

MAKING IT FAIR

A JOINT INSPECTION OF THE DISCLOSURE OF UNUSED MATERIAL IN VOLUME CROWN COURT CASES

JULY 2017

HMCPSI
HMIC



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Making it fair: a joint inspection of the disclosure of unused material in volume Crown Court cases

FOREWORD

The importance of disclosure in the criminal justice system cannot be underestimated. This report has identified a number of aspects of concern in the way that Crown Court trials are handled by the prosecution, and how police and the Crown Prosecution Service (CPS) manage effectively unused material relating to ‘volume’ casework at that venue. Many of our findings are not new and many have been emphasised in previous reviews. Some action has been taken to address them, chiefly in relation to serious and complex crime, where significant disclosure inadequacies in a number of high profile cases have drawn strong criticism from the judiciary and attracted media interest. This concentration on serious casework in the Crown Court, promulgated by those at the top of both the CPS and police, has in turn resulted in a too narrow approach to the overall disclosure problem. In essence, a two-tier attitude towards disclosure has evolved, with significantly less attention being given to the volume cases that proceed through the Crown Court. These cases form the majority of the Crown Court’s work and on a human level involve the majority of victims.

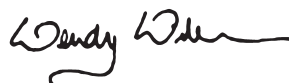
Within many of these cases a culture of acceptance exists amongst the parties involved in the disclosure process, who look for ways of working around its failings rather than fixing the root problems. The situation has not been helped by an over-prioritisation of the available resource on achieving deadlines under the Crown Court Better Case Management (BCM) process, rather than there being sufficient resource available to ensure disclosure is dealt with to the appropriate standard at the first opportunity.

This report does not suggest changes to the law or the BCM process. The Criminal Procedure and Investigations Act 1996 and the code that governs it have been commented on in many previous reviews as an effective piece of legislation. Equally, BCM affords ample opportunity for the disclosure process to work if the relevant parties comply with their disclosure requirements at the right time. The root of the problem lies in the practical application of the legislation that governs disclosure. A number of issues have been identified in relation to how disclosure is managed, each of which is a matter of concern and has elicited a separate recommendation. However, just as importantly as responding to each issue, is a need for a change in attitude to ensure that disclosure is recognised as a crucial part of the criminal justice process and that it must be carried out to the appropriate standards.

This will not be brought about by ‘top down’ pronouncements, but by the engagement of every single police officer and CPS prosecutor and paralegal officer involved in an investigation or prosecution to ensure that a common aim is achieved: a fair disclosure for a fair trial.



Kevin McGinty
HM Chief Inspector of the CPS



Wendy Williams
HM Inspector of Constabulary

1 SUMMARY

- 1.1 Disclosure of unused material is a key component of the investigative and prosecution process. It should be considered at the point where a criminal investigation commences, continue at the point of charge, and be at the forefront as the case progresses and at every subsequent court hearing. Every unused item that is retained by police and considered relevant to an investigation should be reviewed to ascertain whether its existence is capable of undermining the prosecution or assisting the defence case. If either factor applies, unless certain restrictions apply, it must be disclosed to the defence. The way that this disclosure process should take place is governed by the Criminal Procedure and Investigations Act 1996 (CPIA), by common law and by the Code of Practice and guidance.
- 1.2 This inspection has analysed the process in detail. It has reviewed volume Crown Court cases at random, as well as cases that have been identified by the CPS as failing because of an issue with disclosure. These file reviews have been supported by interviews and focus groups, surveys and unannounced Crown Court observations.
- 1.3 The inspection found that police scheduling (the process of recording details of both sensitive and non-sensitive material) is routinely poor, while revelation by the police to the prosecutor of material that may undermine the prosecution case or assist the defence case is rare. Prosecutors fail to challenge poor quality schedules and in turn provide little or no input to the police. Neither party is managing sensitive material effectively and prosecutors are failing to manage ongoing disclosure. To compound matters, the auditing process surrounding disclosure decision-making falls far below any acceptable standard of performance. The failure to grip disclosure issues early often leads to chaotic scenes later outside the courtroom, where last minute and often unauthorised disclosure between counsel, unnecessary adjournments and - ultimately - discontinued cases, are common occurrences. This is likely to reflect badly on the criminal justice system in the eyes of victims and witnesses.
- 1.4 This inspection has identified a number of reasons for this significant failure in the process of disclosure and they form the basis of our recommendations. There needs to be improvement in the training provided to police and in the supervision provided to both police and prosecutors. Although there is good training of prosecutors, it is not leading to commensurate performance improvement. There must be better communication between the two parties and in the information and communications technology (ICT) systems used to support the transfer of information. Equally, there needs to be a greater level of importance given to disclosure by those in key strategic roles in both agencies, especially for non-complex cases which form the majority of cases going to court. Above all, there needs to be a cultural shift that approaches the concept of disclosure differently, that sees it as key to the prosecution process where both agencies add value, rather than an administrative function. Only then will assurance be provided that the prosecution agencies are motivated in their desire for a fair trial, rather than one that focuses on the prosecution case and pays insufficient heed to potential evidence for the defence that lies within the unused material in their possession.

Recommendations

- 1 Immediately, police or CPS must correctly identify all disclosure issues relating to unused material at the charging stage and this must be reflected fully in an action plan (paragraph 3.3).

- 2 Within six months the CPS should comply with the Attorney General's Guidelines on Disclosure requirement and ensure that every defence statement is reviewed by the allocated prosecutor prior to sending to the police and that prompt guidance is given to the police on what further actions should be taken or material provided (paragraph 6.8).

- 3 Within 12 months the College of Policing should produce guidance on training that is of sufficient depth to enable police forces to provide effective training on the disclosure of unused material to all staff involved in the investigation process. The guidance, which may best be served by the use of classroom based or a similar form of interactive training, should concentrate on ensuring that staff fully understand their responsibilities in relation to the revelation of both sensitive and non-sensitive material and how to schedule material correctly (paragraph 10.4).

- 4 Within six months police forces should improve their supervision of case files, with regard to the handling of unused material. This process should be supported by the requirement for supervisors to sign the Disclosure Officer's Report each time this is completed (paragraph 10.9).

- 5 Within six months, the CPS Compliance and Assurance Team should commence six monthly disclosure dip samples of volume Crown Court files from each CPS Area, with the findings included in the CPS Area Quarterly Performance Review process (paragraph 10.12).

- 6 Within six months, all police forces should establish the role of dedicated disclosure champion and ensure that the role holder is of sufficient seniority to ensure they are able to work closely with the CPS Area Disclosure Champions using the existing meetings structure to ensure that disclosure failures are closely monitored and good practice promulgated on a regular basis (paragraph 10.15).

- 7 Within six months the CPS should provide a system of information sharing between the Areas and Headquarters that enables the effective analysis of Area performance on disclosure (paragraph 10.24).

- 8 Within 12 months, the police and the CPS should review their respective digital case management systems to ensure all digital unused material provided by the police to the CPS is stored within one central location on the CPS system and one disclosure recording document is available to prosecutors in the same location (paragraph 10.31).

- 9 Within six months, the CPS and police should develop effective communication processes that enable officers in charge of investigations and the allocated prosecutor to resolve unused material disclosure issues in a timely and effective manner (paragraph 10.33).

Good practice

1.5 Inspectors also noted two aspects of good practice:

1 One CPS Area identified a number of themes where disclosure was weak amongst its prosecutors and the police. As a result, CPS national training was adapted to focus on reducing the problems with a programme of training delivered across the Area. This included a webinar system in order to get the message to the widest police audience, which was well subscribed and positively received by police. The inspection found other examples of good partnership working between the CPS and police, including reviewing disclosure failures and joint training, in a bid to improve standards around disclosure (paragraph 10.6).

2 One CPS Area Disclosure Champion, recognising their limitations in dealing with so many prosecutors, delegated deputy roles to unit heads around the Area (paragraph 10.20).

2 INTRODUCTION

2.1 In its Annual Report and Accounts for 2015/2016, the Criminal Cases Review Commission stated:

*“In the past twelve months this Commission has continued to see a steady stream of miscarriages. The single most frequent cause continues to be failure to disclose to the defence information which could have assisted the accused.”*¹

2.2 This is a stark reminder of the crucial importance of the disclosure of unused material (hereinafter referred to as “disclosure”) within the prosecution process and echoes the comments made by the former Attorney General and the present Lord Chief Justice in their most recent guidance on disclosure:

*“Proper disclosure of unused material, made through a rigorous and carefully considered application of the law, remains a crucial part of a fair trial, and essential to avoiding miscarriages of justice.”*²

2.3 A number of reviews have been undertaken in recent years and all have delivered clear messages that the correct approach to disclosure is crucial to a fair trial – the process must be managed intelligently and in a “*thinking manner*”.³

2.4 Given the importance disclosure has for those involved in the criminal justice process, it is a matter of considerable disquiet that the Court of Appeal has recently handed down a number of critical judgments in relation to the management of unused material by the police and CPS.⁴

2.5 Whilst the importance of these Court of Appeal cases cannot be understated, even where there are not such significant legal and procedural failings, there can be little doubt that the failure to deal with disclosure appropriately can impact on the day to day efficiency of the criminal justice system.

2.6 The failures associated with these cases inevitably have a significant financial impact for the criminal justice system. This waste cannot be afforded at a time where considerable efforts are being expended on trying to improve efficiency, against a backdrop of budget reductions. Equally, each unnecessary adjournment is likely to have both a financial and an emotional cost to victims, witnesses and defendants alike.

