

# Legal Professional Privilege (LPP)

National Guidance

## Notice:

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## Introduction/purpose

In April 2020, the Lord Advocate published guidelines for officers relating to Legal Professional Privilege (LPP), Lord Advocate’s Guidelines. It is advised that all officers familiarise themselves with the guidelines which were drafted in consultation between Police Scotland, the Crown Office, and Procurator Fiscal Service (COPFS) and the Law Society of Scotland. Legal Professional Privilege (LPP) is the principle that a person must be able to consult their lawyer in confidence and that a communication between a person and their lawyer will not be revealed without the person’s consent. Professional firms, such as solicitors, accountancy firms and others, may hold material that is subject to LPP. COPFS must be consulted if material subject to LPP requires to be recovered.

LPP is a matter to be asserted by a client. It cannot be asserted by solicitors in the absence of instructions to do so, assuming that there has been time to take instructions. It will not apply if the material was produced as a result of an illegal act.

If it is anticipated that material seized from a professional firm is likely to contain LPP, the following steps must be taken;

* Advice should be sought from COPFS.
* Contact and discuss with the firm involved, if appropriate.

There may be the requirement for the appointment of an Independent Commissioner, the costs of which will be shared equally between Police Scotland and COPFS. An Independent Commissioner is appointed by the court to examine material to ensure it is not subject to LPP.

## Warrant Applications

For general guidance relating to warrants, refer to Warrants National Guidance.

Warrant applications submitted to COPFS for the premises of a professional firm, should include a strategy document which highlights the handling of material containing LPP.

The strategy document must confirm the following:

* The nature of the investigation (it must be clear whether the professional firm is suspected to be involved in the alleged criminality or hold the information pertaining to the criminal enquiry).
* The material being sought.
* Considerations for handling LPP material.
* What format the material is expected to be found, for example, hard copy, contained on devices.
* A strategy for dealing with both hard copy and digital material.
* If appropriate, timing of the proactive contact with the professional firm should be taken to allow time to separate LPP material, discussions should be formally recorded with particular reference to LPP material.
* Any decision not to intimate the execution of the warrant in advance must withstand any potential scrutiny. Reasons must be recorded fully within the strategy document.
* The strategy must highlight how material will be handled post execution of warrant.
* The warrant application must be presented to a sheriff by COPFS and not the Police Service of Scotland. The warrant application should not be presented to a sheriff in advance of the completion of the strategy document and only once agreed by COPFS.

Electronic Application to Procurator Fiscal for Sheriff Warrant (Form 146-020) should be used.

Legal Strategy for LPP to be attached to Electronic Application to Procurator Fiscal for Sheriff Warrant (Form 146-025) should be used to record strategy in respect of any items which may be subject to LPP. It should be completed and attached to any application in a case where it is considered that items subject to LPP may be recovered.

## Execution of Warrant - Management of Digital Material

Prior to search, consideration should be given to and recorded in the strategy document:

* The type and volume of evidence likely to be found.
* Whether it is possible to view and copy material at locus.
* The practicalities of seizing computer hard drives and other media and the impact on the firm.
* Where it is not feasible to obtain an image of digital material, the likely timescale of returning seized items.

Seizure of both digital and hard copy material may require the attendance of an Independent Commissioner and should be discussed with COPFS prior to execution of warrants.

## Handling of Material

Material identified as potentially subject to LPP should be lodged in line with Standard Operating Procedures and Productions National Guidance. This should include a recorded control of access.

No member of the investigation or prosecution team should have sight of material potentially subject to LPP. This also applies if material is seized which is potentially subject to LPP in other criminal proceedings.

Advice should be sought from COPFS regarding next steps which will include discussion with the professional firm and the requirement, if deemed necessary for the appointment of an Independent Commissioner.

## Key contacts

Information has been removed due to its content being exempt in terms of the Freedom of Information (Scotland) Act 2002, [Section 30](http://www.legislation.gov.uk/asp/2002/13/section/30), Prejudice to effective conduct of public affairs.

## Compliance record

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## Feedback

All Police Scotland service delivery Policies, Standard Operating Procedures (SOPs) and National Guidance are subject to regular reviews. It is important that user feedback is considered when documents are reviewed.

If any officer / staff member wishes to provide comment or make suggestions for improvements to this or any associated document, a Service Delivery Policy and Procedure Feedback Form (Form 066-014) should be used.