

SCOTTISH PROSECUTION COLLEGE

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# Disclosure

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# The Disclosure Duty.....



**THE CROWN **MUST**  
DISCLOSE **ALL**  
INFORMATION FOR  
OR AGAINST THE  
ACCUSED**

# The Crown's Disclosure Obligations

## Leading Disclosure Cases

- *McLeod v HMA (No2) 1998 JC 67* (guiding authority)
- *McDonald v HMA 2008 UKPC 46* (reaffirms *McLeod*)
- *Holland v HMA 2005 SC(PC)3 & Sinclair v HMA 2005 SC(PC)28* (specific refinements to *McLeod*)

# McDonald v HMA

- 3 separate appeals raising issues about disclosure
- McDonald – Glasgow murder 2005
- Dixon – Ayrshire murder 2005
- Blair – Glasgow murder 2005
- Petitions for Recovery of Documents
- Appeals heard in August 2007
- Privy Council July 2008 – reported October 2008

# McDonald cont/d

- Recognised “commendable determination” by prosecuting authorities to address the problems identified in *Holland, Sinclair & G.B.*
- New systems to minimise the risk of error in the future
- Reaffirms disclosure test currently applied is the correct one
- Satisfied that the current system is compatible with the accused’s article 6 rights

# McDonald cont/d

“the correct functioning of any system of disclosure depends on the diligence and sense of duty of everyone involved, starting with the police and going on up the through the procurator fiscal service and the Lord Advocate herself”

*Lord Rodger*

# What is “Information”?

- Information is **ALL** relevant information obtained during the investigating or prosecuting process held by the **PROSECUTING AUTHORITIES**
- Includes information held by the **CROWN** or any reporting agency.

# What must the SRA do?

- Record **ALL** relevant information obtained
- Provide the Crown with all relevant information
- Pursue all “reasonable lines of enquiry”

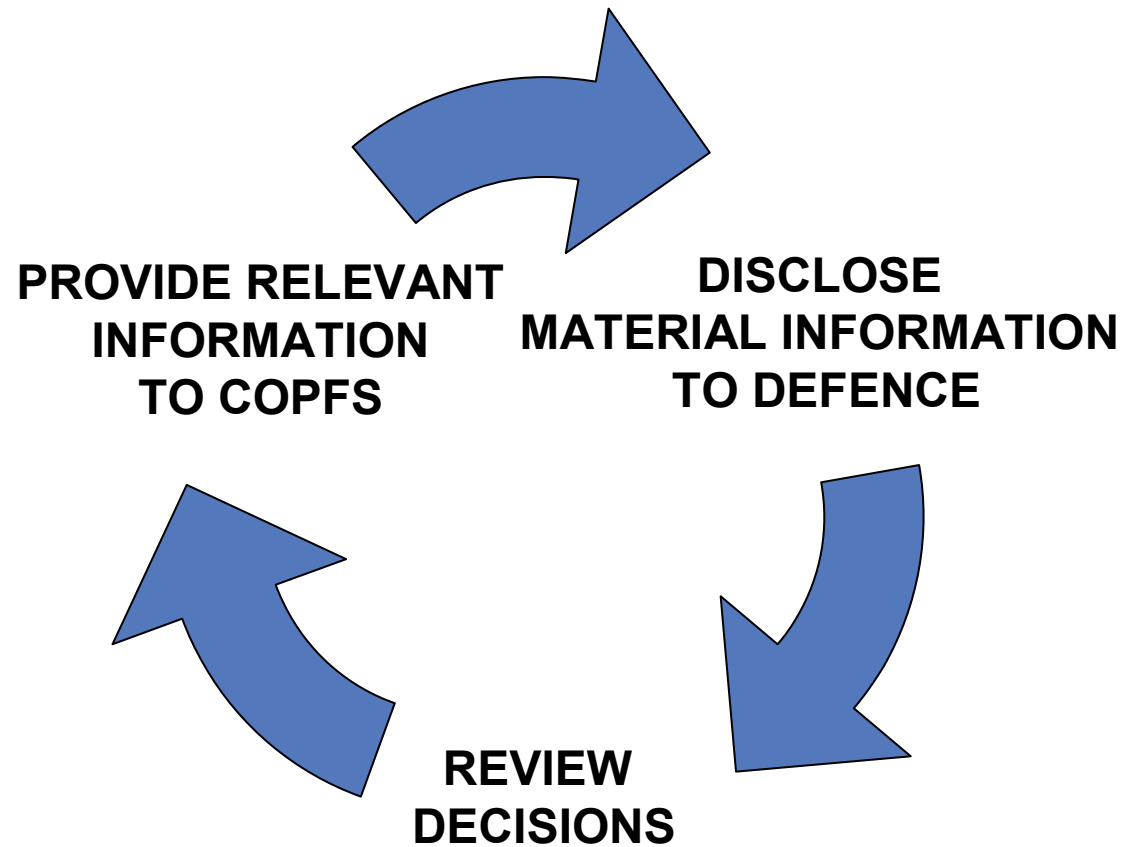
# What must the Crown do?

- Consider ALL relevant information and assess whether it meets the **disclosure test**. i.e. is the information for or against the accused ?
- Disclose ALL information that meets the **disclosure test**

# ONGOING DUTY

- Disclosure is an **ONGOING** duty throughout and beyond the life of the case.
- Any decision that information is **NOT** relevant must be kept under review
- Any decision that information does **NOT** meet the disclosure test **MUST** be kept under review

# Ongoing Duty cont/d



# What next for Disclosure

- Lord Coulsfield's recommendations
- Legislation and Code of Practice
- Schedules in Solemn cases
- Public Interest Immunity
- Training

# Lord Coulsfield's Review

- Commissioned in October 2006
- Report published in September 2007
- 44 recommendations
- Principle aim: to put the disclosure system on a statutory footing in order to ensure clarity and certainty for everyone involved in the process

# Disclosure Legislation

- Provisions to be included in the Criminal Justice & Licensing Bill
- Introduced to Parliament summer 2009
- Implementation expected in mid-2010
- Close consultation with COPFS and ACPOS on draft provisions

# Principle Statutory Provisions

- Definition of Disclosure requirements
- Specific classes of material that will always be disclosable
- Methods of disclosure
- Schedules
- Defence statements
- Public Interest Immunity hearings
- Misuse of disclosed material
- Access to witness statements pre-trial

# Consequences of Non-Disclosure

- Unnecessary trials
- Unnecessary delays
- **MISCARRIAGES OF JUSTICE**

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**Any Questions?**



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