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WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR
ANSWER TO BE TABLED ON TUESDAY 20th NOVEMBER 2012

Question

What protections, if any, are afforded a complainant who consents to the use of confidential medical or counselling information in a criminal trial?

How are they made fully aware of the implications of agreeing to the use of such information?

Answer

The Attorney General has already answered oral questions relating to this matter on 6th November 2012.

The prosecution has a duty to disclose material that might undermine its case or assist the defence. This duty of disclosure is key to providing a defendant with a fair trial pursuant to Article 6 of Human Rights Law. A failure to discharge this duty can result in an acquittal.

In order to discharge this duty, the prosecution will typically need to review any medical records that may relate to a complainant in order to determine what, if any, of that material undermines it case or assists the defence. The complainant will be informed, when consent is sought, that the material may be disclosed to the defence and used at trial.

The prosecution lawyers will consider the medical records having regard to the disclosure test. If (and only if) the test for disclosure is satisfied, then the prosecution must either provide the documents to the defence or offer no evidence and thereby stop the case.

There are limits to the discussions that can be had with a complainant on this issue. A complainant can be properly informed that the material might be used by the defence during the trial. What the prosecution must not do is highlight particular parts of the medical records to the complainant and warn them as to what questions might be put in cross examination.