



HM Crown Prosecution
Service Inspectorate

Disclosure of medical records and counselling notes

A review of CPS compliance with rules and guidance in relation to disclosure of complainants' medical records and counselling notes in rape and sexual offence cases

July 2013



Chief Inspector's foreword

During the course of our inspections in recent years, we have identified that the CPS needs to improve its handling of disclosure of unused material in general. The issue of disclosure in rape and sexual offence cases, in particular in relation to whether or not complainants' medical records and counselling notes are disclosed appropriately (that is only when they might reasonably be considered capable of undermining the prosecution case or of assisting the defence case) and whether their consent is obtained has also been raised by the Attorney General.

As a result, I decided that we should include in our programme of work for 2012-13 a review to assess whether or not CPS prosecutors are complying with the statutory requirements under the Criminal Procedure and Investigations Act 1996 (CPIA) and CPS policy guidance in relation to disclosure to the defence of complainants' medical records and counselling notes in rape and sexual offence cases.

The review has shown that prosecutors do not always consider properly whether or not there is a need to disclose everything in medical records and counselling notes. Nor do prosecutors always actively consider whether or not a complainant's consent has been obtained to disclosure to the defence. Whilst this was not fatal to the cases examined in the file sample there is a need for the processes and systems to be strengthened.

The lack of a national police form for seeking a complainant's consent to disclosure of their records and/or notes does not assist a prosecutor to determine whether or not consent has been obtained. CPS Headquarters may therefore wish to liaise with ACPO in order to resolve this.

My conclusion is that, whilst there is room for improvement in the approach taken by prosecutors when considering whether or not medical records and counselling notes need to be disclosed, the suggestion that the CPS sometimes adopts an approach whereby these documents are disclosed as a matter of course, even where they do not fall to be disclosed under CPIA, and failures to obtain complainants' consent are not fully justified.



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Executive summary

Overview

Our previous inspection activity has identified that disclosure of unused material generally has been a weakness in the past (although the Annual Casework Examination Programme (ACEP)¹ undertaken during 2012-13 shows improvement, significant in relation to continuing disclosure).

In addition, the issue of compliance by the Crown Prosecution Service (CPS) with the rules on disclosure of medical records and counselling notes to the defence in rape and sexual offence cases has been raised by the Attorney General.

Comment has focussed on whether there has been a failure to obtain a complainant's consent to disclosure to the defence, and whether or not prosecutors have properly considered if all of the material needed to be disclosed under the Criminal Procedure and Investigations Act 1996 (CPIA) and the *Code of Practice* to the CPIA (issued under section 23 of the Act). The suggestion has been made that the CPS sometimes adopts an approach whereby these documents are disclosed as a matter of course, even where they do not fall to be disclosed under CPIA.

As a result, Her Majesty's Crown Prosecution Service Inspectorate (HMCPISI) has undertaken, as part of its overall consideration of the handling of disclosure, a review of CPS compliance with rules and guidance in relation to the disclosure of complainants' medical records (other than those created specifically in relation to the offence alleged) and counselling notes.

The file sample consisted of 58 cases² involving allegations of rape and sexual offences, where the unused material included complainants' medical records and/or counselling notes. They were drawn from cases being examined as part of the ACEP work, with inspectors completing an extra questionnaire dealing specifically with the issue. Inspectors also considered the ACEP data to see if there was any difference in CPS performance in relation to disclosure in sexual offence cases (including allegations of rape).

Key findings

The ACEP data shows that CPS performance in relation to compliance with CPIA in cases involving sexual offences is not as good as performance in relation to other cases. The proportion of sexual offence cases where compliance was fully met was lower for initial and continuing disclosure, as well as for the appropriate handling of the sensitive material schedule. However, when taking all factors into account, inspectors rated the overall quality of disclosure handling as being excellent or good in a higher proportion of sexual offence cases than the overall file sample (see annex B).

Prosecutors generally do consider medical records and counselling notes to ascertain whether or not they are disclosable under CPIA – we could tell they did so in 82 per cent of relevant cases in our file sample.