2.7 It is with these issues in mind that a joint inspection by Her Majesty’s Inspectorate of Constabulary (HMIC) and Her Majesty’s Crown Prosecution Service Inspectorate (HMCPSI) on compliance with the disclosure of unused material provisions was agreed. In deciding what form the inspection should take, consideration was given to those recommendations which were most likely to have the greatest impact and improve performance across the criminal justice system. While HMCPSI’s unpublished review of CPS Complex Casework Units (CCU) management report in March

1 Paragraph 5, *Annual Report and Accounts 2015/2016*; Criminal Cases Review Commission; July 2016. <https://s3-eu-west-2.amazonaws.com/ccrc-prod-storage-1jdn5d1f6iq1/uploads/2017/01/CCRC-Annual-Report-and-Accounts-2015-16-HC244-Web-Accessible-v0.2-2.pdf>

2 Paragraph 1, *Attorney General’s Guidelines on Disclosure*; Attorney General’s Office; December 2013. www.gov.uk/government/uploads/system/uploads/attachment_data/file/262994/AG_Disclosure_Guidelines_-_December_2013.pdf and *Judicial Protocol on the Disclosure of Unused Material in Criminal Cases*; Judiciary of England and Wales; December 2013. www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Protocols/Disclosure+Protocol.pdf

3 Paragraph 4, *Attorney General’s Guidelines on Disclosure*.

4 *R v DS and TS [2015] EWCA Crim 662*; *R v Boardman [2015] EWCA Crim 175*; *R v R and Others [2015] EWCA Crim 1941*.

2011 revealed certain aspects of concern, it concluded that disclosure was generally dealt with well in those units:

“The handling of unused material is very strong in general terms. Lawyers are generally aware of the principles behind, and the detail of the CPIA regime, including the disclosure manual and the protocol on the handling of unused material in the Crown Court. All CCUs have an appropriate level of expertise in dealing with Preston briefings and other aspects of disclosure which do not commonly arise in other CPS units.”

- 2.8 Whilst the serious casework dealt with by the CCUs involved significant reputational risks to the organisations, their work represents only a very small percentage of the cases being dealt with at any one time by the agencies. Any recommendations that resulted from an inspection involving only CCUs were likely to be relevant to specialist teams alone.
- 2.9 As a result, a decision was made to undertake an inspection which focussed on Crown Court cases dealt with by the CPS at Area level, rather than within CCUs, and where the police officer in the case usually performed the role of disclosure officer as well. Whilst designated as non-complex many of these cases, in particular those handled by CPS Rape and Serious Sexual Assault (RASSO) units, carry significant reputational risk and include the type of work highlighted in two of the 2015 Court of Appeal judgments.

Methodology

- 2.10 The inspection included the examination of 146 Crown Court case files. These cases originated from various police teams, both specialist and non-specialist, and were dealt with at CPS Area level. It excluded casework dealt with by CCUs and the Central Casework Divisions. The cases were selected from two distinct sub categories:
- a random selection of 90 recently finalised Crown Court case files, including 36 RASSO cases. These cases have been used to assess how the disclosure process is currently implemented and will be referenced as Theme 1 throughout this report;
 - a sample of 56 finalised case files that were identified on the CPS computer system as unsuccessful outcomes or ineffective trials due to prosecution disclosure failings. These cases were selected from the period 2013 to 2016 and will be referenced as Theme 2 throughout.
- 2.11 The cases in both file samples were all contested and required the police to provide schedules of unused material and a supporting Disclosure Officer’s Report. The case file examination was supported by a series of focus groups and interviews with relevant staff in various roles and ranks within the police forces and CPS Areas,⁵ as well as interviews with strategic leads from the CPS and police at both regional and national levels. In addition, unannounced visits to Crown Court centres within these and other areas were conducted in order to view the disclosure process live. Finally, surveys were conducted with both prosecution and defence advocates in order to gain more far reaching feedback on the disclosure process.

5 Case file examination and other inspection activity occurred in the following CPS Areas: North West, London, Yorkshire and Humberside, and West Midlands and in these police forces: Metropolitan Police Service (London), North Yorkshire Police, West Yorkshire Police, Lancashire Constabulary, West Midlands Police, Greater Manchester Police (case file review only) and Staffordshire Police (case file review only).

3 THE DISCLOSURE PROCESS: INITIAL DISCLOSURE REQUIREMENTS

Early identification of disclosure issues

- 3.1 Effective handling of unused material and the early identification of potential disclosure issues are essential to ensure any problems in a case are identified and dealt with at the earliest opportunity. There may be some occasions when the prosecution, pursuant to surviving common law rules of disclosure, ought to disclose an item or items of unused prosecution material in advance of the statutory duty to disclose under CPIA. Such circumstances may include a witness's previous convictions or information that might affect a bail decision. There is also a duty on the police to provide the CPS with information that may mitigate the seriousness of an offence.⁶
- 3.2 Unused material issues that arise must be recorded on the Case File Evidence and Information form (MG6) under the section headed disclosure. This section draws specific attention to the requirement to identify at this early stage any relevant material that may assist the defence case or undermine the prosecution case.
- 3.3 The inspection found that the police and CPS are failing to properly identify and respond to disclosure issues prior to the charging decision. Ultimately this may mean cases going to trial in circumstances where, if disclosure issues had been identified earlier, they would have led to a discontinuance of the case. In our file examination, we found that there were obvious disclosure issues prior to charge in 81 of the 146 cases (55.5%) reviewed. Of those cases where issues were identified, the prosecution dealt with these issues fully in 24.7% of cases. In 37.0% of cases, they were only partially dealt with and in 38.3% of cases they were not dealt with at all. Where issues were fully identified by the prosecution team prior to charge, it was encouraging to find that in all except one such case, police did perform all relevant actions set down in the CPS charging advice. Conversely, where there were obvious disclosure issues and these were not gripped at an early stage, there was a knock on effect with little or no subsequent evidence of effective strategies being set up to deal with disclosure issues throughout the life of the case.

RECOMMENDATION

Immediately, police or CPS must correctly identify all disclosure issues relating to unused material at the charging stage and this must be reflected fully in an action plan.

⁶ Guidance as to occasions where such disclosure may be appropriate is provided in *R v DPP ex parte Lee (1999) 2 Cr App R 304*.

4 THE DISCLOSURE PROCESS: POLICE INITIAL DISCLOSURE RESPONSIBILITIES UNDER CPIA

- 4.1 Under the Criminal Procedure and Investigations Act 1996 (s. 23(1)) Code of Practice⁷ the officer in charge of an investigation, as well as being responsible for directing a criminal investigation, must also take on the role of disclosure officer unless a dedicated disclosure officer is appointed. The disclosure officer must examine all material retained by police during the investigation and provide to the prosecutor details of all unused material that is relevant to the case. This material should in turn be divided into sensitive and non-sensitive material. For cases going to trial at the Crown Court, the unused material should be brought to the attention of the prosecutor via the relevant disclosure schedules as part of the case submission process. In addition, the disclosure officer must submit a Disclosure Officer's Report (the MG6E) identifying to the prosecutor any material listed on either the non-sensitive or sensitive disclosure schedules, which satisfies the disclosure test in that it assists the defence case or undermines the prosecution case.

The scheduling process for unused non-sensitive material

- 4.2 The non-sensitive disclosure schedule (MG6C)⁸ requires the disclosure officer to list each item of unused material separately and consecutively and must contain sufficient detail to enable the prosecutor to decide whether they need to view the material before deciding whether or not it should be disclosed to the defence.⁹
- 4.3 Inspectors found that police are routinely failing to comply with this requirement. Only 18.9% of the Theme 1 cases examined contained an MG6C schedule judged to be fully compliant and 22.2% of schedules were judged to be wholly inadequate. The most prominent failing related to poor descriptions of items (67.1% of cases). Officers clearly lacked understanding of the rationale for providing good descriptions and often simply listed the item rather than explaining its content to assist the prosecutor in discharging their responsibilities under the disclosure test. In addition, many schedules had missing items of unused material (21.9%) which should have been scheduled. Inspectors found that in some police forces, officers were simply listing items required for routine revelation and nothing else.
- 4.4 An example of an MG6C with only reference numbers removed is overleaf.

7 *Criminal Procedure and Investigations Act Code of Practice*; Ministry of Justice; February 2015. www.gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice

8 The process used in the magistrates' court is different, although the provisions of the CPIA apply almost identically as in the Crown Court.

9 Paragraph 6.11, *Criminal Procedure and Investigations Act Code of Practice*.

1	CPS / JOINT ACPO DV CHECKLIST	ON FILE	CND
2	OASIS LOG: xxxxx	ON FILE	CND
3	OASIS LOG: xxxxx	ON FILE	CND
4	xxxxx - CRIME REPORT HEADER	ON FILE	CND
5	xxxxx - CRIME REPORT INVESTIGATION LOG	ON FILE	CND
6	xxxxx - CRIME REPORT HEADER	ON FILE	CND
7	xxxxx - CRIME REPORT INVESTIGATION LOG	ON FILE	CND
8	xxxxx - CRIME REPORT HEADER	ON FILE	CND
9	xxxxx - CRIME REPORT INVESTIGATION LOG	ON FILE	CND
10	ICIS CUSTODY RECORD - xxxxx	ON FILE	CND

CND Clearly not disclosable

- 4.5 One case reviewed related to an allegation of attempted rape by the defendant on a passer-by in a park. Extensive forensic, CCTV and witness enquiries had occurred, all of which should have been recorded and described, yet the MG6C listed only the emergency call to the police and the custody record.
- 4.6 In police focus groups, we identified a basic lack of knowledge by police of the disclosure and scheduling process, with officers failing to understand why they needed to provide good descriptions of material. There was also confusion amongst officers as to what constituted relevant unused material. It was apparent that many officers had a very narrow approach to relevancy, often providing only a minimum amount of material. Many appear to have been influenced by the College of Policing basic training on disclosure, which places much emphasis on whether an item of unused material has the ability to have a direct impact on the case, but less emphasis on the wider consideration of its potential to have some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case.¹⁰ The issue of training is discussed in greater detail later in this report.
- 4.7 Our findings were broadly reflected by the views of CPS prosecutors and defence solicitors whom we surveyed. 46.3% of CPS prosecutors rated the overall standard of police schedules as poor and only 9.3% rated them as generally of good quality. 73.1% of defence prosecutors surveyed believed that the schedules produced by the police were not of sufficient quality. Both groups also cited missing items and poor descriptions of items as the most prominent failings.

¹⁰ Fair Investigations for Fair Trials is a computer-based training package giving an introductory overview of the disclosure process. It was published by the College of Policing on 31 January 2017 via the Managed Learning Environment on the National Centre for Applied Learning Technologies (NCALT) part of the police computer system.

