DISCLOSURE

A thematic review of the duties of disclosure of unused material undertaken by the CPS

Executive summary

May 2008

Promoting Improvement in Criminal Justice

HMcpsi
HM Crown Prosecution Service Inspectorate

1 This is the summary of Her Majesty's Crown Prosecution Service Inspectorate's (HMCPSI) thematic review of the undertaking of the duties of disclosure of unused material by the Crown Prosecution Service (CPS). This review has focused on disclosure handling by the CPS on 152 'live' and finalised cases from eight CPS Areas, combined with interviews with the individuals within the criminal justice system (CJS) who played an active part in the way those cases were handled. Inspectors also interviewed the Resident Judges of all Areas visited. In addition to the detailed scrutiny of those cases inspectors also took into account CPS performance on disclosure handling from the previous thematic review in 2000, two full cycles of inspections of all 42 Areas between 2000-05, and the more recent Area effectiveness inspections (AEIs) of 11 Areas undertaken from August 2006-April 2007.

Background to the review

2 In the last 15 years there has been considerable change to the legislative provisions and case law which set out the duties of disclosure handling for all parties. The first statutory requirement for the handling of unused material came from the Criminal Procedure and Investigations Act (CPIA) in 1996. Prior to this, the prosecution's duty had developed through the guidelines issued by the Attorney General and through case law. The disclosure provisions of the CPIA were amended significantly by Part V of the Criminal Justice Act 2003 (CJA 2003).

3 There are currently three distinct disclosure regimes in operation, the use of which will depend on the date the relevant criminal investigation began. In cases where the investigation began prior to 1 April 1997 the common law will apply, with the test for disclosure being that which was set out in *R v Keane* (1994). If it commenced on or after 1 April 1997, but before 4 April 2005, then the CPIA in its original form applies with separate tests for disclosure of unused prosecution material at the primary stage and, following service of a defence statement, at the secondary stage. Finally, where the investigation commenced on or after 4 April 2005, the law set out in the CPIA as amended by the CJA 2003 applies. This Act created a single objective test of the disclosure of any unused material which might reasonably be considered capable of undermining the case for the prosecution or assisting the case for the accused (the revised disclosure test). It provided for a continuing duty of disclosure of any material which satisfies the revised disclosure test, which should be re-appraised following receipt of a defence statement (which the amended legislation required to be more specific). In certain circumstances the obligation remains on the prosecution to provide early disclosure to the accused. Guidance is set out in *R v DPP ex parte Lee* 1999 2 All ER 737 which held that the CPIA did not abolish common law obligations relating to the disclosure of material by the prosecutor prior to committal.

4 In order to implement the new provisions the Code of Practice issued under the CPIA was amended. New joint operational instructions between the police and CPS were agreed and issued in the form of the Disclosure Manual. In addition, the Attorney General's Guidelines on Disclosure were revised in 2005. These Guidelines address the roles and responsibilities of the participants in the disclosure process and, in some instances, address aspects not covered by the CPIA. They are applicable to all police investigations and prosecutions undertaken by the Crown.

5 Two protocols have been developed to assist in the case management and handling of unused material in the Crown Court. The Protocol for the Control and Management of Unused Material in the Crown Court was issued by the Court of Appeal on 20 February 2006 and the Protocol on the Control and Management of Heavy Fraud and other Complex Criminal Cases was issued by the Lord Chief Justice of England and Wales and came into force on 22 March 2005.

6 The Criminal Procedure Rules 2005 (as amended) provide an overriding objective that criminal cases be dealt with justly and codify the court's duty of active case management, both pre-trial and throughout the trial itself. They also set out the duties of the participants in a criminal trial.

7 The first two cycles of inspections carried out by HMCPSI in relation to the 42 Areas between 2000–05, overall performance assessments (OPAs) in 2005, and 11 AEIs in 2006–07 have all revealed some incremental improvement in some aspects of the handling of the duties of disclosure, but also non compliance. This has included failure to record decisions, prosecutors not examining items which they ought and wide scale (or 'blanket') disclosure of items to the defence that did not pass the statutory disclosure test. The OPAs in 2007 have further confirmed this overall picture.