¹ This comprised an examination during 2012-13 of 2,177 cases from across all CPS areas, including those where the charging decision was made by CPS Direct. For the purposes of this review we did not include the subset of ACEP cases which had also been subject to core quality standards monitoring by the CPS.

² The cases came from ten of the 13 CPS areas – Cymru-Wales, East Midlands, North East, North West, South East, South West, Thames and Chiltern, Wessex, West Midlands, and Yorkshire and Humberside.

Where medical records and counselling notes should be disclosed under the CPIA regime prosecutors are disclosing the material: we could tell they did so in 86.5 per cent of the relevant cases in the file sample.

It was appropriate to disclose some of the material in every case where medical records and/or counselling notes were disclosed. However, in seven cases out of 32 more material was disclosed than should have been: this was a breach of CPIA. The over disclosure did not have an adverse impact on the case itself but was an apparent breach of the complainant's right to respect for their private and family life³, under Article 8 of the European Convention on Human Rights (ECHR).

Prosecutors are not always recording their decision-making on a disclosure record sheet, as required by the *Disclosure Manual* (joint CPS and Association of Chief Police Officers (ACPO) instructions) and the lack of a proper audit trail of actions taken made it difficult to ascertain what had happened in some cases.

It was difficult to ascertain whether or not the police had obtained a complainant's consent to disclosure of their medical records and/or counselling notes. This was partly because there was often nothing in the file to show this, but it was also because the lack of a national police form appears to have led to varying local practices being adopted. We could not tell if the complainant's consent had been obtained in 78.1 per cent of the relevant cases examined.

The approach adopted by policy advisors at CPS Headquarters (of taking it that consent has been obtained if the material is listed on the non-sensitive schedule of unused material) does not provide an assurance as there is no consistency in where the material is listed. In addition, where consent forms are provided by the police they do not always show that a complainant has consented to disclosure to the defence, rather than just to revelation to the CPS.

CPS guidance in relation to rape and sexual offences makes it clear that a complainant's consent should be obtained before medical records and/or counselling notes are disclosed to the defence. However, there is nothing to explain what a prosecutor should do if consent is refused. The CPS has plans to amend the guidance by the addition of the steps that must be taken, drawing on existing guidance in relation to victims and witnesses with mental health issues and/or learning difficulties.

Compliance issues

¹ CPS areas should ensure that where unused material substantially undermines the prosecution case, assists the defence or raises a fundamental question about the prosecution, prosecutors reassess the case in accordance with the *Code for Crown Prosecutors*, and decide after consulting with the police whether the case should continue (section 12.19 *Disclosure Manual*) (paragraph 2.9).

³ Article 8 (1) "Everyone has the right to respect for his private and family life, his home and his correspondence".

2 CPS areas should ensure that prosecutors disclose to the defence only the material, or parts of it, that falls to be disclosed under the Criminal Procedure and Investigations Act 1996 (*Attorney General's Guidelines on Disclosure 2005*) (paragraph 2.16).

3 CPS areas should ensure that prosecutors record on the disclosure record sheet the reasoning behind decisions to disclose or not (section 11.4 *Disclosure Manual*) (paragraph 2.18).

4 CPS areas should ensure that prosecutors satisfy themselves that complainants have consented to their medical records and/or counselling notes being disclosed to the defence (Chapter 15 *CPS Rape and Sexual Offences Guidance*) (paragraph 3.10).

The way forward

The CPS has already put in place a number of measures to help prosecutors to handle disclosure more effectively. As part of that work, it has introduced mandatory best practice for dealing with disclosure in the Crown Court. This includes some rape and sexual offence cases.

In response to this report the CPS plans to amend the *Rape and Sexual Offences Guidance* to remind prosecutors to adhere to the compliance issues set out above. They have also agreed to explore with ACPO the possibility of developing a national police form for use when the police consult complainants over the disclosure of their medical records and counselling notes.



1 Introduction and background

Background

1.1 HMCPsi has identified, during the course of its inspections in recent years, that the handling of disclosure of unused material is an aspect of casework that requires further improvement. The failure of some high profile cases because of issues in relation to disclosure has also served to emphasise the need to handle unused material scrupulously.