The scheduling process for unused sensitive material

- 4.8 The sensitive disclosure schedule (form MG6D) requires material of a sensitive nature to be listed on the schedule, along with sufficient details to explain why it is deemed sensitive, to enable the prosecutor to make an informed decision as to whether the material needs to be viewed prior to assessing whether the material fulfils the disclosure test.¹¹
- 4.9 Our findings show that the police do not understand what constitutes sensitive material and are routinely not scheduling sensitive material correctly. Whilst 60.0% of Theme 1 cases were rated as fully compliant, a large proportion of these related to cases where there was no sensitive material and the schedule simply reflected this. Of the cases that were not fully compliant (40.0%), the most common failure related to police incorrectly listing items on the MG6D which were either not sensitive or could be easily redacted of sensitive details and then placed on the non-sensitive schedule (55.6%). Examples included custody records, transcripts of emergency calls and records of previous convictions and cautions. In addition there were often poor explanations (19.4%) as to why the police asserted that an item was sensitive. Examples were also found of late or non-revelation of potentially undermining sensitive material (11.1% of cases) in circumstances where a miscarriage of justice was only narrowly avoided.

Case study

A defendant in a case of robbery refuted his guilt from the outset, claiming that the victim was a violent drug dealer who had actually robbed him. Neither at the point of charge nor upon receipt of the defence statement did the police or CPS make any enquiries to ascertain whether any intelligence existed to support his claim. The Crown Advocate subsequently reviewed the case just before trial, contacted police and received intelligence that confirmed the claims of the accused. As a result, the prosecution offered no evidence at court and the case was dismissed. The defendant had been remanded in custody for over six months and the defence subsequently submitted a formal complaint to the directorate of professional standards of the relevant force, on the grounds that crucial disclosure that undermined the prosecution case had not been forthcoming.

- 4.10 Inspectors also found a general lack of understanding of the meaning of sensitive material amongst officers. Many were unwilling to redact material and saw any document that contained personal details as automatically sensitive. Equally they were often ignorant of the processes behind sensitive material linked to intelligence matters and did not consider items such as information for warrants, surveillance authorities and intelligence reports when compiling sensitive schedules. Our focus groups demonstrated a general misconception held by a significant numbers of police officers, that any sensitive material revealed to the CPS would also be shared with the defence, whether deliberately or in error.

¹¹ Paragraph 6.14, *Criminal Procedure and Investigations Act 1996 Code of Practice*.

Identifying to the prosecutor any material listed on either disclosure schedule which satisfies the test for disclosure

- 4.11 The Disclosure Officer's Report (MG6E) requires all material that fulfils the disclosure test to be clearly identified in terms of which schedule it originates from and its item number on that schedule. An explanation should also be provided as to why the material fulfils the disclosure test. In addition, the disclosure officer must certify to the prosecutor that, to the best of their knowledge and belief, all relevant material which has been retained has been revealed to the prosecutor in accordance with the Code of Practice.¹² We found that in 33.3% of cases, an MG6E was either not supplied at all or was wholly inadequate in failing to highlight potentially disclosable material.
- 4.12 One case reviewed related to a drugs supply where there was sensitive material in existence which was detrimental to the prosecution case. A blank MG6E was submitted and the information only came to light at trial, causing the case to be dismissed. In another case involving sexual offences, previous allegations by the victim as well as counselling notes, which undermined the prosecution case, were not revealed by the police to the prosecutor and only came to light at trial, again leading to a discontinuance of the case

¹² Paragraph 7.2, *Criminal Procedure and Investigations Act 1996 Code of Practice*.

5 THE DISCLOSURE PROCESS: PROSECUTION INITIAL DISCLOSURE RESPONSIBILITIES UNDER CPIA

The prosecutor review of schedules prepared by the police

- 5.1 When the disclosure schedules are received by the CPS, it is the responsibility of the prosecutor to review the schedules thoroughly and identify any relevant material which may exist and which has not been revealed to them.¹³
- 5.2 Prosecutors are also expected to reject¹⁴ substandard schedules and insist that a fully compliant schedule is produced. We found little evidence of such challenge and a culture of acceptance appeared to prevail, where prosecutors tended to work with what they received. In our prosecution focus groups, it was apparent that prosecutors saw the issue of police scheduling as just too difficult to address. Police knowledge of disclosure was seen by the CPS prosecutors we spoke to as extremely poor. They also believed that standards were worsening as officers had less exposure to training and supervision. Additionally, prosecutors expressed concern over the tight deadlines for supplying disclosure to the defence imposed under the BCM process and of poor communication channels with police.

Case study

In an investigation of a rape allegation, police made extensive forensic enquiries at the crime scene, recovered CCTV and evidence of the defendant's use of an oyster card. These items were not used in evidence, yet only two items (the 999 recording and custody record) were placed onto the MG6C schedule. Inspectors noted that a crime report and a statement relating to the identification process were also sent to the CPS as part of separate correspondence, but were never added to the schedule. Despite these failings there was no challenge from the prosecutor.

- 5.3 Instead of challenging poor schedules, the file examination found a number of local practices which have emerged to try to work around the problems including:
- revelation of certain standard documents from police to the CPS well beyond those required to satisfy routine revelation, effectively passing the duty to describe and assess the items to the reviewing prosecutor;
 - prosecutors creating lists of unused items on letters to the defence which should have been placed on an MG6C;
 - blanket disclosure of poorly described items to the defence;
 - blanket non-disclosure whereby prosecutors endorse items on the schedules as not to be disclosed in circumstances where the descriptions are plainly inadequate and the reviewing prosecutor could not have known what the item contained; and
 - serving inadequate schedules as initial disclosure on the assumption that police would retrospectively remedy the schedule in time for the trial.

¹³ Paragraph 29, *Attorney General's Guidelines on Disclosure*.

¹⁴ Paragraph 30, *Attorney General's Guidelines on Disclosure*.

Making decisions and endorsing the schedules

- 5.4 Correctly endorsing decisions as to what should be disclosed or withheld is critical to holding an audit of the disclosure process, as well as explaining to both the police and defence why the decision has been made.
- 5.5 Not only did we find examples of poor quality schedules of unused material in our file sample, but we found evidence of poor decision-making by CPS prosecutors on the CPIA test for disclosure. The Theme 1 files showed that in relation to the CPS discharging its duty of initial disclosure and correctly endorsing the schedules, only 22.2% of files were of the required standard. Equally concerning was that 16.7% of endorsements were found to be wholly inadequate and 54.4% were only partially met, with prosecutors merely applying a simple endorsement rather than recording their rationale or reasoning.

Handling of sensitive material by prosecutors

- 5.6 Sensitive schedules must contain sufficiently clear descriptions to enable the prosecutor to make an informed decision as to whether or not the material itself should be viewed.¹⁵ Inspectors found the handling of sensitive material a cause for concern. There was often a lack of understanding by prosecutors over what sensitive material should appear on a schedule, especially when it related to intelligence-led investigations. Cases were identified where the disclosure officer had indicated that there was no sensitive material in existence, in circumstances where it should have been obvious that material should have been listed, but this was not challenged by the prosecutor.

Case study

One case examined related to charges of drug supply emanating from the execution of a search warrant. Information supporting the application for the warrant was not listed on the unused sensitive schedules. This is a standard form and its existence should have been identified by the prosecutor. Police did not come forward with the information until the day of trial, at which point the information was found to contain material that undermined the prosecution case and a very late discontinuance of the case occurred.

- 5.7 As with unused non-sensitive material schedules, we found that in a high proportion (41.1%) of the Theme 1 cases examined, the prosecutor failed to deal with sensitive material adequately. Prosecutors are failing to challenge poor scheduling of sensitive material by police and a culture of acceptance appears to prevail. Prosecutors would often not challenge why an item placed on the sensitive schedule could not be edited and placed on the non-sensitive schedule without compromising the sensitive nature of the material. It should be noted that in the 45.6% of cases where we found that the prosecutor fully complied, a large proportion of these were down to simply signing off a schedule which was blank because the disclosure officer stated there was no sensitive material.
- 5.8 The Criminal Cases Review Commission (CCRC) has referred a number of cases to the Court of Appeal which were subsequently quashed as a result of a failure to disclose material which affected the credibility of a witness. We also found eight cases in both our case file samples which had unresolved disclosure issues relating to witness credibility.

¹⁵ Paragraph 24, *Attorney General's Guidelines on Disclosure*.

6 THE DISCLOSURE PROCESS: ONGOING POLICE AND PROSECUTION DISCLOSURE AND THE DEFENCE STATEMENT

Ongoing disclosure responsibilities

- 6.1 The CPIA imposes a continuing duty on the prosecution team to disclose material which satisfies the test for disclosure.¹⁶ The disclosure officer is required to support the prosecutor, in that they must regularly review the unused material and provide updates on the MG6. If new material comes to light they must also provide further schedules and an accompanying Disclosure Officer's Report which is signed and dated and highlights any material which satisfies the disclosure test.
- 6.2 Whilst there were good examples of MG6s being used by some police forces as an effective means of communication between the officer in the case and the prosecutor, we noted that in those Theme 1 cases where an MG6 was submitted (86 files), only 40.0% were rated as good and in 13.3% cases they were rated as poor. It is crucial to a fair trial that the officer explains clearly to the prosecutor what material is outstanding and when it is likely to arrive. They must also deal with any issues that arise that cannot be scheduled, such as responses to queries from the defence and prosecution.
- 6.3 Inspectors were also concerned to find that some forces were not updating schedules and providing them to prosecutors when new material came to light, but were instead providing further unused material by way of correspondence. In one CPS Area it has become common practice between the police and CPS for the police to inform the prosecutor of disclosure issues on a further evidence or information form (MG20) without providing updates on the correct schedule. This effectively negated the officer's responsibilities as disclosure officer to provide both an effective description of each item and an indication as to whether the item passed the disclosure test, passing the burden on to the prosecutor to complete this task. Again, inspectors found that these issues were not challenged by the CPS. The MG6C is a critical 'living' document in the disclosure process and must be updated and circulated to prosecutors when new unused material comes to light.

