGEMENT**

### **A CASE IN THREE PARTS**

#### **What is Case Management?**

1. Case Management is the clear and logical arrangement by the prosecuting authority of evidence in a criminal prosecution so that all parties can easily and confidently know:

- (a) What material the prosecution rely upon in support of an allegation.
- (b) What material the prosecution do not rely upon in support of an allegation, either because (i) it helps or may help the defence or (ii) because it is irrelevant.
- (c) For the purposes of the prosecution only, whether any material which helps or may help the defence is nonetheless so sensitive that the Court should be asked to grant it immunity from disclosure to the defence.

2. The material in any criminal prosecution can thus be managed effectively by dividing it into three parts:

- (a) Part A – The evidence which the prosecution rely upon to prove guilt.
- (b) Part B – The evidence and other material which the prosecution do not rely upon to prove guilt, either because (i) it helps or may help the defence or (ii) because it is irrelevant.
- (c) Part C – Sensitive material which the Police/Customs consider it is inappropriate for the defence to know.

### **A Universal System**

3. The aim is to introduce a procedure for case management which, from the police officer preparing a speeding case for the Centenier, to the Crown Advocate prosecuting a complex fraud in the Royal Court, will be understood and employed by everyone, so that all involved in criminal prosecutions should have in mind the concept of a three-part case.

### **Relevance**

4. The key to understanding and employing the Three Part System is the concept of relevance.

5. In broad terms:

- A** Material that tends to prove a defendant is guilty of the charge is said to be relevant to the prosecution.

**B(1)** Material which tends or may tend in any way to undermine the prosecution case or does or may assist the defence, is said to be relevant to the defence.

**B(2)** Material which has no effect one way or the other is said to be irrelevant.

Sensitive material could fall into any of these categories, A, B(1) or B(2) – that is, it could be relevant to the prosecution, relevant to the defence or irrelevant. The classification “*sensitive*” has nothing to do with whether such material is relevant or irrelevant, but merely with whether it is operationally so sensitive that the Police or Customs and Excise claim that the defence should not be told about it. For that reason, unless specific authority is obtained to the contrary, it is listed in Part C until a final decision is taken about whether it:

- Can be disclosed to the defence.
- Should be disclosed to the defence.
- Need not be disclosed to the defence.

6. Anyone who at any stage undertakes to manage a case, whether police officer or lawyer, needs to have a grasp of **A** what in any given case is likely to be relevant to the prosecution on the one hand and **B(1)** what is likely to be relevant to the defence or **B(2)** irrelevant to both sides.

7. These Guidelines require the separating of these different classes, **A**, **B(1)** and **B(2)**, of material and keeping them physically separate from each other.

## **THE CASE MANAGEMENT SYSTEM**

### **Stage 1**

Every criminal prosecution should have an 'Officer in the Case'. The OIC has the **initial** duty of 'managing' the evidence on the Three Part principle described above, once sufficient has been obtained for the nature of the case against an accused to be clear. 'Officer in the Case' is not a term of law. It means nothing more in practice than that one police officer (and 'police officer' includes an honorary officer), should have responsibility for managing a case, so that consistency is achieved, and so that there is one knowledgeable point of reference in each case. The Chief Officer of the States of Jersey Police will designate the police officer who is to be OIC whenever the States of Jersey Police have an open file. In any other case, it shall be the duty of the Chef de Police in the Parish where the alleged offence took place to act as OIC.

### **Part A – Used Material – 'The Prosecution Case'**

The Officer in the case should collate and assemble:

- (i) Those **statements** which are likely to assist in proving or supporting the prosecution case;
- (ii) Those **exhibits** which are likely to assist in proving or supporting the prosecution case;

The Officer in the case should then:

- (iii) Create a list of such statements (**List A1**) and a list of such exhibits (**List A2**);
- (iv) Keep such statements and exhibits physically separate from items in B and C below.

**Part B – Unused Material – ‘NOT the Prosecution Case’ – sub-divided into Parts B(1) and B(2) as follows:**

The Officer in the case should collate and assemble:

**B(1)** All statements, exhibits or any other material which either undermines or contradicts the prosecution case, or which in any way assists or might assist the defence, and create a list of such material – **List B(1)**.