1.2 In addition, the issue of compliance by the CPS with the rules on disclosure of medical records and counselling notes to the defence in rape and sexual offence cases has been raised by the Attorney General.

1.3 HMCPsi therefore decided, as part of its overall consideration of the handling of disclosure, to undertake a review of CPS compliance with rules and guidance in relation to disclosure of complainants' medical records and counselling notes (other than those created specifically in relation to the offence alleged).

Remit of the review

1.4 The review focused on CPS compliance with CPIA and CPS policy guidance in the handling of disclosure to the defence of records and notes (in its possession) in cases involving allegations of rape and sexual offences. It considered in particular the following issues:

- Whether the CPS considered if any records and notes (or parts of) were disclosable to the defence under CPIA and CPS policy guidance
- Whether the CPS considered if any records and notes that substantially undermined the prosecution case, assisted the defence or raised a fundamental question about the prosecution, affected the realistic prospect of conviction

- Whether HMCPsi agreed with prosecutors' decisions made in relation to disclosure to the defence of records and notes
- Whether any disclosure of records and notes complied with the duties under CPIA and CPS policy guidance
- Obtaining of complainants' consent to disclosure of records and notes to the defence
- The approach taken by the CPS if a complainant does not consent to disclosure of records and notes to the defence

1.5 The report covers:

- CPS compliance with the duties of disclosure under CPIA and CPS policy guidance in relation to records and notes
- The recording of CPS prosecutors' reasoning and decision-making in relation to disclosure of records and notes
- Compliance with the need to obtain the complainant's consent to disclosure of records and notes to the defence
- The CPS guidance in relation to the procedure where a complainant refuses consent to disclosure of records and notes to the defence

Methodology

1.6 During the course of HMCPSP's Annual Casework Examination Programme inspectors completed an additional spreadsheet in 58 cases involving allegations of rape and sexual offences, where the unused material included complainants' medical records and/or counselling notes. Inspectors also considered the ACEP data to see if there was any difference in CPS performance in relation to disclosure in sexual offence cases (including allegations of rape) compared with the overall data for all offences.

1.7 The review team also interviewed CPS policy advisors with responsibility for rape and sexual offence cases and for disclosure of unused material. In addition, the CPS policy advisor for victims and witnesses was consulted.

1.8 The team sought information from all 13 CPS areas in relation to how they dealt with disclosure of medical records and counselling notes in rape and sexual offence cases and requested sight of any forms used by the police for obtaining complainants' consent.

2 CPS compliance with the duties under CPIA of disclosure of complainants' medical records and counselling notes

Prosecutors' duties under CPIA

2.1 Prosecutors are under a duty to ensure that any disclosure to the defence of a complainant's medical records and/or counselling notes complies with the Criminal Procedure and Investigations Act 1996 and the *Code of Practice* to the CPIA (issued under section 23 of the Act). The prosecutor must disclose to the defence any prosecution material which has not previously been disclosed and which might reasonably be considered capable of undermining the case for the prosecution or of assisting the case for the accused. (Unless the court, on application by the prosecutor, orders that it is not in the public interest to do so.) This means that material should only be disclosed to the defence if it satisfies the disclosure test - blanket disclosure should not take place.

2.2 Prosecutors need to consider very carefully whether records and/or notes are disclosable to the defence and, if so, whether this applies to all the material or only part of it. In the case of, for example, medical records it is likely that some entries will be of a routine medical nature and will not fall to be disclosed under CPIA. In those circumstances, it is possible to "redact" the material i.e. to disclose only part of it. This can be done by way of disclosing only some pages from a record, or by blocking out items on a page so that they cannot be read.

Annual Casework Examination Programme findings

2.3 We considered the ACEP data to see if there was any difference in CPS performance in relation to disclosure in sexual offence cases (including allegations of rape) compared with the overall data for all offences. The proportion of sexual offence cases where compliance was fully met was lower for initial and continuing disclosure, as well as for the appropriate handling of the sensitive material schedule. However, when taking all factors into account, inspectors rated the overall quality of disclosure handling as being excellent or good in a higher proportion of sexual offence cases than the overall file sample (see annex B).