The defence statement

- 6.4 Despite there being a requirement to continue to review the disclosure, in most cases the trigger for the next review takes place upon receipt of the defence statement (DS). The DS must provide the nature of the defence relied upon, the matters of fact upon which the accused takes issue with the prosecution, and any point of law which the accused proposes to take. Inspectors did not measure timeliness of DS submissions by the defence, but it was noted in many Theme 1 cases in the file sample that the DS was often served late and sometimes very close to the trial itself. However, inspectors did confirm that the majority (73.3%) of DSs were of sufficient quality for the prosecution to work with.
- 6.5 Upon receipt of the DS, the Attorney General's Guidelines on Disclosure state that:

*"Prosecutors should copy the defence statement to the disclosure officer and investigator as soon as reasonably practicable and prosecutors should advise the investigator if, in their view, reasonable and relevant lines of further enquiry should be pursued."*¹⁷

¹⁶ Section 7A Criminal Procedure and Investigations Act 1996.

¹⁷ Paragraph 31, *Attorney General's Guidelines on Disclosure*.

- 6.6 A DS was present in 76.7% of the Theme 1 cases we examined. It is to be expected that in all of these cases, in order to comply with the Attorney General's Guidelines, the DS must be routinely referred to a reviewing prosecutor for comment prior to sending to police. However, there is a national CPS instruction in place¹⁸ which states that the DS should be sent immediately to the officer in charge of the investigation and the prosecutor at the same time, which leads to the DS being received by the police without any consideration or input from a prosecutor. This arrangement was accepted by CPS prosecutors and caseworkers as normal practice, on the basis that prosecutors considered they did not get time to review the DS until the response had come back from the police. It was therefore no surprise that of those 69 files, only four (5.8%) were reviewed by a prosecutor prior to sending to the police. Inspectors are concerned that the current Disclosure Manual and CPS Crown Court Standard Operating Practice (SOP) are not aligned to the Attorney General's Guidelines on this subject.
- 6.7 Whilst late receipt of the DS may partly explain the need to send the statement promptly to the police, it is of concern that in doing so the CPS adds no value to this process. Reviewing the DS at the time of receipt would afford the reviewing prosecutor an opportunity to assess what the defence is (in some cases this will be the first time the defence proffer their case) and, if necessary, advise the police on any lines of enquiry to pursue. The failure to provide input has not gone unnoticed amongst police officers with whom we spoke. Officers stated that some of the statements they received were either inadequate or were a 'fishing expedition' and a lot of requests should have been challenged by the prosecutor. This cannot happen if, in compliance with the SOP, the DS is sent straight to the police on receipt.
- 6.8 After receipt of the DS, the disclosure officer must again look at all the unused material. As well as being mindful of their continuing duty of disclosure, they must particularly review material in the light of the issues identified in the DS and bring these to the attention of the prosecutor in an updated Disclosure Officer's Report.¹⁹ However, police failed to adequately identify any new disclosure in over a quarter (26.5%) of Theme 1 cases reviewed. This often led to unnecessary adjournments later at court when these issues came to light.

Case study

During one court observation, inspectors noted a case concerning a sexual assault on a child, where it was revealed that the complainant had earlier produced to the officer in the case a letter which contradicted their evidence later given to police in a statement. This new material had never been scheduled nor flagged up on an updated MG6E, though it clearly had the potential to undermine the prosecution case. It was only revealed to the prosecutor on the day before the trial and led to an unnecessary delay in the trial starting as these matters were resolved.

RECOMMENDATION

Within six months the CPS should comply with the Attorney General's Guidelines on Disclosure requirement and ensure that every defence statement is reviewed by the allocated prosecutor prior to sending to the police and that prompt guidance is given to the police on what further actions should be taken or material provided.

¹⁸ *Crown Court Casework Standard Operating Practice No:49.*

¹⁹ Paragraph 9.1, *Criminal Procedure and Investigations Act 1996 Code of Practice.*

7 TIMELINESS OF DISCLOSURE

- 7.1 BCM sets down a timetable for disclosure in contested Crown Court cases. Of the 90 cases read for the inspection, the prosecution did not discharge its disclosure duties in a timely manner in 54.4% of Theme 1 cases. The main reason identified by the prosecutors we spoke to was the late submission of defence statements and the subsequent delay caused in receiving responses from the police. Judges we spoke to confirmed that there were occasions when the defence supplied the DS late, but stated that often the items being requested by the defence should have been flagged up at the initial disclosure stage.
- 7.2 Judges spoken to expressed a lack confidence in the prosecution's ability to manage the disclosure process. This was supported by the file sample which showed that 81 of the 90 files (90.0%) required ongoing disclosure by the CPS and, of these, in 32.2% the prosecutor only partially complied with their duty of continuing disclosure and in 7.8% ongoing disclosure was not complied with at all. Fortunately these did not lead to a miscarriage of justice.

8 THE AUDIT TRAIL

8.1 A complete audit trail of actions and decisions setting out the prosecution disclosure process is crucial if the prosecution team is to ensure fair disclosure and fair trials. Disappointingly, our findings from our file examination suggest that there are significant failings at all stages of the recording process.

8.2 The disclosure record sheet (DRS) is the key document used by the prosecutor to record all decision-making and is effectively the audit trail for all disclosure matters pre and post-charge, for both sensitive and non-sensitive unused material. Despite the clear guidance and instructions on how to complete a DRS, our Theme 1 file sample revealed a less than effective approach to its use. Only 13.3% of cases contained a DRS which was marked fully satisfactory. It is a matter of serious concern that almost half of the cases (48.9%) were either deficient of a DRS or had one which was wholly inadequate.

8.3 Common failings included:

- the DRS containing no, or an inadequate, rationale behind disclosure decisions;
- an incomplete list of actions;
- brief descriptions of initial disclosure but no subsequent entries;
- no information on any interaction between the prosecuting advocate or defence;
- often no mention at all of sensitive material despite there being some in existence;
- no mention of discussions with the police; and
- no record of any disclosure taking place at trial.

8.4 An example of a poor DRS which only had two entries and involved a case of domestic abuse:

Date	Events and actions
xx xx	Receipt of Defence Case Statement
xx xx	Sent Defence Case Statement

8.5 Line managers at the CPS, and the reviewing prosecutors that we spoke to, claimed that although they knew it was a requirement to complete the DRS, they lacked the time to do so and found the system cumbersome. One prosecutor stated in response to our survey that they considered that the “*DRS is a luxury*”. Even where considerable work had gone into fulfilling the requirements of the disclosure process, prosecutors often failed to record their actions and there was very often no coherent audit trail to demonstrate it.

8.6 Inspectors failed to find in any of the cases reviewed, evidence on the DRS that disclosure discussions or decisions had been made at court. However, in the course of the inspection a number of courts were visited to observe the start of trials and such discussions were routinely witnessed. Furthermore, we found little or no evidence of any recorded feedback from counsel with regards to disclosure actions taken at court. We also found no evidence of any follow up

by the CPS in order to complete the audit trail. It was clear that counsel was frequently making decisions on disclosure during the trial without these being referred back to the reviewing prosecutor and which were not being recorded on the CPS file.

Case study

During a fraud investigation, police seized a number of documents. It transpired that some of this evidence (documents and interviews of witnesses) was retained by the police but not revealed to the prosecution. The defence questioned the existence of this material in a defence statement which was served shortly before trial. The police then proceeded to reveal over 50 previously undisclosed pages of material. This was not, however, added to a schedule, but submitted to the defence by the prosecutor by way of a series of letters. None of the additional items was ever recorded on a DRS. Defence counsel then complained that there was no clear method of determining if everything had been disclosed. The prosecution had no official audit of the disclosure process to reassure the court it had done so. The judge removed the case from the list and put it off to allow the CPS to complete the exercise.

- 8.7 Police officers we spoke to at court confirmed that they were regularly having to take full paper files to court to deal with last minute requests for disclosure by either prosecution or defence counsel. The general feeling amongst police officers is that they are being asked to hand over more unused material than is required in law to ensure the trial proceeds.
- 8.8 Our observations confirmed the practice of last minute counsel to counsel disclosure despite this being contrary to the Attorney General's Guidelines.²⁰ Additionally, there were no records kept on the CPS case management system (CMS) of disclosure decisions either being made in writing to the prosecutor as is required, or discussed with a CPS prosecutor.

Case study

At court inspectors observed a trial where the defendant was stopped near to the scene of a burglary. He was in possession of a chisel and it transpired that chisel marks were found on the window of the attacked property. The MG6C contained standard items including the 999 call, but no mention of forensics or the investigation undertaken by the scenes of crime officer (SOCO). At trial the defence opened on the basis there was no damage to the window (as no evidence had been served to suggest this). The judge made enquiries with the prosecution and it was revealed that there was in fact damage, but that the chisel held by the defendant did not appear to have caused it. The jury had to be discharged as their view of the case had been distorted. In preparation for the new trial, inspectors noted that CMS showed that, even after criticism by the judge for not putting the items on an MG6C, the officers continued to pass documents to the CPS in the form of a letter.

²⁰ Paragraph 38, *Attorney General's Guidelines on Disclosure*.

9 CASES DISCONTINUED AS A RESULT OF DISCLOSURE ISSUES

- 9.1 As previously mentioned, in addition to the examination of 90 random recent Crown Court cases (Theme 1), the inspection team looked specifically at a further 56 finalised cases (Theme 2) where disclosure was stated to be the main reason for discontinuance. Inspectors found a number of common themes between the two file samples.
- 9.2 Inspectors were informed during interviews with both police and CPS staff that they believed the main causes for poor disclosure practices were down to limited resources and lack of time. However, given some of the files examined pre-dated the BCM process, it is clear that these are issues are long standing, predating recent budget reductions.
- 9.3 Equally, inspectors found that the outcome for 23 of the Theme 2 cases (41%) was incorrectly recorded (for example, some did have disclosure issues but the case was stopped for other reasons). The poor finalisation recording means that it is impossible to determine the true scale of disclosure failures over and above those identified by inspectors.

10 THE SUPPORT MECHANISMS BEHIND THE DISCLOSURE PROCESS

- 10.1 Whilst our inspection has identified a number of key failings in the disclosure process, none was found to be attributable to the existing law, procedure or guidance. It would, however, be helpful to practitioners to have all the guidance in one place to assist in removing confusion. The CPIA is acknowledged by this, and previous, reviews as an effective piece of legislation. Instead, the issues that inspectors have identified can be attributed to weaknesses in the training, supervision and quality assurance mechanisms that should exist to ensure the smooth running of the disclosure process. Additionally, a number of issues have been identified that affect both the ability of prosecutors and police to communicate effectively and in the effectiveness of the ICT system used to send information between the two parties.

