

January 2018

National Disclosure Improvement Plan

Foreword

The legitimacy of our criminal justice system relies on the process being fair and even-handed. The public rightly expects to see the guilty convicted, but it is equally important to avoid the wrongful conviction of the innocent.

The disclosure process provides a crucial safeguard within the system. The police have a duty to follow all reasonable lines of enquiry, whether they point towards or away from the suspect. Prosecutors must provide the defence with any material that undermines the case for the prosecution or assists the case for the accused. Proper disclosure is vital for there to be a fair trial.

The legislation that governs this process has been in place for a number of years, but the criminal justice system has struggled to get it right. Disclosure issues are systemic and deep-rooted. In recent years the challenge of discharging our statutory duties has been made more difficult than ever before by the widespread use of mobile phones and other communication devices. There are no simple solutions and the police service and Crown Prosecution Service must work together, engaging with the wider criminal justice system, for any action to be effective.

In his report into the failure of the authorities to properly disclose material in the Mouncher case, Richard Horwell QC said:

“Disclosure problems have blighted our criminal justice system for too long and although disclosure guidelines, manuals and policy documents are necessary, it is the mindset and experience of those who do disclosure work that is paramount.”

The Joint National Disclosure Improvement Plan (JNDIP) builds on detailed work over the past six months to agree an effective approach to meet this challenge. It seeks to address both the very practical issues that will result in improved disclosure as well as affect the change in mindset that Richard Horwell describes. It represents the shared commitment of our two institutions to make sustainable change to the way we exercise our duties of disclosure.

It is a joint plan, owned by the police service, the Crown Prosecution Service and the College of Policing and will succeed with senior leaders in all organisations adopting it and supporting its implementation.



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Background

The Criminal Procedure and Investigations Act (CPIA) has been on the statute books since 1996. This Act sets out clear guidelines as to the requirement to disclose relevant material that either undermines the prosecution case or assists the defence in their case. There is also a requirement in the legislation for the defence to provide the outline of their case in the defence statement so that further consideration can be given by prosecutors to any additional disclosure required. Managing disclosure is a fundamental part of an investigation and prosecution. It is essential that it is dealt with competently and fairly, with a thinking approach throughout.

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) conducted a joint inspection of the police and prosecution management of disclosure of unused material by the police service and the Crown Prosecution Service (CPS) during 2017. They generally found that specialist teams dealing with disclosure matters did this professionally and to a high standard. However, the inspection did identify a number of areas of concern in relation to volume crime investigations that would be heard in the Crown Court.

Several years ago a murder case managed by South Wales Police resulted in an extensive investigation into police corruption. The trial relating to this corruption case collapsed due to failings in the disclosure of sensitive material. This resulted in several reviews of what had failed in the case, in particular one by the Independent Police Complaints Commission (IPCC) and one by HMCPSI, with both making a number of recommendations. A number of these recommendations were adopted within the criminal justice system by the police and CPS. Following the conclusion of the civil court case into the collapsed trial, the Home Secretary commissioned Richard Horwell QC to investigate the overall response to these two reports and the recommendations contained within them. He prepared a report called the 'Mouncher Investigation Report' which was published in July 2017. Overall he identified the need for a change in culture when approaching disclosure, making it a fundamental and continuing part of all investigations.

Within the HMCPSI/HMICFRS and Mouncher Investigation reports, a total of 26 recommendations were made identifying a number of themes which include: training and accreditation, closer liaison and better information sharing between the CPS and the police, greater accountability, the handling of third party material and the adoption and use of a better digital case management system. The reports also identified challenges involving disclosure concerning digital technology, including social media.

Work has taken place within the CPS and the police service to address these recommendations but it is clear there is still more to achieve.

The Joint National Disclosure Improvement Plan sets out the further work needed to address the recommendations as well as to identify and prepare for future challenges. It does so under five themes: capacity, capability, leadership, governance and partnership.

The police service and the CPS welcome the Attorney General's review of existing Codes of Practice, protocols, guidelines and legislation on disclosure, and will contribute fully.

Capacity

Across the criminal justice system resources have been stretched as the nature of the crimes we investigate and prosecute continues to evolve. The intentions of the statutory disclosure scheme remain the same; principally, to assist the defence in the timely preparation and presentation of its case, and to enable the court to focus on all the important issues in the trial. But while the principles remain unaltered, the working practices of the police service and Crown Prosecution Service have had to respond to significant developments. There has been an explosion in the volume of digital material created in criminal investigations, with greater strain being placed on the capacity for CPS lawyers and individual officers to consider disclosure.

