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# Guidance on disclosure of unused material

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## Guidance on the disclosure of unused material

- 1 This Guidance is issued by the Conduct Committee of the Financial Reporting Council under the Accountancy Scheme and the Actuarial Scheme. Both Schemes empower the Conduct Committee to provide the Executive Counsel and any Tribunal with guidance concerning the exercise of their duties under each Scheme, who shall have regard to such guidance.
- 2 This document provides guidance for the Executive Counsel, and for members of any Tribunal, with respect to the disclosure of “unused material” in professional discipline cases.
- 3 Copies of the evidence relied upon in support of the Formal Complaint are served by the Executive Counsel on the Member or Member Firm concerned in accordance with the provisions of the Schemes and the Regulations. However, in addition to material used as evidence, there is likely to be unused material in connection with the case which the Executive Counsel has in his possession.
- 4 “Unused material” under the common law is described in paragraph 1 of the Attorney General’s Guidelines issued in December 1981 (the applicable common law guidelines) as all witness statements and documents which are not included in the evidence served on the defence and the unedited version(s) of any edited statements served as evidence.
- 5 The Executive Counsel and any Tribunal should apply the common law rules of disclosure in relation to any material which has not been relied on as evidence. These rules form the basis for the test for disclosure in criminal cases (set out in the Criminal Procedure and Investigations Act 1996). They are conveniently summarised in the House of Lords decision of *R v Brown (Winston)* [1998] A.C. 367.
- 6 In summary, the Executive Counsel should disclose to the Respondents any material which might undermine the Executive Counsel's case or assist the Respondents' defence (the "Disclosure Test").
- 7 The duty of disclosure is a continuing one and therefore the Executive Counsel should keep under review until the conclusion of the proceedings whether there is in the Financial Reporting Council's possession or under its control further unused material which meets the Disclosure Test.
- 8 In particular, when the Respondents serve their Defence, the Executive Counsel should re-review the unused material that has not already been disclosed in the light of the contents of that Defence, and should make further disclosure to the Respondents of any material which meets the Disclosure Test.
- 9 The Tribunal should apply the Disclosure Test when considering the disclosure of documents, for example when deciding whether to make a pre-hearing direction.
- 10 An example of the application of the common law duties in disciplinary proceedings is *Rajan v General Medical Council* [2000] Lloyd's Rep. Med. 153.
- 11 This guidance is subject to the provisions of the Scheme. In the event of any conflict between the two, the terms of the Scheme, and any Regulations thereunder, shall

prevail. This guidance should be applied in accordance with the overriding requirements of fairness between the parties and the interests of justice.

**Issued by the Conduct Committee of the Financial Reporting Council  
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