Training

Police

- 10.2 The College of Policing describes its function as “*to provide those working in policing with the skills and knowledge necessary to prevent crime, protect the public and secure public trust*”.²¹ In relation to providing adequate training on disclosure, it is our view that it is not fulfilling this responsibility. The basic online training package currently offered is confusing and lacks sufficient detail of the process. The College has recently released a video-graphic which aims to provide an elementary understanding of relevancy and the disclosure test. Whilst this product has been well received by forces across the country, the College offers little outside of the disclosure training contained within the national accreditation programme to enable police officers to understand fully the requirements of disclosure officer in any criminal investigation.²²
- 10.3 As a result, the majority of police forces are simply not providing adequate training for their officers, especially those who have not recently qualified through the PIP process,²³ or who are in investigative roles but not qualified detectives. Police officers spoke of a lack of knowledge on disclosure and lacked confidence in their role and responsibilities as the disclosure officer. This was echoed by prosecutors across the CPS who expressed deep concern at the lack of knowledge and correct application of disclosure principles by officers completing case files.
- 10.4 Some forces are providing training, but given the lack of direction at a national level this has led them to design their own bespoke courses. This is commendable, but risks duplication of effort across individual forces and creates a potential for inaccuracy and inconsistency. Some forces report that they have previously engaged experts who have provided training which was subsequently shown to be wrong, for example in relation to how the test of relevancy should be applied, leading to confusion amongst officers and subsequent disagreement with prosecutors. In the absence of any central guidance this confusion around the principles of disclosure will remain in place.

21 About us, College of Policing website. www.college.police.uk/About/Pages/default.aspx

22 The graphic is accessed via the Managed Learning Environment on NCALT. www.ncalt.com

23 Professionalising the Investigation Process (PIP) is a national detective training accreditation course.

RECOMMENDATION

Within 12 months the College of Policing should produce guidance on training that is of sufficient depth to enable police forces to provide effective training on the disclosure of unused material to all staff involved in the investigation process. The guidance, which may best be served by the use of classroom based or a similar form of interactive training, should concentrate on ensuring that staff fully understand their responsibilities in relation to the revelation of both sensitive and non-sensitive material and how to schedule material correctly.

CPS

- 10.5 Conversely, the CPS runs a variety of courses designed for prosecutors of varying experience and delivered either by e-learning via its Prosecution College, or through face to face delivery. It is mandatory for all prosecutors to take the foundation course in disclosure, which as the name suggests, covers the principles and practices of disclosure. A number of other courses, including on advanced and complex disclosure issues, have been made available at a national level by the CPS Learning and Development Team. Prosecutors in focus groups and their managers confirmed that comprehensive training had been delivered to all prosecutors in the Areas we visited, as well as refresher training. A number of prosecutors within the Areas, including the Complex Casework Units (CCUs) and RASSO teams, additionally received complex disclosure training and were available to offer their assistance to less experienced colleagues.
- 10.6 One piece of good practice identified was in a CPS Area which identified a number of themes where disclosure was weak amongst its prosecutors and the police. As a result, CPS national training was adapted to focus on reducing the problems with a programme of training delivered across the Area. This included a webinar system²⁴ in order to get the message to the widest police audience, which was well subscribed and positively received by police. The inspection found other examples of good partnership working between the CPS and police, including reviewing disclosure failures and joint training, in a bid to improve standards around disclosure, but it was inconsistent across the Areas.

Supervision of the disclosure process

Police

- 10.7 Supervision of standards is important in ensuring compliance in any system, but this is clearly not happening within the disclosure process. Officers in charge of investigations have line managers who have a responsibility for the supervision of cases but, by their own admission, they often lack both the knowledge and training on disclosure necessary for them to supervise effectively. Their position is further weakened by a staged system of case files submission under BCM which does not require any active supervision in the form of a supervisory signature at the point the disclosure schedules are completed.
- 10.8 Some forces have introduced quality control mechanisms, often within a case management unit (CMU), where unused schedules are completed by case administrators rather than the officer in charge of the investigation and are then checked by a supervisor prior to submission to the CPS. This system has been shown through the case reviews to improve the quality of entries on both the non-sensitive and sensitive unused schedules. However, this inspection

²⁴ A live online educational presentation during which participants can submit questions and comments.

stops short of recommending that forces adopt this type of system as by not involving the officer in charge of the investigation, who has access to all unused material, there is a risk items relevant to the investigation may be missed. More importantly, the officer in charge is best placed to assess the capability of the material to assist the defence or undermine the prosecution case. At the same time, whilst the quality of the descriptions in the schedules had improved, the quality of the Disclosure Officer’s Report was often no better than those completed by the officer in charge of the investigation, therefore neutralising the positive impact of such units.

- 10.9 The lack of supervision is a significant cause for concern and was supported by our file read, which showed that out of a total of 146 files, 114 (78.1%) were either poor or fair.

Rate the overall quality of handling of unused material by the police	All files (%)	Theme 1 (%)	Theme 2 (%)
Excellent	0	0	0
Good	22	28	12.5
Fair	36	43	25
Poor	42	29	62.5

RECOMMENDATION

Within six months police forces should improve their supervision of case files, with regard to the handling of unused material. This process should be supported by the requirement for supervisors to sign the Disclosure Officer’s Report each time this is completed.

CPS

- 10.10 The CPS operates a quality assurance programme of legal decision-making known as Individual Quality Assessment (IQA). It is of note that the IQA provides for a very limited number of assessments per year of how disclosure issues are handled by prosecutors. While the IQA process has 28 questions on casework handling, there is only one generic question which relates to disclosure. Further, managing prosecutors spoken to confirmed that they were struggling to meet their commitment to the IQA process due to the weight of work required to manage their units, with the result that often the targets were not met. HMCPSI plans to undertake a detailed review of IQA in 2017-18.

- 10.11 The CPS Compliance and Assurance Team carries out an analysis of IQA results and provides workshops which focus on improving the quality of IQA assessments. It also assists managers by ensuring that meaningful feedback is given. Whilst this is important, the opportunity needs to be taken to place a greater emphasis on the disclosure process. A regular dip sample of files across the Service specifically on the disclosure process would improve the awareness of disclosure issues as they arise and provide better analysis.

10.12 The table shows our overall assessment of CPS performance in relation to disclosure issues, based on our file sample findings.

Rate the overall quality of handling of unused material by the CPS	All files (%)	Theme 1 (%)	Theme 2 (%)
Excellent	0	0	0
Good	23	27	18
Fair	44	50	34
Poor	33	23	48

RECOMMENDATION

Within six months, the CPS Compliance and Assurance Team should commence six monthly disclosure dip samples of volume Crown Court files from each CPS Area, with the findings included in the CPS Area Quarterly Performance Review process.

10.13 Inspectors were also concerned to see that files which had an adverse outcome recorded at finalisation, had no evidence on the file of a report being completed to identify and address the failings in the case. Without capturing these issues, either by dip sampling or adverse outcome reports, the opportunity to identify these issues are lost.

Strategic oversight

Police

10.14 Whilst the role of national disclosure lead at chief officer level exists, its importance has waned in recent years and it is only recently and predominantly in response to the recommendation in the Mouncher report²⁵ that the national disclosure working group has been re-invigorated. This group aims to promote both a consistent approach and good practice in relation to disclosure and it is noteworthy that it is currently working closely with the CPS to update the Disclosure Manual of Guidance.

10.15 Within forces the role of disclosure champion, if it exists, is fulfilled by a variety of different ranks and roles and examples found during our inspection included: a dedicated disclosure manager, the head of Criminal Justice, a proactive detective chief inspector and a chief officer. The seniority of the person undertaking the role of disclosure champion was often commensurate with the level of criticism or adverse publicity a force had received in relation to disclosure failures at court. At the same time, emphasis was predominantly placed on serious and complex investigations, in the assumption that failure in such cases would cause greater reputational damage to forces. It appeared to inspectors that little concern was given to improving the knowledge or ability in disclosure of those officers conducting volume investigations.

²⁵ *Review into the disclosure handling in the case of R v Mouncher and others*; HMCPSI; May 2013. www.justiceinspectorates.gov.uk/hmcpsi/inspections/disclosure-handling-in-r-v-mouncher-and-others-south-wales/

RECOMMENDATION

Within six months, all police forces should establish the role of dedicated disclosure champion and ensure that the role holder is of sufficient seniority to ensure they are able to work closely with the CPS Area Disclosure Champions using the existing meetings structure to ensure that disclosure failures are closely monitored and good practice promulgated on a regular basis.

CPS

10.16 The CPS, as a single national organisation in contrast to the 43 police forces of England and Wales, has established dedicated Disclosure Champions at both national and regional levels. Whilst this structure has enabled it to achieve a consistency of grade for those undertaking the role inspectors found that not dissimilar to the police, there is an inconsistent and at times ineffective response to the regulation of disclosure issues, especially in relation to volume Crown Court cases.

10.17 The National Disclosure Champion regards her role as multifaceted, including:

- building and maintaining the CPS relationship with police at a national level;
- engagement with CPS Areas at Chief Crown Prosecutor (CCP) level;
- engagement with the judiciary;
- co-ordinating national initiatives (such as the revision of the new Disclosure Manual);
- working with the local Area Disclosure Champions;
- reviewing the six monthly Disclosure Assurance Reports and referring matters of concern to the Director of Public Prosecutions (DPP) where appropriate.

10.18 However direct responsibility for, or overview of, operational performance is for CCPs and CPS Area Disclosure Champions.

10.19 Area Disclosure Champions are experienced prosecutors and frequently, but not exclusively, heads of the Area CCUs. There is variation in how they undertake their roles across the Service. Whilst they all provide support and advice to colleagues, there is frequently a lack of connection to the operational delivery of volume Crown Court casework. During interviews with the Area Disclosure Champions, we asked how the disclosure process is quality assured and they pointed to the CPS IQA process. However, they had little or no connection to the IQA process and confirmed that they did not personally dip sample files. The Disclosure Champions frequently see their role as ‘a legal lead’, rather than a manager that scrutinises performance measures.