Consideration of whether the records and notes were disclosable under CPIA

2.4 Prosecutors did not consider records and/or notes to ascertain if part or all of it was disclosable under CPIA in four out of 50 relevant cases (8 per cent).

2.5 There was potential for the failure to consider the material to have an adverse affect in two of the four cases. In one the material should have been disclosed but was not and the case proceeded to trial. In the event, the defendant was acquitted of the two charges of rape and convicted of an offence of assault. (We considered that the defendant would have been convicted even if the defence had been in possession of the material.) In the second case material was also disclosable but the case was dropped, in part because of disclosure issues not being dealt with promptly.

2.6 Failure to consider the material properly did not impact on the remaining two cases: one was dropped for reasons unconnected with disclosure and the material was not disclosable in the second.

2.7 If prosecutors do not consider whether material is disclosable under CPIA they risk failing to disclose material that should be disclosed. This could result in a miscarriage of justice occurring, as well as it being a failure to comply with CPIA.

Consideration of whether the records and notes impacted on the realistic prospect of a conviction

2.8 If unused material substantially undermines the prosecution case, assists the defence or raises a fundamental question about the prosecution, prosecutors need to reassess the case in accordance with the *Code for Crown Prosecutors*⁴, and decide after consulting with the police whether it should continue. In our file sample, there were 37 cases where the contents (or part/s) of records and/or notes were disclosable under CPIA. The audit trail was insufficient to tell whether there was any consideration in four cases. Prosecutors considered the material to determine whether it impacted on the realistic prospect of conviction (RPOC) in 27 (81.8 per cent) of the remaining 33 cases, but did not in six (18.2 per cent).

2.9 Of the six cases where prosecutors did not consider this, there were three where the RPOC was affected by the material. In none of those cases did the CPS take the appropriate action at the right time. The defendant was acquitted after trial in two cases (in one the defendant was acquitted of the two counts of rape in relation to which the material was disclosable but convicted of assault – we refer to this case again in paragraph 3.12). The third case was dropped when the complainant indicated an unwillingness to continue with it. The failure to take appropriate action in all three cases was not in anyone's interests, including that of the complainants. This is poor performance which has the potential to damage the reputation of the CPS.

Compliance point

CPS areas should ensure that where unused material substantially undermines the prosecution case, assists the defence or raises a fundamental question about the prosecution, prosecutors reassess the case in accordance with the *Code for Crown Prosecutors*, and decide after consulting with the police whether the case should continue (section 12.19 *Disclosure Manual*).

⁴ The *Code for Crown Prosecutors* is issued by the Director of Public Prosecutions. It requires that there is a realistic prospect of conviction and that a prosecution is in the public interest. A revised version was published in January 2013.

Disclosure of records and notes

2.10 There were 37 cases in the file sample where medical records and/or counselling notes needed to be disclosed under the CPIA regime but this was not properly undertaken in five of them. This is very concerning because of the potential for miscarriages of justice to occur and the accompanying reputational damage to the CPS.

2.11 The audit trail was too poor to tell if disclosure had been made in two of those five cases. In one, the defendant pleaded guilty to an alternative charge and the non-disclosure would not have had an adverse impact on the case. In the second, whilst there was an indication that some unused material was handed to the defence at trial, exactly which documents were disclosed was not recorded satisfactorily.

2.12 A further two cases were subsequently dropped for reasons unconnected with disclosure. There was a failure to comply with the prosecution's duty under CPIA in the fifth case. There was no potential miscarriage of justice in this case as the defendant was acquitted after trial of the two counts of rape in relation to which the material was disclosable. (He was convicted of assault but the non-disclosure of the material would not realistically have affected the verdict.)

Over disclosure of records and notes

2.13 There were seven cases out of the 32 (21.9 per cent) where records and notes were disclosed that did not fully comply with the prosecution's duty under CPIA.