There is a significant resource implication to be considered concerning digital media collected during an investigation, which is invariably complicated due to the sophistication of mobile devices and the extremely large amount of data that requires capturing, analysing, reviewing and disclosing where appropriate.

Investigating officers are required to pursue all reasonable lines of inquiry, whether to exonerate or inculpate suspects, under the Code of Practice issued under the CPIA 1996. This will often include obtaining and analysing communication data originating from devices belonging to the complainant, the suspect and, on occasion, third parties.

Prosecutors should be alert to the critical importance of such evidence. Where such lines of inquiry have not been undertaken prosecutors should advise the police to pursue them.

There is a further significant resource implication in the capturing of third party material which also requires examining and disclosing where appropriate, particularly in the historical crime investigations which have increased dramatically over recent years.

There is great potential for the use of more advanced technologies in this area. We have identified areas where technology could help the disclosure process in providing advanced search tools, improved document and process management, content analysis and actually assessing the relevance of material.

We have:

- Started work on a joint protocol to deal with the identification, handling and disclosure of third party material. This will be published by March 2018.
- Developed a modernised interface to sections of the CPS case management system to make it easier for all users to find, sort and classify evidential material. Roll-out will commence in February 2018.
- Reviewed the police HOLMES computer system to ensure it allows for the correct handling, storage and disclosure of sensitive material.
- Developed a business case for funding, and started design activities, for a police Digital Evidential Transfer System (DETS). This will be a single national repository for multimedia seized by the police. ¹ This is expected to begin with pilots in 2018 and be fully live nationally in 2020.

¹ This was updated on 10 May 2018.

We will:

- Develop a joint protocol by March 2018 for the examination of digital media to include an agreement on each case between the disclosure officer and the prosecutor as to the reasonable lines of enquiry proportionate to each investigation.
- Develop best practice from the current CPS serious casework regime and extend this to other Crown Court cases. Disclosure Management Documents, which are routinely used in the casework divisions to identify the issues for the judiciary and the defence, will be used in all cases where there is a significant volume of material by March 2018.
- Provide all multimedia evidence from the CPS to the defence via direct electronic link by July 2018.
- Develop a cadre of specialist and experienced disclosure experts in every force, available to conduct sampling, local training and assistance in complex cases from February 2018.
- Establish a joint technology working group to explore the use of a range of digital tools to assist in the review of digital material by March 2018.

Capability

It is apparent from both the HMCPSI/HMICFRS and Mouncher Investigation reports that there is a lack of understanding concerning disclosure responsibilities within the police service and that, in volume Crown Court cases, prosecutors sometimes fail to challenge poor quality schedules and in turn provide little or no input to the police.

The CPIA clearly states that the duty to disclose information rests with the officer in the case or a designated disclosure officer. It is therefore imperative that all officers and police staff involved in investigations have a good working knowledge of the disclosure rules.

Disclosure issues need to be considered as an integral part of all investigations, rather than an additional responsibility added on at the end when preparing a prosecution file. It is recognised that the current training delivered is not successfully providing the appropriate learning outcomes for large sections of the police service.

The process by which disclosure is quality assured in the CPS has been reviewed to ensure that prosecutors positively engage with officers regarding issues relating to unused material at the charging stage of all cases. Both services need to learn from the significant reforms that have taken place in the most complex investigations.

We have:

- Refreshed the CPS Disclosure Manual. This clarifies how contact with witnesses should be recorded and disclosed. This will be published by February 2018.
- Provided all prosecutors with access to disclosure training via the Prosecution College.
- Initiated development of a suite of national standard forms covering third party material examination, retention and disclosure. These will be completed by June 2018.
- Refreshed the online training 'Fair Investigations for Fair Trials' provided to officers via the College of Policing.

We will:

- Deliver additional mandatory disclosure training through Chief Crown Prosecutors to all prosecutors in their Area by September 2018.
- Create national minimum standards on quality and content for the MG6 disclosure schedules. A memorandum of understanding between the police and the CPS will be published by March 2018.
- Review the current provision of disclosure training with the College of Policing and report by May 2018 with recommendations.
- Deliver regional awareness workshops with the College of Policing to address disclosure issues highlighted in recent cases from March 2018.
- Review, together with the College of Policing, whether there should be a requirement for officers to hold a Licence to Practice in respect of disclosure by January 2019.