10.20 An example of good practice was noted in one Area, where the Area Disclosure Champion, recognising their limitations in dealing with so many prosecutors, delegated deputy roles to unit heads around the Area. The expectation was that the unit heads would feed local issues up to the Area Champion. It did, however, fall short of using dip sampling to identify poor practice.

- 10.21 Each CPS Area Disclosure Champion provides a six monthly report to the National Disclosure Champion known as the Disclosure Assurance Report (DAR). This report provides an overview of the Area's performance in relation to governance regimes, strategic meetings, police issues, analysis of IQA and highlighting good practice, and is agreed with the Area CCP. The reports are analysed by the National Disclosure Champion (working with CPS policy advisors) and the DPP is briefed from these documents. The CCPs receive general feedback on these reports and specific feedback is provided where there is anything of more local relevance.
- 10.22 Based upon interviews with Disclosure Champions and the National Disclosure Champion it is clear that, although the DAR process has the capacity to capture the significant aspects of poor performance, our inspection has identified there are clearly missed opportunities to rectify common issues and learn lessons. A 'realistic' approach, which includes analysis of case files, needs to be taken concerning the role of the Area Disclosure Champions and how they complete the reports.
- 10.23 The National Disclosure Champion (and policy advisors) needs to challenge the Areas with greater rigour regarding the contents of their reports and ensure that an evidential basis is provided for the assessment of performance. There is currently an over-reliance on standard templates and acceptance of assertions from the Area. Whilst the CPS clearly appreciates the risks associated with disclosure handling in high profile or sensitive cases, there needs to be a greater balance reflected within the DAR process between 'serious' and 'volume'.
- 10.24 Inspectors are of the view that the report needs to provide sufficient evidential detail to enable the Headquarters team to undertake an analysis of the effectiveness of the IQA process and to understand the nature and significance of any issues that are raised.

RECOMMENDATION

Within six months the CPS should provide a system of information sharing between the Areas and Headquarters that enables the effective analysis of Area performance on disclosure.

Information and communications technology

Police and CPS

- 10.25 Whilst the CPS operates a national electronic case management system called CMS, the majority of police forces possess standalone case management systems, each of which is required to interface separately with CMS. We found that in relation to disclosure, a number of aspects of these police systems were problematic and, in addition, police officers' lack of understanding of how the systems worked compounded the issues.
- 10.26 There is a lack of available memory on the majority of police systems which prevents larger documents from being sent as part of an electronic file package. As a result unused material is often sent separately to a generic email address, to which local prosecutors will have access. These documents are also often poorly labelled, requiring prosecutors to trawl through lists of unnamed documents trying to locate those pertinent to their case. The net result is that items are mislaid or even lost, causing delay and frustration later at court. Equally the items are often sent through as scanned rather than Word documents, causing problems with redaction and editing.

- 10.27 In addition, whilst our findings have shown that police officers and staff are not completing unused schedules to an acceptable standard, the quality of submissions is often hindered rather than helped by available technology. Some electronic case management systems used by forces include drop-down menus as an aide to identifying key documents that need to be listed on the schedules, especially those required under routine revelation. As a result, officers often fail to consider other items in their case, instead simply ticking the pre-populated fields and attaching the items. Equally it is often not possible to continue, as required, the consecutive numbering of items when completing new schedules, either in response to a defence statement or when new relevant unused material comes into the investigation. This can lead to different items on different schedules having the same number, which in turn can lead to confusion, especially when trying to identify specific items that have been placed on the disclosure certificate as being capable of assisting the defence case or undermining the prosecution case.
- 10.28 The handling of sensitive material using existing digital systems also poses problems. Existing systems are not sufficiently secure to deal with sensitive material marked above restricted. The result is that both agencies often operate a dual system of electronic and paper systems as a work around. We found examples where there was clearly sensitive material in existence, but it could not be found on CMS either as a document or even as a record in the DRS.
- 10.29 The DRS is a living document and is held on CMS. It should, at a glance, inform the reader or auditor of the up-to-date position in any given case. The present system uses a Word document template generated in CMS. After generating the first template, subsequent entries are added but the user must not dispatch the document pack. If users do, it will require a further DRS to be generated, which then causes confusion. We found that finding multiple DRSs was not uncommon.
- 10.30 At the time of the inspection, we found there was inconsistency in the way disclosure material is uploaded and stored on CMS, which often made it very difficult to review the material thoroughly and effectively. A number of prosecutors and managers at the CPS wanted to have one place to find all the unused material (similar to a tab) in which would also be found one DRS.
- 10.31 The effectiveness of CMS is also a cause for concern. Staff told us it is a difficult system to navigate and leads to user errors. This lack of proper user record keeping, coupled with weaknesses in the CPS case management system, made it extremely difficult to put together an audit trail of decision-making in a large number of the cases examined. This was a serious cause for concern as it was likely to lead to disclosable items not being revealed or disclosed.

RECOMMENDATION

Within 12 months, the police and the CPS should review their respective digital case management systems to ensure all digital unused material provided by the police to the CPS is stored within one central location on the CPS system and one disclosure recording document is available to prosecutors in the same location.

Communication between the police and CPS

Police and CPS

- 10.32 As a final point, it is important to acknowledge that the ability to maintain a good working relationship between the police and CPS requires ongoing communication. The Attorney General's Guidelines promote discussion between the agencies, both at an early stage and during the life of the case. However, communication is hampered by lack of availability through varying shift patterns, lack of time and lack of resources. The result is that beyond file submissions and formal updates, which as we have seen are often poor, there is very little contact between the officer and prosecutor in the case. Police perceive the CPS as remote and officers struggle to gain access to the prosecutor assigned to their case. Often disclosure decisions are made in the absence of discussion, leading the police to mistrust the prosecutor.
- 10.33 At the same time, prosecutors spoken to confirmed that regular contact with the case officer would be extremely beneficial, yet they struggled to catch the officer whilst on duty. Communication is usually left to electronic means such as email, with often a delayed response or no response at all between the parties. Improving the method of communication would go some way to dispel myths and would improve the trust between parties and enable the early resolution of potential disclosure issues.

RECOMMENDATION

Within six months, the CPS and police should develop effective communication processes that enable officers in charge of investigations and the allocated prosecutor to resolve unused material disclosure issues in a timely and effective manner.

11 CONCLUSION

- 11.1 Given the failings in the disclosure process uncovered in this inspection this report aims to articulate not only those failings but also to produce, in a practical format, the key requirements that will enable the police and prosecution to fulfil their collective responsibilities under common law, the CPIA and the Code of Practice and guidance. In doing so it is hoped that this report will stimulate a real drive for improvement rather than, as appears to have occurred with previous reports, be seen as another academic account of a complex legal concept which may be quickly forgotten. For there to be any chance of improvement the whole concept of disclosure must be demystified and efforts made, through improved training and supervision, to emphasise its crucial importance as an integral part of the case management process, which is designed to secure a fair trial and a just outcome for both the defendant and victim.
- 11.2 The correct handling of unused material is essential if the criminal investigation and trial process is to be fair and just. The Criminal Cases Review Commission is concerned at the number of cases it has to deal with in which disclosure is a serious issue. The courts are wasting time dealing with last minute attempts to deal with unresolved disclosure issues and victims, witnesses and defendants are all receiving a less than acceptable service as a result. The criminal justice system and the attempts to make it more effective and efficient through the Better Case Management and Transforming Summary Justice programmes are being undermined by disclosure failings.
- 11.3 Whilst the disclosure regime is not complicated or difficult, this inspection has identified a number of issues which demonstrate non-adherence to the disclosure process. Rather than addressing non-compliance, our inspection has found a continuing decision by the police and CPS to accept the risk associated with poor disclosure practices and procedures in respect of disclosure handling for volume Crown Court work.
- 11.4 Non-compliance with the disclosure process is not new and has been common knowledge amongst those engaged within the criminal justice system for many years and it is difficult to justify why progress has not previously been made in volume crime cases. Until the police and CPS take their responsibilities in dealing with disclosure in volume cases more seriously, no improvement will result and the likelihood of a fair trial can be jeopardised.

ANNEX A - GLOSSARY

Better Case Management (BCM)

The majority of cases sent to the Crown Court now come under BCM principles and procedures. The aim of this initiative is to ensure there is a single, effective hearing before trial, known as the plea and trial preparation hearing (PTPH). The PTPH is normally expected to take place 28 days after the case has been sent from the magistrates' court. The maximum time allowed in special circumstances is 35 days. Key to making BCM work effectively is early pre-trial engagement between defence practitioners and the CPS once a case has been sent from the magistrates' court. The implementation of BCM is supported by the introduction of the Crown Court Digital Case System (DCS).

Case management system (CMS)

ICT system for case tracking and case management used by the CPS.

Case management unit (CMU)

A specialist police department that has the responsibility to manage the submission process for all charged and summonsed prosecution files emanating from offences committed within a police force.

Caseworker

A member of CPS staff who deals with, or manages, day to day conduct of a prosecution case under the supervision of a Crown Prosecutor and, in the Crown Court, attends court to assist the advocate.

Chief Crown Prosecutor (CCP)

One of 16 chief officers heading the local CPS in each Area. Has a degree of autonomy but is accountable to the DPP for the performance of the Area.

Code for Crown Prosecutors (the Code)

The public document that sets out the framework for prosecution decision-making. Crown Prosecutors have the DPP's power to determine cases delegated, but must exercise them in accordance with the Code and its test – the evidential stage and the public interest stage. Cases should only proceed if, firstly, there is sufficient evidence to provide a realistic prospect of conviction and, secondly, if the prosecution is required in the public interest. (see also *Evidential test* and *Public interest test*)

Code of Practice

The framework for undertaking the duties of disclosure issued under section 23 Criminal Procedure and Investigations Act 1996.

College of Policing

Established in 2012 as the professional body for everyone who works for the police service in England and Wales. The purpose of the College is to provide those working in policing with the skills and knowledge necessary to prevent crime, protect the public and secure public trust.

