



Disclosure Orders

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Welcome to the Kirwans Guide to Disclosure Orders.

Disclosure Orders in criminal investigations can pose a variety of problems for individuals involved.

In this guide our leading Criminal Defence experts address the frequent questions they face in relation to Disclosure Orders and will provide helpful information and guidance regarding interview procedures and protocol.

It is important to remember that failure to comply with a Disclosure Order can result in a prison sentence of up to two years. If served with a Disclosure Order it is essential to seek legal advice as soon as possible.

Legal representation from the outset can help to ensure that any complexities and potential implications are effectively addressed and managed. We understand the uncertainty and concerns individuals may face, which is why our leading lawyers invest time to provide expert advice and guidance throughout each step.

As a multi-disciplinary law firm, Kirwans work collaboratively with a Criminal Defence team which includes experts in Crown Court, Post Conviction, and Regulatory & Business Prosecutions. This ensures that clients receive the best possible representation throughout the entirety of their legal journey.

Our Client Commitment

- 24/7 access to Criminal Defence legal specialists
- Day to day support and advice
- Concise and honest advice tailored to your needs
- Regular updates ensuring you are fully informed
- Transparent pricing with no hidden costs
- Prompt and thorough response to enquiries

Q. What is a 'Disclosure Order'?

Disclosure Orders are requested by investigating authorities, such as the National Crime Agency (NCA), where there are reasonable grounds for suspecting that a person has benefited from criminal conduct or that some property is connected with criminal conduct.

Under Section 357 of the Proceeds of Crime Act 2002 the NCA can apply to the High Court and obtain a Disclosure Order that requires the named individual to attend an interview.

The NCA can request any person to attend an interview during which they can ask questions which they consider relevant to a financial investigation.

It's important to remember that you don't need to be convicted, charged, arrested or even suspected of a criminal offence for the NCA to request an interview with you.

Q. Can an application for a Disclosure Order be made without my knowledge or consent?

Yes. The NCA do not pre-notify you of an application to the High Court and apply for a Disclosure Order without your knowledge.

Also, if the Order is granted you do not have an automatic right to view the evidence that supported the application in the first place. If you do not contest the Order you might never see this evidence.

Q. Can I refuse to attend an interview with the NCA?

No, you cannot refuse to attend the interview. It is a criminal offence if, without a reasonable excuse, you do not answer the NCA's questions or fail to provide the information or documents requested.

It is also a criminal offence to make any misleading statement in answer to their questions, whether intentionally or not.

Q. What is the interview process?

During the interview you are obliged to answer questions, provide information or produce documents that the NCA think is relevant to their investigation.

Furthermore, even if the Disclosure Order only mentions you by name, the NCA can also request your accountant or lawyer to attend an interview, provide information and/or produce documents.

The NCA are required to follow a Code of Practice and can only ask the types of questions specified in the Disclosure Order. You may not have to answer any privileged questions, provide any privileged information or produce any privileged document.

In addition you may not have to produce any excluded material and the NCA can only retain any documents for as long as is necessary.

Q. Can a Disclosure Order be discharged?

Yes, in some cases. An application can be made to the Court to discharge the Disclosure Order or to vary its provisions, but this must be done as soon as possible after you have received notice of the interview.

To obtain a Disclosure Order the NCA must establish that there are reasonable grounds for suspecting that a person has benefited from criminal conduct or that some property is connected with criminal conduct. The information that the NCA suspect you will provide must be likely to be of substantial value. It must also be in the public interest for the information to be provided.

To discharge the Order you would have to show that the above grounds have not been satisfied.

Q. If I make a statement in the interview, can it be held against me?

Any statement you make in compliance with the Order cannot be used against you in most criminal proceedings.

However, this protection does not extend to confiscation hearings after any conviction or prosecutions brought for perjury. Furthermore, if you make a later statement that is inconsistent with any statement you made during the disclosure interview then you could be prosecuted for this also.

While it may be the case that anything you say during a disclosure interview cannot be used against you in a criminal prosecution, the information you provide is an investigative tool for the NCA in their ongoing enquiries. The fact that you provided the information in compliance with the Order does not bar a subsequent prosecution if the NCA acquire additional evidence against you in light of any admissions you may have made.

Disclosure Orders are extremely invasive but the law does provide individuals with protective measures.

It is vital that if requested by the NCA to attend an interview that you seek legal advice at the earliest opportunity. With the right expertise you have peace of mind that any complexities can be effectively handled.

Important Notice: The information in this guide is based upon current law of England and Wales, which is subject to change. We cannot accept responsibility for any liability that may arise as a result of any action taken or not taken as a result of this information. This guide does not constitute legal or tax advice. To be fully aware of the implications it is important to seek advice from a qualified Solicitor.

For all your Criminal Law needs contact our team today

E: info@kirwans.co.uk

T: 0800 525 035

24 Hour Crime Service: 07770 864 037

www.kirwans.co.uk

Disclosure Orders: What You Should Know

- ✓ You do not need to be convicted, charged, arrested or even suspected of a criminal offence for the National Crime Agency (NCA) to request an interview.
- ✓ It is a criminal offence to refuse to attend an interview without a reasonable cause.
- ✓ It is a criminal offence to make any misleading statement in answer to interview questions, whether intentionally or not.
- ✓ A failure to comply with the Disclosure Order can result in a prison sentence of up to two years.
- ✓ You can be accompanied by a solicitor or an accountant at an interview. However, in some circumstances the interviewing officer can refuse your request for a solicitor.
- ✓ If you attend an interview without a solicitor the NCA is not under an obligation to provide one.
- ✓ You do not need to answer a question if you have a reasonable excuse or the question is beyond the scope of the Order. However, given the possibility of being prosecuted for any failure to answer the question, this is a delicate balancing act that should not be done without expert legal advice.