8 The measures of compliance have mainly been in the 60-80% range, including in relation to dealing with sensitive material. Most of the non compliance related to extra disclosure outside the statutory test, poor endorsements of decisions, or poor recording of actions. It reflected a wide spread belief that whatever the prosecutor did there would be wide or blanket disclosure undertaken close to, or at, trial. There have been instances of non-disclosure of items that ought to have been disclosed, which we have brought to the attention of Chief Crown Prosecutors, and judges have told us of examples in which the existence of unused material was revealed during the trial process so that in the event there was no risk of a miscarriage of justice.

The purpose of the review

9 The purpose of this review has been to assess the quality and timeliness of the undertaking of the prosecution's duties of disclosure by the CPS, in respect of material obtained in the course of a criminal investigation which does not form part of the prosecution case in Crown Court and magistrates' courts' cases, the effectiveness of compliance with the CPIA disclosure regime and the impact of non compliance upon the fairness of trials and on the wider costs and resources within the CJS.

10 The main themes were to:

- assess the quality of CPS decision-making and recording of decisions taken in respect of the disclosure or withholding of unused material, including the adherence by prosecutors and prosecuting advocates to the requirements imposed by relevant legislation, case law and guidance;
- assess compliance with the Protocol for the Control and Management of Unused Material in the Crown Court, the Disclosure: Experts' Evidence and Unused Material Guidance Booklet for Experts and the Protocol for the Control and Management of Heavy Fraud and Other Complex Cases;
- assess the effectiveness of joint working with the police to ensure all relevant material is correctly captured and recorded;
- assess performance management to ensure compliance and secure improvement;
- assess the effectiveness and adequacy of ongoing training and materials provided to prosecutors;
- consider the cost and resource issues of disclosure handling and its impact on the prosecution process; and
- identify good practice and make recommendations to secure improvements in practice.

Methodology

11 We examined a total of 152 files. Of these 48 (16 magistrates' courts and 32 Crown Court) were finalised cases which were sent to us prior to the on-site visits to the Areas. The remaining 104 (55 magistrates and 49 Crown Court) were live trial files which were observed at the relevant court centre. We also took into account the findings from our recent cycle of AEIs and performance in the two cycles of inspections which concluded in 2002 and 2005 respectively. Overall, these exercises had involved the scrutiny of disclosure issues in about 6,526 cases.

12 The inspection of live trial files was coupled with interviews of those involved in the decisions taken on them. Wherever possible inspectors interviewed the defence and prosecution teams and the judge. Being present on the morning of the trial gave the inspectors a clear perspective of what was actually happening in practice, on the files 'there and then'. This has been of significant benefit in enabling us to come to our findings - it confirmed that what was happening at court with regard to disclosure handling is frequently not recorded on the file. This means there is a lack of overall awareness of the true position with regard to compliance with the disclosure requirements.

13 The Areas visited were a representative sample of metropolitan and rural and reflected a mix of those receiving Excellent, Good, Fair and Poor assessments in the disclosure aspect of the OPAs.

14 A reference group was formed in order to provide guidance and focus. Those invited to participate brought a wide range of perspectives and were included due to their skill and expertise with regard to disclosure handling in their particular background and organisation.

15 Part of the review was to gain an insight into cost and resource issues of disclosure handling for the CPS and the impact of this on the prosecution process.

Findings

16 The overall key finding was that the current system is not being adhered to fully. On the one hand less than full compliance by police disclosure officers and crown prosecutors manifests itself in inadequately described material and a lack of either informed decision-making or recording reasons for decisions. On the other there is too often a decision not to apply the statutory disclosure test so that blanket disclosure is allowed by the prosecution (or influenced or ordered by some courts) so that responsibility, and added resource costs, is passed to the defence and Legal Aid budget. Inspectors recognise that for the system to work properly there is a need for sufficient time, effort and attention to be devoted to the task by investigators and lawyers who fully understand the nature of it. At present this is too often the exception rather than the rule.

17 The resource demands are without question considerable. The Association of Chief Police Officers considers the effort disproportionate - particularly in relation to cases dealt with in the magistrates' courts - and not fully workable within existing resources. Many CPS prosecutors consider that they do not have sufficient time to undertake the duties fully. Defence lawyers vary between an acceptance of proportionality and a desire in principle to see all unused material when they think it appropriate. The costs to the public through the funding of both public and private participants in the criminal process are considerable. It is of concern that 1% of cases take up 50% of the Crown Court Legal Aid budget and that examination of large quantities of unused material contributes to this, in particular if not actually required by the CPIA test.