Committal

Procedure whereby a defendant in an either way case is moved from the magistrates' courts to the Crown Court for trial, usually upon service of the prosecution evidence on the defence, but occasionally after consideration of the evidence by the magistrates.

Complex Casework Unit (CCU)

A CPS team of experienced specialist lawyers, paralegal officers and administrators who work in collaboration with police forces to tackle serious, organised and cross-border crime.

Court of Appeal

The highest court within the Senior Courts of England and Wales, it deals only with appeals from other courts or tribunals. It is divided into two Divisions, criminal and civil, and is based at the Royal Courts of Justice in London.

CPS Direct (CPSD)

The CPS Area which takes the majority of CPS decisions as to charge under the charging scheme. Lawyers are available on a single national telephone number so that advice can be obtained at any time.

Criminal Cases Review Commission (CCRC)

The statutory body responsible for investigating alleged miscarriages of justice in England, Wales and Northern Ireland. It was established by Section 8 of the Criminal Appeal Act of 1995 and began work on 31 March 1997. The Commission is the only body in its area of jurisdiction with the power to send a case back to an appeals court if it concludes that there is a real possibility that the court will overturn a conviction or reduce a sentence.

Criminal investigation

An investigation conducted by police officers with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it.

Criminal Procedure and Investigations Act 1996 (CPIA)

Came into effect on 1 April 1997 and introduced a statutory framework for the disclosure of material to defendants which the prosecution did not intend to use as evidence in its case. This is known as unused material. Previously there had been no statute governing the disclosure of unused material, only common law rulings.

Crown Prosecution Service (CPS)

The principal prosecuting authority in England and Wales responsible for prosecuting criminal cases investigated by the police and other investigating bodies, advising the police on cases for possible prosecution, reviewing cases submitted by the police, determining any charges in more serious or complex cases, preparing cases for court, and presenting cases at court.

It is divided into 14 geographical Areas, each led by a CCP. Each CCP is supported by an Area Business Manager (ABM) and their respective roles mirror, at a local level, the responsibilities of the DPP and Chief Executive. Administrative support to Areas is provided by Area Operations Centres. A 'virtual' 15th Area, CPS Direct, is also headed by a CCP and provides charging decisions to the police across England and Wales, 24 hours a day, 365 days a year. The 16th Area, CPS Proceeds of Crime (CPSPOC), is also headed by a CCP and is responsible for the majority of CPS asset recovery work. (see also *CPS Direct*)

Defence statement (DS)

In proceedings before the Crown Court, where the prosecutor has provided initial disclosure, or purported to, the accused must serve a DS on the prosecutor and the court. This assists in the management of the trial by helping to identify the issues in dispute; provides information that the prosecutor needs to identify any material that should be disclosed; and prompts reasonable lines of enquiry whether they point to or away from the accused. The DS must provide the nature of the defence relied upon, the matters of fact upon which the accused takes issue with the prosecution, and any point of law which the accused proposes to take.

Disclosure

The prosecution has a duty to disclose to the defence material gathered during the investigation of a criminal offence, which is not intended to be used as evidence against the defendant, but which may undermine the prosecution case or assist the defence case. Initial (formerly known as “primary”) disclosure is supplied routinely in all contested cases. Continuing (formerly “secondary”) disclosure is supplied after service of a defence statement.

Disclosure officer

The person responsible for examining material retained by the police during the investigation; revealing material to the prosecutor during the investigation and any criminal proceedings resulting from it, and certifying that he has done this; and disclosing material to the accused at the request of the prosecutor.

Disclosure record sheet (DRS)

The key document used by the prosecutor to record all decision-making and is effectively the audit trail for all disclosure matters pre and post-charge for both sensitive and non-sensitive unused material.

Discontinuance

The dropping of a case by the CPS whether by written notice, withdrawal, or offer of no evidence at court.

Evidential test

The initial stage under the test in the Code for Crown Prosecutors – is there sufficient evidence to provide a realistic prospect of conviction on the evidence? (see also *Code for Crown Prosecutors* and *Public interest test*)

Focus group

A small number of people (usually between four and 15, but typically eight) brought together with a moderator to focus on a specific topic. Focus groups aim at a discussion instead of on individual responses to formal questions, and produce qualitative data (preferences and beliefs) that may or may not be representative of the wider organisation.

Good practice

An aspect of performance upon which the inspectorates not only comment favourably, but consider that it reflects a manner of handling work which, with appropriate adaptations to local needs, might warrant being commended as national practice.

Individual Quality Assessment (IQA)

A CPS national scheme designed to complement the Casework Quality Standards (CQS) by providing a framework within which managers and their staff can work together to improve their quality of the service.

Ineffective trial

The trial does not go ahead on the trial date due to action or inaction by one or more of the prosecution, defence or the court and a further listing for trial is required.

Investigator

Any police officer or police staff member involved in the conduct of a criminal investigation.

Material

Material of any kind, including information and objects, which is obtained or inspected in the course of a criminal investigation and which may be relevant to the investigation. This includes not only material coming into the possession of the investigator, such as documents seized in the course of searching premises, but also material generated by them, such as interview records. (see also *Relevant material* and *Sensitive material*)

MG (Manual of Guidance) forms

National forms used by police to prepare a case file, which are numbered and have the prefix “MG”.

MG3: used by the police and CPS in relation to advice and decisions as to charging an accused person.

MG6 (Case File Evidence and Information): informs the CPS prosecutor of all relevant background information (some of which may not be disclosable to the defence) for an effective case review; assists the prosecutor in considering both the evidential and public interest tests; provides target dates for the supply of relevant types of evidence; and documents the rationale for police charging decisions in accordance with Director’s Guidance on Charging.

MG6C (Police Schedule of Relevant Non-Sensitive Material): informs the prosecutor of the description and existence of all non-sensitive material relevant to the case and the location of the material for inspection; and allows the prosecutor to record whether the material is disclosable, clearly not disclosable, or to allow inspection.

MG6D (Police Schedule of Relevant Sensitive Material): informs the prosecutor of the description and existence of all sensitive material relevant to the case and the reason for sensitivity; and allows the prosecutor to record whether they agree that the material is sensitive, or the prosecutor needs to make a Public Interest Immunity (PII) application to the court.

MG6E (Disclosure Officer’s Report): highlights to the prosecutor unused material (sensitive or non-sensitive) that undermines the prosecution case or assists the defence; informs the prosecutor of any unused material that needs to be disclosed under Paragraph 7.3 of the Code of Practice; provides the CPS with the disclosure officer’s certification; and gives details of material likely to be covered by paragraph 7.3 on rear of the form.

National Police Chiefs’ Council (NPCC)

Organisation which brings together 43 operationally independent and locally accountable chief constables and their chief officer teams to co-ordinate national operational policing.

Prosecutor

The authority responsible for the conduct, on behalf of the Crown, of criminal proceedings resulting from a specific criminal investigation.

Public interest test

The second stage under the Code for Crown Prosecutors test - is it in the public interest to prosecute this defendant on this charge? (see also *Code for Crown Prosecutors* and *Evidential test*)

Rape and Serious Sexual Offences Unit (RASSO)

CPS unit that deals with cases of rape and serious sexual offences. Staffed by specially trained lawyers, paralegal officers and a team of admin caseworkers, the unit offers specialist legal advice, decision-making and support to victims. The RASSO unit works closely with a number of other organisations, including the police, to improve the service that is offered to the victims of rape, child sexual abuse and all other serious sexual offences. The cases they deal with include: rape, including attempted rape; child sexual abuse, including historic cases; all other serious sexual offences; and all allegations of perverting the course of justice or wasting police time which arise from false accusations of rape and domestic violence.

Recommendation

Normally directed towards an individual or body and sets out steps necessary to address either a significant weakness relevant to an important aspect of performance (i.e. an aspect for improvement) or a significant issue which would improve service delivery that, in the view of the inspectorates, should attract highest priority.

Relevant material

Material may be relevant to an investigation if it appears to an investigator, the officer in charge of an investigation, or to the disclosure officer, that it has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case. (see also *Material* and *Sensitive material*)

Review: initial, continuing, summary trial etc

The process whereby a Crown Prosecutor determines that a case received from the police satisfies and continues to satisfy the test for prosecution in the Code for Crown Prosecutors. One of the most important functions of the CPS.

Routine revelation

Though not prescribed in the Code of Practice, the concept of routine revelation of certain unused material has been agreed between all police forces and the CPS as an aid to prosecutors in their case review function. This is irrespective of whether it is deemed as fulfilling the disclosure test. Therefore copies of the crime report and the log of messages should be routinely copied to the prosecutor in every case in which a full file is provided. This requirement is in addition to any other locally agreed arrangements between the police and the CPS that allow for the similar treatment of other additional categories or types of document.

Sensitive material

Any relevant material in a police investigation not forming part of the case against the defendant, the disclosure of which carries a real risk of serious prejudice to an important public interest. (see also *Material and Relevant material*)

ANNEX B - FILE EXAMINATION RESULTS BY THEME

The file sample was made up of 146 cases. Theme 1 (T1) consisted of 90 randomly selected, recently finalised Crown Court case files, including 36 RASSO cases. Theme 2 (T2) contained 56 finalised cases from 2013-16 identified on the CPS computer system as unsuccessful outcomes or ineffective trials due to prosecution disclosure failings.