**B(2)** All other material which appears to have no relevance either to the prosecution or the defence and create a list of such material – **List B(2)**.

**Part C – Sensitive Material**

The Officer in the case should:

Identify any material, whether evidence or otherwise, and whether assisting the prosecution, or the defence, or neither, which is or may be operationally sensitive.

Make a list (**List C**) of such material, identifying it and giving the reason for its sensitivity, UNLESS express written consent not to make such a list has been obtained from the Attorney General or a Crown Advocate designated specifically by him in connection with material of such sensitivity on the grounds that it would be potentially dangerous to the physical safety of any person to do so.

## **Stage 2 – Preparation of the Trial Brief**

### A Centenier's Case

If the matter is to be prosecuted to a conclusion by the Centenier, the OIC should prepare a brief consisting of two parts:

Part A                      Used material – prosecution statements and exhibits.

Part B                      List B1 (relevant) unused material.

The OIC should compile and retain a List B2 (irrelevant material).

The likelihood is that the papers will be very limited.

The probability of there being any sensitive material is extremely remote.

The OIC is likely to be the officer who has reported the offence – for example, the officer who recorded the suspect speeding, or who arrested the suspect for being drunk and disorderly.

Such cases will usually be very short and straightforward. A simple handwritten list could be sufficient.

The overriding importance is that the prosecuting Centenier is informed by the OIC of all the material which has been gathered in the case, so that the

Centenier can in turn keep in mind his **duty of fairness**, and ensure that if any material exists which might undermine his case or might assist the defendant, he tells the defendant about it.

In many instances such cases will come to Court within hours of commission of the offence. It will not generally be appropriate that an application is made to adjourn such proceedings while formal lists are typed up and copied. The object of the exercise in such cases is to ensure that the Centenier knows not only the evidence against a defendant, but knows of any other material which might assist a defendant and which he ought to tell the defendant about.

## B     Police Lawyer's Cases

If the matter is to be prosecuted to a conclusion by a lawyer before the Magistrate, the OIC should prepare for him a brief as follows:

- |        |   |
|--------|---|
| Part A | Used material – prosecution statements and exhibits.                      |
| Part B | B1 list of relevant Unused Material and B2 list of irrelevant material.   |
| Part C | A list of any sensitive material <u>or</u> confirmation that none exists. |

Upon receipt, the duty of case management passes to the lawyer, who should:

- (i) Satisfy himself that Part A establishes a case for prosecution on any particular charge and advise upon charge and any further evidence required.

- (ii) Consider the unused material in both the B1 and B2 lists in Part B, confirm with the OIC whether all unused material has been included on the lists and confirm that no material on list B2 should be disclosed as part of list B1.
- (iii) Ensure that Part A and list B1 are served upon the defence in good time or in accordance with any Court direction.
- (iv) Ensure that any further prosecution evidence or further relevant unused material acquired subsequently is served on the defence in good time or in accordance with a Court direction and in an orderly and managed way, making it clear to the defence what material so served is used and what is unused. These Notices of Additional Material, whether used or unused, should be backed by a dated addendum to the Part A and Part B1 lists showing what further material has been served and on what date.
- (v) Consider, where any material is claimed to be sensitive, whether it really is sensitive, whether it does or may assist the defence and, if it does or may assist the defence and is genuinely sensitive, consider the need to seek public interest immunity from disclosing it. (It is to be noted that the

prospect of PII matters arising in summary cases is likely to be remote).

### C Cases for Committal to the Royal Court

If the case is to be committed to the Royal Court for trial, the brief should be prepared in exactly the same way as at B above BUT upon receipt of it, the lawyer should:

- (i) Satisfy himself that Part A establishes a prima facie case on any particular charge, advise on charge if necessary and advise on further evidence if necessary.
- (ii) As soon as he is satisfied that a prima facie case exists and that the case is ready to proceed to committal, Part A should be served on the defence. Part A will constitute the Committal Bundle, and should be known as such. Part B1 will NOT be part of the Committal Bundle. Part B1 may be disclosed in the lawyer's discretion at this stage, but it MUST NOT be served as part of the Committal Bundle, and this must be made clear to the defence.
- (iii) Whilst the gathering of further evidence may continue, once Part A Committal Bundle has been served, disclosure will cease unless further Part A evidence is required to be served to establish or strengthen a prima facie case for committal.