2.14 In five of those seven cases only some of the material was disclosable but in fact the prosecutor had disclosed the whole of the document/s and had failed to redact the material sufficiently or at all.

Case studies

In one case over 300 pages of medical records were disclosed when only a limited number of entries were disclosable.

In a second case, the prosecutor attempted to limit the material provided to the defence by summarising the disclosable parts, but counsel then advised that the material itself should be disclosed. This could have been done by way of selecting which page/s to disclose and/or by redaction, but all of the material was disclosed.

2.15 In the remaining two cases, medical records were disclosed in breach of CPIA.

2.16 The over disclosure did not have an adverse impact on any of the cases themselves but was an apparent breach of the complainant's right to respect for their private and family life under ECHR, as consent to disclosure is generally to material which meets the test under CPIA.

Compliance point

CPS areas should ensure that prosecutors disclose to the defence only the material, or parts of it, that falls to be disclosed under the Criminal Procedure and Investigations Act 1996 (*Attorney General's Guidelines on Disclosure 2005*).

Recording of prosecutors' reasoning and decision-making

2.17 The *Disclosure Manual* sets out a requirement for prosecutors to record their decision-making in relation to disclosure on a disclosure record sheet. It is important that prosecutors record the reasoning behind decisions to disclose or not so that anyone looking at the file is able to ascertain why actions were or were not taken. There was a sufficient record of the reasoning behind the decision in only just over half of the relevant cases in the file sample.

2.18 There was insufficient recording of the decision-making in four of the cases where we considered that too much material had been disclosed.

Compliance point

CPS areas should ensure that prosecutors record on the disclosure record sheet the reasoning behind decisions to disclose or not (section 11.4 *Disclosure Manual*).

3 Compliance with the need to obtain the complainant's consent to disclosure of medical records and counselling notes

The need to obtain the complainant's consent

3.1 CPS guidance makes it clear that prosecutors need to seek the consent of the complainant before there is any disclosure under CPIA of medical records or counselling notes to the defence. In the case of *R v Stafford Crown Court* [2006] EWHC 1645 the Divisional Court held that the medical records of a complainant were “confidential between the medical practitioner and the patient”, and that a patient had “a right of privacy” under Article 8 of the ECHR. The CPS guidance is that this will usually mean the prosecutor must be satisfied that the person to whom the material relates consents to disclosure to the defence.

3.2 Policy advisors at CPS Headquarters take the view that if medical records and counselling notes are listed on the MG6C (schedule used to list non-sensitive material) the prosecutor can assume that the police will have obtained the complainant's consent to disclosure to the defence (unless the police say otherwise). In those circumstances, where the records/notes are considered to be disclosable under CPIA the complainant is not contacted prior to any disclosure to the defence. This approach has risks attached to it in view of the file examination findings and the lack of a national police form for seeking a complainant's consent (see later in this chapter).

3.3 CPS policy advisors work on the assumption that medical records and counselling notes will be listed on the MG6D (schedule used to list any sensitive material) if the victim's consent to disclosure to the defence has not been obtained by the police. That is, the CPS takes it that the complainant has declined consent (or has not been asked). There is a justifiable

argument (based on paragraph 6 of the *Code of Practice* to the CPIA) to say that the police should list the material on the MG6D if the complainant has not consented to disclosure to the defence. However, relying on which unused material schedule a document has been put on to determine whether or not a complainant has consented does not provide the prosecutor with sufficient assurance (see later in this chapter).

3.4 If medical records and counselling notes are on the MG6D and they are considered to be disclosable under CPIA, CPS policy advisors say that the prosecutor will consider asking the police to seek the complainant's consent to disclosure. If consent is not obtained (or no further approach is made), they will make a public interest immunity (PII) application (where the prosecutor makes an application for a court order to withhold the material). If the judge does not grant the application and the complainant's consent is not subsequently obtained, the prosecution would have to drop the case, as far as it relates to that complainant.

