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Defence Access Policy

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The SPA Forensic Services Defence Access Policy has been developed to ensure that defence agents and independent forensic science experts have consistent, fair and transparent access to productions and specific information held by the organisation.

This document is a summary of the Standard Operating Procedure implemented at all Forensic Services sites when defence access to productions and information held by SPA is granted by the Procurator Fiscal.

Objectives of the policy are:

1. To support the fair and impartial working of the Criminal Justice System by ensuring that defence agents are afforded appropriate access to SPA Forensic Services practitioners, test items, reports, and where necessary, case examination notes.
2. To ensure the security of all SPA Forensic Services information and data, including that contained within case files, and the security and integrity of any test item examined by the defence whilst within SPA premises.
3. To ensure that those acting on behalf of the defence cause no damage to SPA equipment or property.
4. To minimise the risk of contamination of test items in the custody of SPA or to SPA laboratory premises.
5. To ensure the safety of SPA staff and defence experts by adhering to appropriate Health and Safety procedures.

The SPA Forensic Services routinely produce court reports for any case examinations instructed by COPFS. These reports are provided to the COPFS as documentary productions and a copy made available by the COPFS to the defence upon request. Reports generally contain examination details, results and any consequent expert opinion.

If the SPA Forensic Services report requires any clarification, Scottish law provides for the interviewing of witnesses under precognition to assist the prosecution and/or defence in the preparation of their case. SPA Forensic Services is committed to making its staff available for precognition and requires them to cooperate fully and frankly with agents for the prosecution and/or the defence who wish to clarify any aspect of the forensic findings reported by SPA. Given sufficient notice, precognition may be carried out in person, on the telephone or by video-conference.

It is strongly recommended that the opportunity to precognose SPA staff be taken as this allows discussion of possible scenarios and exploration of any additional examinations that might be required to clarify the situation prior to the case appearing in Court.

No charge will be made for a precognition that takes place at the witness's normal place of work but if the witness is required to meet the precognoscer at another location then it may be necessary to charge for the additional hours lost as travelling time and any travelling expenses incurred.

In order to arrange for a precognition, the defence agent should, in the first instance, contact the relevant service centre.

During a precognition the precognoscer may, upon request, be shown any papers necessary to support the findings referred to in the SPA Forensic Services report. A brief review of the relevant case file contents will be provided only under supervision. As a general rule, copies of case notes or any other case file contents will not be provided however the precognoscer will have the opportunity to make their own notes based on the results within the case file.

SPA staff will not provide access to case file contents which have not originated from, or are not owned by, the SPA.

If, after precognition, (or without precognition) the defence wish their own forensic expert to review the findings of SPA Forensic Services, then the defence agent must seek written agreement from the COPFS allowing SPA Forensic Services to facilitate this request. Such a review may take place at SPA premises or, alternatively, the COPFS may allow the defence expert to use their own facilities to perform their examinations.

SPA Forensic Services will not generally facilitate access to case productions which have not previously been examined by Forensic Services.

If SPA Forensic Services facilities are to be used as a venue for a defence expert's examination, a SPA scientist will supervise the defence expert at all times during their visit.

Prior to a defence expert gaining entry to SPA facilities, or receiving copies of data held by the SPA (eg. DNA profiles), certain administrative details must be completed. These may include:

- Written confirmation that the COPFS agree to the examination taking place
- An agreed date and time for the examination
- Confirmation that the defence agent will agree to pay any appropriate charges
- Confirmation of the defence expert's experience and suitability to perform their intended examinations using SPA facilities
- Written agreement that the defence agent and defence expert will not make any further copies of any material provided, that they will not disclose case information to a third party and that they will return any electronic or hard copy data to the SPA at the conclusion of the criminal case.

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During a defence examination within SPA facilities the defence expert may discuss scientific issues with SPA staff. This may involve clarification of the content of the SPA case file. As with a precognition, a brief review of the relevant case file contents will be provided only under supervision. As a general rule, copies of case notes or any other case file contents will not be permitted. It is also not permitted for the defence to take photographs of case notes or case file contents. However the defence examiner will be permitted to make their own notes based on the results within the case file.

The only photographs that the defence examiner will be permitted to take are those of the original productions. Photographs of photographs or Fingerprint Lifts taken by Forensic Services will not be permitted.

SPA staff will not provide access to case file contents which have not originated from, or are not owned by, the SPA.

The use of SPA Forensic Services specialist equipment by defence experts will not be permitted under normal circumstances however basic bench equipment may be provided.

If the defence examination is limited to the interpretation of electronic raw data from instrumental methods (eg. DNA profiles) and therefore does not require access to SPA facilities, this data can be provided upon request. If the defence forensic expert does not have access to the specialist software required to interpret such data, hard copy print outs may be provided (e.g. DNA electropherograms).

The supervising scientist's time and any time spent in the preparation of data / administrative work will be charged for at the rate of £100 per hour.