Leadership

Examples of excellent leadership in relation to disclosure matters are apparent in many areas in England and Wales, although we recognise that this is not consistent throughout the whole of the CPS and police service.

Matters relating to disclosure have not generally been given the national profile or importance they merit on all levels of casework. We have started to redress this balance through the National Police Disclosure Working Group and its panel of disclosure experts, NPCC policing leads and CPS Disclosure Champions.

We have:

- Established CPS national and Area disclosure champions for our most complex casework. The Area champions provide an assurance for their part of the business through supporting the Chief Crown Prosecutors to complete disclosure assurance, taking forward strategic discussions with investigators and supporting training in their Areas.
- Appointed a NPCC lead for disclosure.

We will:

- Appoint CPS disclosure champions for the magistrates' court, the Crown Court and Rape and Serious Sexual Offences teams to work with those already appointed for Complex Casework Units in each Area by February 2018.
- Implement pre-charge case assurance discussions led by senior CPS legal managers with prosecutors in cases where there are likely to be significant disclosure complexities from February 2018.
- Develop a joint CPS/police disclosure improvement plan for each force and CPS Area reflecting local issues and national agreed priorities by February 2018.
- Appoint a nominated disclosure champion in each force at chief officer level by February 2018.
- Appoint force disclosure experts from each region to the National Police Disclosure Working Group by February 2018.
- Appoint a tactical disclosure lead at chief superintendent/superintendent level in each force by February 2018.

Partnership

The disclosure legislation and the issues that have been highlighted in recent failed cases and the various inspection reports highlight the need for a joint approach and close working between the police and CPS.

Action must be taken by the Police, the CPS and also by partners throughout the criminal justice system, in particular the defence community, to ensure the effective implementation of proposed measures designed to tackle the current challenges.

To assist in the management of the large amount of data that is now recovered in all levels of investigations, assistance and technical expertise should be sought from external providers as well as colleagues with the relevant technical knowledge.

We have:

- Held a disclosure seminar bringing together senior figures from across the criminal justice system to put forward solutions to the practical challenges of getting disclosure right in all criminal cases.
- Reviewed and amended the CPS disclosure assurance reporting to enable more rigorous assessment of performance in CPS Areas.
- Agreed improvement plans in a number of CPS Areas and this is now to be extended to all forces and CPS Areas.

We will:

- Establish by March 2018 a jointly led police and prosecution-led national disclosure forum with representation from all agencies, including the judiciary and the defence community, to focus on practical action that can and should be taken to improve performance on disclosure and guard against disclosure failures.
- Establish by March 2018 joint local CPS/police disclosure forums, where they do not exist already, to discuss and agree local themes and joint solutions.
- Establish criteria for the identification of appropriate cases that require examination by a joint CPS and police Case Management Panel where there are significant and complex disclosure issues by March 2018.
- Repeat the disclosure seminar we held with senior figures from the criminal justice system on a bi-annual basis.

Governance

It is recognised that nationally, very little joint governance between the CPS and police regarding disclosure is currently in place.

A mechanism needs to be implemented to review and monitor performance and to enable the sharing of learning throughout the police and CPS. Performance, compliance and quality must be monitored in order to identify both good practice and areas for improvement across the full range of casework.

We have:

- Started work on a joint CPS/police review of national crime file standards which will incorporate disclosure issues and amendments to working practices.
- Ensured that Individual Quality Assessments (IQA) in the CPS are completed by legal managers on a sample of cases each month drawing out learning and good practice. We have also now implemented disclosure-themed IQA.
- Set up CPS Area Casework Quality Committees (ACQCs) who give consideration to disclosure themes identified through the Individual Quality Assessment process.

We will:

- Establish a quarterly review of progress against this plan by the Director of Legal Services and National Police Chiefs' Council Lead on Disclosure.
- Include disclosure monitoring as part of the performance framework of every force.
- Introduce the revised disclosure assurance process in the CPS by February 2018. Compliance with the process will be assessed through the existing Area performance reviews.
- Reflect any work/actions identified by ACQC in CPS Area action plans and themes identified will be escalated to the National Casework Quality Committee.
- Use local police/prosecution team performance meetings will review progress against local action plans as a standing agenda item and review case-specific failures to ensure lessons are learned with immediate effect.
- Ensure that delivery against the commitments in this plan will be overseen by the National Police Chiefs' Council, the Director of Public Prosecutions and the College of Policing.