The way consent is obtained

3.5 There is no national police template for a complainant's consent to disclosure to be obtained. We asked each CPS area to provide us with examples used by their police forces. We also considered forms used in the cases in the file sample. It was clear that some police forces have their own template forms; and that in other forces police officers create their own. Some of these forms (templates and individual) seek a complainant's consent only for the police to obtain the material and then to pass it to the prosecutor, and do not include reference to disclosure to the defence. Others seek consent for the whole process.

3.6 The best way of ensuring that a complainant has truly consented to their records and/or notes being

- i obtained by the police;
- ii revealed by the police to the CPS; and
- iii disclosed to the defence

would be for a national police form to be used and for that form to be included with the file sent to the CPS. This option needs to be explored by CPS Headquarters with ACPO.

Ensuring a complainant has consented to disclosure

3.7 It was difficult to tell whether the complainant's consent to disclosure to the defence had been obtained because in the majority of cases we could not see anything in the file to show this. With some exceptions, prosecutors are not asking the police to approach the complainant for consent, even where the original consent is limited. This means that in some cases it is possible that consent to disclosure is never obtained.

3.8 Of the 32 cases where material was actually disclosed, we could see that the complainant's consent had been obtained in seven. We could not tell whether consent had been obtained or not in the remaining 25.

3.9 The approach adopted by CPS policy advisors in relation to ascertaining whether or not a complainant has consented to disclosure from which unused material schedule records and notes are listed on is not always the one adopted at operational level. The responses from CPS areas indicate that there is no consistency nationally in which schedule the material is listed on. In some cases, it is put on an MG6D regardless of whether or not the complainant has consented. Therefore, adopting the approach advocated by CPS policy advisors would not ensure that in every case the complainant had consented to disclosure to the defence.

3.10 In view of the different forms used and approaches adopted by the police in terms of how consent is obtained, and the inconsistent approach to which unused material schedule the material should be placed on, the conclusion has to be that the only way prosecutors can satisfy themselves that a complainant has consented fully to disclosure to the defence is by way of ensuring that they have seen a document showing this. This would be the case even if ACPO were to introduce a national police form.

Compliance point

CPS areas should ensure that prosecutors satisfy themselves that complainants have consented to their medical records and/or counselling notes being disclosed to the defence (Chapter 15 *CPS Rape and Sexual Offences Guidance*).

Approach to be taken if a complainant refuses consent to disclosure

3.11 CPS guidance (on disclosure and rape and sexual offence cases) on the procedure to follow where a complainant does not agree to their records and/or notes being disclosed to the defence is not clear. It sets out that there should usually not be any disclosure (as it would breach the complainant's right to respect for their private and family life under Article 8 of ECHR) if a complainant does not consent but does not spell out what the next step is.

3.12 There is, however, clear CPS guidance, including process charts, in relation to this in the case of victims and witnesses who have mental health issues and/or learning difficulties. The charts set out the steps to take to obtain consent, and what a prosecutor should do if a victim or witness gives only qualified consent to disclosure of medical evidence or does not consent at all. The issue is not exactly the same but the broad principle applies equally to rape and sexual offence cases. The CPS is planning to adapt the guidance and process charts to put into the *Rape and Sexual Offences Guidance*: this is to be welcomed.

3.13 There were no cases in the file sample where a victim had refused to consent to disclosure of their records and/or notes.