- (iv) Defence requests for further disclosure at this stage will NOT be entertained. Defence requests for the calling of witnesses not relied upon for the purposes of committal will NOT be entertained. (Once committal has taken place, the process of disclosure can then resume in readiness for the case to proceed to a conclusion in the Royal Court).
  
- (v) Once committal has taken place, the lawyer should send to the Crown Advocate appointed to prosecute the matter, the prosecution brief organised as above with Part A (paginated), Part B – lists B1 and B2 – and Part C. And to the defence the same brief, but **omitting** Part B2 and Part C.

#### D Cases in the Royal Court

The Crown Advocate has a duty to consider all the evidence and material in Part A, as to sufficiency of evidence and the appropriate charges upon which to indict. In that respect the Crown Advocate continues to have the duties set out in Part 2 of the Procedural Guidelines for Crown Advocates Conducting Criminal Prosecutions. He also now has a duty to consider the material in Part B(1) and (2) and Part C as part of his duty of disclosure to the defence.

The Crown Advocate has a continuing duty of disclosure in respect of Part B1 (including satisfying himself that nothing on list B2 should be on list B1), and Part C throughout the case.

In particular he should satisfy himself that all unused material which is not sensitive and which is or may be helpful to the defence has been listed on list B1.

As a matter of prudence he should familiarise himself with the contents of any unused witness statements or exhibits in list B1 which may assist the defence so that he knows the merits of his own case and the likely issues at trial.

Additionally he should consider whether the list of sensitive material in Part C is likely to be exhaustive or whether material has been omitted – for example, do the facts of the prosecution case suggest the involvement of an informant whose existence is not mentioned on the Part C list?

If ‘sensitive’ material exists, counsel should consider:

- (i) Whether it really is sensitive (through consultation with the police or Customs and Excise).
- (ii) If it is genuinely sensitive, whether it is disclosable as a matter of law – that is, does it tend to undermine the prosecution case, or does it or may it assist the defence.
- (iii) If it is disclosable, whether it is possible to edit the material in such a way as to allow its disclosure without revealing that which is sensitive.
- (iv) If editing is not possible, a PII application will have to be made.

- (v) BUT if the material is not disclosable because it is irrelevant, the issue of PII does NOT arise at all, and no application need be made.
- (vi) If counsel is in any doubt as to whether sensitive material is disclosable as a matter of law, he should seek the guidance of the Court on an application for PII.
- (vii) Otherwise it is for prosecution counsel to decide what, if any, of the sensitive material is disclosable.
- (viii) Where the Attorney General or a designated Crown Advocate has consented in writing to a request that very sensitive material is not listed it shall be the duty of the officer in charge to disclose to prosecution counsel the existence of that material in order that counsel may familiarise himself with it and thus be enabled to perform his continuing duty of disclosure.

## Points of General Principle

### 1. The Lawyer's Assessment of Disclosure is Paramount

The lawyer is not bound to adopt the police officer's view on what material should be placed in which part, A, B(1) or B(2). Indeed he has an overriding duty to apply his own judgment to the question, and move material from one part to another accordingly.

### 2. Sensitive Material a Special Case

A decision to disclose sensitive material should not be made by the lawyer without taking into account the views of Police or Customs officers. Where sensitive material is disclosable, but there is good reason not to disclose it – for example disclosure might risk the life or limb of any person – and on a PII application the Court orders that the Prosecution must disclose if the case is to proceed, a decision not to proceed with the prosecution should only be taken on the authority of the Attorney General.

### 3. A General Rule of Practice

Disclosure is a matter of judgment, not science. If the defence have not disclosed the nature of their case, it may be difficult to assess whether unused material is relevant or not. The following is a general rule of thumb for non-sensitive unused material:

## **IF IN DOUBT - DISCLOSE**

In practical terms, that means include it on Part B, list B1.

## **Practical Considerations**

### 1. The Logistics of Disclosure

It will be apparent from the above that the primary responsibility for deciding what to serve and whether to serve it as used or unused material will fall upon the lawyer in all but Centenier prosecutions.