	Total (T1 and 2)	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q1 Were there any obvious disclosure issues apparent prior to charge</i>						
Yes	81	55.5%	42	46.7%	39	69.6%
No	65	44.5%	48	53.3%	17	30.4%
	Total files identified having a disclosure issue	% of total cases with disclosure issues (T1 and 2)	T1	% of total cases with disclosure issues (yes to Q1)	T2	% of total cases with disclosure issues (yes to Q1)
<i>Q2 If Yes to above, what were they</i>						
Third party	29	19.9%	20	47.6%	9	23.1%
Witnesses	11	7.5%	4	9.5%	7	17.9%
Adverse evidence	7	4.8%	3	7.1%	4	10.2%
Forensic	9	6.2%	7	16.7%	2	5.1%
Collation of evidence	5	3.4%	1	2.4%	4	10.3%
Sensitive material	13	8.9%	4	9.5%	9	23.1%
Social media	1	0.7%	1	2.4%	0	0%
Other	6	4.1%	2	4.8%	4	10.3%
Not applicable	65	44.5%	48	–	17	–
	Total files identified having a disclosure issue (in Q1)	% of total cases with disclosure issues (T1 and 2)	T1	% of total cases with disclosure issues in Q1 (T1 only)	T2	% of total cases with disclosure issues in Q1 (T2 only)
<i>Q3 Were these issues identified in the police MG3 or pre-charge advice</i>						
Fully met	20	24.7%	16	38.1%	4	10.2%
Partially met	30	37.0%	15	35.7%	15	38.5%
Not met	31	38.3%	11	26.2%	20	51.3%
Not applicable	65	–	48	–	17	–
	Total	% of total (T1 and 2)	T1	% of total cases which were fully met in T1	T2	% of total cases which were fully met in T2
<i>Q4 If the answer to the Q3 is FULLY MET did the police perform the relevant actions set down in the advice to comply with disclosure</i>						
Fully met	19	13.0%	16	100%	3	75.0%
Partially met	0	0%	0	0%	0	0%
Not met	1	0.7%	0	0%	1	25.0%
Not applicable	126	86.3%	74	–	52	–

	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q5 What was the quality of the MG5 summary of evidence</i>						
Excellent	6	4.1%	4	4.4%	2	3.6%
Good	90	61.6%	56	62.2%	34	60.7%
Fair	40	27.4%	23	25.6%	17	30.3%
Poor	10	6.8%	7	7.8%	3	5.4%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q6 Did the summary of interview on MG5 accurately set out any potential defence and any challenges made by the police</i>						
Yes	132	90.4%	79	87.8%	53	94.6%
No	14	9.6%	11	12.2%	3	5.4%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q7 Were sections 3-9 on MG5 accurate and the MG5 of sufficient quality</i>						
Fully met	82	56.2%	54	60.0%	28	50.0%
Partially met	55	37.7%	31	34.4%	24	43.0%
Not met	9	6.2%	5	5.6%	4	7.0%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q8 Was the MG6 of sufficient quality for disclosure purposes</i>						
Excellent	3	2.1%	2	2.2%	1	1.8%
Good	50	34.2%	36	40.0%	14	25.0%
Fair	46	31.5%	36	40.0%	10	17.8%
Poor	36	24.7%	12	13.3%	24	42.9%
Not applicable	11	7.5%	4	4.5%	7	12.5%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q9 If this case was police charged did the MG6 form adequately cover disclosure issues</i>						
Yes	8	5.5%	6	6.7%	2	3.6%
No	4	2.7%	1	1.1%	3	5.3%
Not applicable	134	91.8%	83	92.2%	51	91.1%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q10 If an MG6B was supplied was it adequate</i>						
Yes	2	1.4%	1	1.1%	1	1.8%
No	1	0.7%	0	0%	1	1.8%
Not applicable	143	97.9%	89	98.9%	54	96.4%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q11 The police complied with their disclosure obligations on the MG6C</i>						
Fully met	21	14.4%	17	18.9%	4	7.1%
Partially met	86	58.9%	53	58.9%	33	58.9%
Not met	39	26.7%	20	22.2%	19	33.9%

	Total	% of total (T1 and 2)	T1	% of cases where police partially met or did not meet disclosure obligations in Q11	T2	% of cases where police partially met or did not meet disclosure obligations in Q11
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Q12 The main failing in the police MG6C disclosure was in relation to

Listing items incorrectly	2	1.4%	2	2.7%	0	0%
Poor descriptions of items	78	53.4%	49	67.1%	29	55.8%
Lack of schedules	3	2.1%	1	1.4%	2	3.8%
Wrong schedules	1	0.7%	1	1.4%	0	0%
Witness previous convictions	4	2.7%	4	5.5%	0	0%
Missing items from schedules	37	25.3%	16	21.9%	21	40.4%
Not applicable	21	14.4%	17	–	4	–

	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
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Q13 The prosecutor complied with the duty of initial disclosure, including the correct endorsement of the schedules (but not including timeliness of disclosure)

Fully met	34	23.3%	20	22.2%	14	25.0%
Partially met	74	50.7%	49	54.4%	25	44.6%
Not met	26	17.8%	15	16.7%	11	19.5%
Not known	12	8.2%	6	6.7%	6	10.7%

	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
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Q14 The police complied with their disclosure obligations on the MG6D

Fully met	72	49.3%	54	60.0%	18	32.1%
Partially met	32	21.9%	11	12.2%	21	37.5%
Not met	42	28.8%	25	27.8%	17	30.4%

	Total	% of total (T1 and 2)	T1	% of cases where police partially met or did not meet disclosure obligations in Q14	T2	% of cases where police partially met or did not meet disclosure obligations in Q14
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Q15 The main failing in the police MG6D disclosure was in relation to

Listing items incorrectly	27	18.5%	20	55.6%	7	18.4%
Poor descriptions of items	9	6.2%	2	5.5%	7	18.4%
Poor explanation as to why sensitive	13	8.9%	7	19.4%	6	15.8%
Lack of schedules	6	4.1%	1	2.8%	5	13.2%
Wrong schedules	3	2.1%	2	5.6%	1	2.6%
Missing items from schedules	16	11.0%	4	11.1%	12	31.6%
Not applicable	72	49.3%	54	–	38	–

	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q16 Sensitive unused material was dealt with appropriately by the CPS</i>						
Fully met	60	41.1%	41	45.6%	19	33.9%
Partially met	28	19.2%	12	13.3%	16	28.6%
Not met	57	39.0%	37	41.1%	20	35.7%
Not applicable	1	0.7%	0	0.0%	1	1.8%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q17 Was there an MG6E of adequate standard</i>						
Fully met	63	43.2%	42	46.7%	21	37.5%
Partially met	31	21.2%	18	20.0%	13	23.2%
Not met	52	35.6%	30	33.3%	22	39.3%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q18 Third party material was dealt with appropriately</i>						
Yes	42	28.8%	31	34.5%	11	19.6%
No	25	17.1%	9	10.0%	16	28.6%
Not known	6	4.1%	3	3.3%	3	5.4%
Not applicable	73	50.0%	47	52.2%	26	46.4%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q19 Rate the overall quality of handling of unused material by police</i>						
Excellent	0	0%	0	0%	0	0%
Good	32	21.9%	25	27.8%	7	12.5%
Fair	53	36.3%	39	43.3%	14	25.0%
Poor	61	41.8%	26	28.9%	35	62.5%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q20 Did the defence supply an adequate defence statement</i>						
Yes	111	76.0%	66	73.3%	45	80.3%
No	6	4.1%	3	3.3%	3	5.4%
Not supplied	24	16.4%	16	17.8%	8	14.3%
Not applicable	5	3.4%	5	5.6%	0	0%
	Total	% of total (T1 and 2)	T1	% of total where a defence statement was supplied (yes and no to Q20)	T2	% of total where a defence statement was supplied (yes and no to Q20)
<i>Q21 If a defence statement was supplied, did the prosecutor review the document and provide comments and advice to the police before sending to them or challenge the defence for non-compliance</i>						
Yes	6	4.1%	4	5.8%	2	4.2%
No	111	76.0%	65	94.2%	46	95.8%
Not applicable	29	19.9%	21	-	8	-

	Total	% of total (T1 and 2)	T1	% of total where a defence statement was supplied in Q20	T2	% of total where a defence statement was supplied in Q20
<i>Q22 Did the police adequately identify further disclosure as a result of the defence statement</i>						
Yes	69	47.2%	50	73.5%	19	33.9%
No	48	32.9%	18	26.5%	30	62.5%
Not applicable	29	19.9%	22	–	7	–
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q23 The prosecutor complied with the process of continuing disclosure (but not including timeliness of disclosure)</i>						
Fully met	62	42.5%	45	50.0%	17	30.4%
Partially met	44	30.1%	29	32.2%	15	26.8%
Not met	27	18.5%	7	7.8%	20	35.7%
Not applicable	13	8.9%	9	10.0%	4	7.1%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q24 Was the case conducted by a RASSO unit</i>						
Yes	44	30.1%	36	40.0%	8	14.3%
No	102	69.9%	54	60.0%	48	85.7%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q25 The failure to comply with the duty of disclosure was a complete failure to disclose undermining or assisting material (late disclosure is not a complete failure)</i>						
Yes	41	28.1%	2	2.2%	39	69.6%
No	47	32.2%	30	33.3%	17	30.4%
Not applicable	58	39.7%	58	64.5%	0	0%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q26 If the case was discontinued, the main reason was a disclosure issue</i>						
Yes	30	20.5%	2	2.2%	28	50.0%
No	50	34.2%	25	27.8%	25	44.6%
Not known	1	0.7%	0	0%	1	1.8%
Not applicable	65	44.5%	63	70.0%	2	3.6%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q27 The prosecution complied with its duty of disclosure in a timely manner</i>						
Fully met	48	32.9%	41	45.5%	7	12.5%
Partially met	53	36.3%	33	36.7%	20	35.7%
Not met	45	30.8%	16	17.8%	29	51.8%

	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q28 The disclosure record sheet or other recording document was properly completed with actions and decisions taken on disclosure</i>						
Fully met	15	10.3%	12	13.3%	3	5.3%
Partially met	58	39.7%	34	37.8%	24	42.9%
Not met	73	50.0%	44	48.9%	29	51.8%
	Total	% of total (T1 and 2)	T1	% of total T1 only	T2	% of total T2 only
<i>Q29 Rate the overall quality of handling of unused material by the CPS</i>						
Excellent	0	0%	0	0%	0	0%
Good	34	23.3%	24	26.7%	10	17.9%
Fair	64	43.8%	45	50.0%	19	33.9%
Poor	48	32.9%	21	23.3%	27	48.2%

HM Crown Prosecution Service Inspectorate
London Office:
One Kemble Street
London WC2B 4TS
Tel. 020 7210 1185

HM Inspectorate of Constabulary
6th Floor
Globe House
89 Eccleston Square
London SW1V 1PN
Tel. 020 3513 0500

Website:
www.justiceinspectorates.gov.uk/hmcpsi/
www.justiceinspectorates.gov.uk/hmic/

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