Annexes

A Rape and sexual offence data

		Medical	Counselling Both	All					
1	What type of material was involved	34 58.6%	2 3.5%	22 37.9%	58				
		Yes	No	Not known	Not applicable	All			
2	Did the police obtain the complainant's consent to release to police/CPS	34 59.7%	0 0%	23 40.4%	1	58			
3	Did the CPS initiate obtaining of the material from a third party	19 37.3%	27 52.9%	5 9.8%	7	58			
4	Were the contents properly considered to ascertain whether they impacted on RPOC	27 73.0%	6 16.2%	4 10.8%	21	58			
5	Did the material have an impact on the RPOC	15 27.3%	40 72.7%	0 0%	3	58			
6	If the material impacted on RPOC, did CPS take appropriate action	11 73.3%	4 26.7%	0 0%	43	58			
7	Was the material properly considered to ascertain if part/all was disclosable under CPIA	46 83.6%	4 7.3%	5 9.1%	3	58			
8	Was the material or parts of it disclosable under CPIA	37 67.3%	17 30.9%	1 1.8%	3	58			
9	Were the contents/parts of it disclosed (including redaction)	32 65.3%	13 26.5%	4 8.1%	9	58			
10	If the contents were disclosed, was this fully CPIA compliant	22 64.7%	7 20.6%	5 14.7%	24	58			
11	Was there sufficient recording of the reasoning behind the decision to disclose/not disclose material	27 52.9%	23 45.1%	1 2.0%	7	58			
		Defence team	Defence expert	Other	Not known	Not applicable	All		
12	To whom were contents disclosed	32 91.4%	0 0%	0 0%	3 8.6%	23	58		
		Yes	No	Not known	Not applicable	All			
13	At any stage did the police/CPS seek the complainant's consent to disclosure to the defence	10 23.8%	0 0%	32 76.2%	16	58			
14	If the complainant did not consent, was the material disclosed anyway	0 0%	0 0%	4 100%	54	58			
15	If the complainant did not consent, was the case dropped as a result	0 0%	0 0%	0 0%	58 100%	58			
		Pre-charge	Initial discl.	Cont. discl.	Court order	Other	Not known	Not applic.	All
16	At what stage was the material disclosed	0 0%	6 16.7%	26 72.2%	1 2.8%	1 2.8%	2 5.6%	22	58



B Annual Casework Examination Programme disclosure data

For the purposes of this review we did not include the subset of ACEP cases which had also been subject to core quality standards monitoring by the CPS.

ACEP questions	Overall file sample (2,177)	Sexual offence sample (incl. allegations of rape) (285)
Q41 Initial disclosure compliance (FM + PM)	93.6% (FM 78.4% + PM 15.2%)	93.2% (FM 74.6% + PM 18.6%)
Q42 Continuing disclosure compliance (FM + PM)	89.8% (FM 76.8% + PM 13.0%)	89.7% (FM 75.4% + PM 14.3%)
Q43 Sensitive material schedule handled appropriately (FM + PM)	80.4% (FM 75.8% + PM 4.6%)	82.5% (FM 69.6% + PM 12.9%)
Rate overall quality (Excellent)	3.0%	3.8%
Rate overall quality (Good)	43.8%	47.0%
Rate overall quality (Fair)	40.6%	33.3%
Rate overall quality (Poor)	12.2%	15.5%
Rate overall quality (Not known)	0.4%	0.4%

FM = fully met; PM = partially met



C Glossary

ACEP

Annual Casework Examination Programme undertaken by HMCSI during 2012-13 which involved an examination of cases from across all CPS areas.

Attorney General's Guidelines on Disclosure (2005)

Guidelines on the disclosure of unused material published by the Attorney General. If properly applied, the guidelines will contribute to ensuring that the disclosure regime operates effectively, fairly and justly.

CPS Rape and Sexual Offences Guidance

CPS guidance which is designed to guide prosecutors through every stage of a rape or sexual offence prosecution, from pre-charge early consultation to sentencing.

Disclosure Manual

Joint CPS and ACPO instructions on disclosure.

Disclosure record sheet

Form on a file which is used to record the prosecutor's decisions and reasoning, and actions taken, in relation to disclosure.

MG6C

Schedule used by the police to list non-sensitive unused material.

MG6D

Schedule used by the police to list sensitive unused material.

PII application

A public interest immunity application is where the prosecutor makes an application for a court order to withhold unused material from the defence.

Prosecution's duty of disclosure

The prosecution has a duty under CPIA 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. See also *unused material*.

Sensitive material

Any relevant material in a police investigative file not forming part of the case against the defendant, the disclosure of which may not be in the public interest.

Unused material

Material collected by the police during an investigation but which is not being used as evidence in any prosecution. The prosecutor must consider whether or not it needs to be disclosed to the defence.

If you ask us, we can provide a synopsis or complete version of this booklet in Braille, large print or in languages other than English.

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