The practice of police officers disclosing material wholesale and piecemeal upon the defence without any attempt to classify what is being served or the basis upon which it is being served, should cease.

Under the case management system, the onus will be on the OIC at the outset to lay the foundations for the prosecution brief by separating the material into the 3 Parts, A, B1 and B2 or C. In large cases, the OIC's duty would continue in this respect. The physical disclosure of material, whether by the OIC in a Centenier prosecution or a lawyer would not happen until the material had been considered, and a reasoned decision made about whether it fell into Part A or Part B1, (material which is properly in Part B2 or Part C will not be disclosed).

It follows that under the system the prosecution would not only maintain an accurate record of what material had been served on the defence and when, but would know on what basis every last piece of material had been served, and which Part, A or B1, it came under, as well as what had not been disclosed because listed in Part B2 or Part C.

The system would ensure a clear shape to the majority of cases from the earliest stage, and would ensure that by the time a case reached the Royal Court, trial counsel and the trial judge would receive a well organised brief in which the

prosecution evidence and the unused material were clearly set out and separated from each other.

The system would ensure that in any case the disclosure of unused material to the defence, and the consideration of material which might assist the defence, would have been considered at least once in a Centenier's prosecution, at least twice in the case of a police lawyer prosecution and at least three times in the case of a Royal Court trial.

How frequently to disclose additional used and unused material in a larger case with a continuing investigation would, subject to any timetable for disclosure set by the Court, be a matter for the judgment and discretion of the reviewing lawyer. It is suggested that piecemeal disclosure should be avoided whenever possible, but that disclosure of material should always be considered as soon as possible.

Finally the system would ensure that at all times the lawyer had recourse to a list of sensitive material and a duty to consider the topic of sensitive material proactively.

## 2. Copying Unused Material for the Defence

This again is a matter of discretion. It is suggested that in most cases the following could be copied and served on the defence under Part B1 as a matter of course and before any request for disclosure from the defence:

- (i) Unused witness statements.
- (ii) Unused documentary exhibits.
- (iii) Accused's custody record.
- (iv) Accused's antecedents.

## **Related Issues**

### **A Disclosure at Police Station**

All that need be disclosed at the caution interview stage is sufficient information to permit the accused to know what he is accused of and what in broad terms the evidence against him is.

### **B Third Party Disclosures**

It is NOT the prosecutor's duty to consider whether material may exist in the possession of third parties which may afford some support to the defence. Whilst it is correct that the prosecutor is a minister of justice, it is not for him to do defence counsel's job.

In any case where the defence considers that a third party may be in possession of relevant material (e.g. child welfare reports, medical records), it is a matter for the defence to request it from the third party, or, if refused, make application to the Court upon notice to the prosecution and the third party concerned to seek an order for disclosure. It is then a matter for the Court to determine the question of disclosure by considering the material in light of the issues in the case, and for the third party to make any representations it wishes to make.

However, as a matter of professional prudence, the prosecutor who has reason to suspect that reliable third party material exists which may have a potentially negative bearing on the prosecution case would be wise to enquire whether such material does exist, and what in broad terms the nature of it is. If it has, or may

have, an adverse effect on the merits of his case, prosecution counsel would doubtless be well advised to consider its contents carefully and at an early stage.

The prosecutor who, for any reason, knows of the existence of such third party material does, if the prosecution should proceed, have a duty to alert the defence to its existence if they are not aware of it.

## **SUMMARY**

1. All cases will be managed by division into 3 Parts from inception to final disposal:

A. The Prosecution Case – (statements and exhibits).

B. Anything which is not the Prosecution Case:

B1 - Statements, exhibits, other items of material which do or might assist the defence;

B2 – Any material which appears to be entirely irrelevant.

C. Any sensitive material of any description.

2. The service of the prosecution case and disclosure of unused material to the defence will be orderly and considered.

3. Save in Centenier prosecutions, the decision as to what is served as part of the prosecution case and what is disclosed as unused material is ultimately the responsibility of the police lawyer and the Crown Advocate.

4. Material should never be delivered to the defence without someone having taken the decision as to the basis upon which it is being served or disclosed, and that basis being made clear to the defence at the time of service or disclosure.

These Guidelines shall come into force on 1<sup>st</sup> August 2006.

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