18 In essence inspectors make recommendations to ensure the existing legislation operates properly and fairly. There are some proposals as to the way forward in reducing burdens and seeking proportionality in summary (magistrates' courts) cases, but any large scale changes would require legislation and risk offending principles relating to the right to a fair trial within Article 6 of the European Convention and the Human Rights Act 1998.

19 The CPS complied with its duties of disclosure in the majority of cases. However, this was not universal and throughout this review inspectors found frequent non compliance within the linked processes which support disclosure. In the cases in the file sample the initial duty of disclosure was properly complied with in 56.6% (86 out of 152). In the magistrates' courts the initial duty of disclosure was complied with in 55.6% (40 out of 72) and in the Crown Court 57.5% (46 out of 80). The duty of continuing disclosure was properly complied with in 71.3% (62 out of 87) of all relevant cases. This was made of up 81.8% (nine out of 11) magistrates' courts and 69.7% (53 out of 76) Crown Court. The handling of sensitive material was properly complied with in 47.5% (28 out of 59) cases, which was made up of 26.7% (four out of 15) magistrates and 54.5% (24 out of 44) Crown Court.

20 Very few cases were seen where there was total compliance with all the disclosure procedures and guidance. However, in the cases examined and the trials observed this did not result in any findings of abuse of process or cases being dismissed prematurely. What were identified as failures were either rectified on the morning of, or during the course of, the trial. On many files where there were procedural failures these related to recording decisions or actions properly and would not cause the trial to be unfair. Other non compliance related to blanket disclosure.

21 Significant aspects of the non compliance were only seen by inspectors due to the methodology of seeing live contested cases, as opposed to the Inspectorate's more usual practice of examination of finalised files, as the actions were not recorded. This tends to explain the lower levels of compliance found in this review compared to earlier inspections.

22 In eight out of 152 (5.3%) of the cases observed some aspects of the non compliance resulted in adjournments and ineffective trials whilst disclosure issues were resolved. There were also examples of significant delays on the morning of trials whilst the trial advocates sorted out disclosure issues. Inspectors were informed that these delays, often lasting for two to four hours or more, were not uncommon. This clearly has a detrimental impact on court listing practices and on the progress of other cases listed for trial. It also contributes to a lack of public confidence in the trial process; juries inevitably are forced to wait for significant periods of time before their trials can commence and victims, witnesses and defendants are inconvenienced.

23 Some of the disclosure made on the morning of the trial related to non compliance with CPIA earlier in the life of the case, but in other instances this disclosure was wider than necessary under the CPIA. This often resulted from a combination of a need for expediency or a general lack of confidence by the trial advocate in the way the prosecution had discharged their duty of disclosure, based on what was apparent from the file up to that point. Key contributing factors for this were the lack of information and limited endorsements on the file, combined with the inadequate instructions provided to the trial advocate. In many cases there was no evidence of cohesive 'prosecution team' working. This lack of information can result in the trial advocate almost working in a vacuum and there was often no CPS involvement at all in the decisions taken by them whether to disclose

material or otherwise. When the trial advocate made disclosure at court to the defence there was generally no record made on the file that this had taken place and no record of what material had been disclosed. This further reduced the audit trail of what had and had not been disclosed.

24 Inspectors saw a number of examples (and were told of others) of cases listed for trial in which wide disclosure of unused material was undertaken on the morning of the trial, following which the defendant pleaded guilty. This can happen even if the CPS has undertaken disclosure appropriately, because the prosecuting advocate at court allows it. It was generally impossible to say that this disclosure was the only factor in the change of plea as it often depended on additional factors, such as the presence or otherwise of prosecution witnesses. However, the handing over of (or provision of access to) material on the morning of the trial gives the defence the opportunity, whether this is the reason for the change of plea or not, to claim a discount for the guilty plea. Since the disclosure of material is new information the defence have not previously had sight of, it can be asserted that the plea was entered at the earliest opportunity. If the disclosure fell outside that required under the CPIA test, as often seems to be the case, this would be an inappropriate discount. Additionally, the impact of late guilty pleas is to waste resources on preparation of cases for trial and contribute to unnecessary activity relating to disclosure duties. The fact that there was a 'successful' outcome to the case (a conviction on a guilty plea) means that in a significant number of cases where this occurs there is no scrutiny or analysis of either whether there was any disclosure failure or non compliance with CPIA through unnecessary disclosure. The issues are therefore not addressed at any level.

25 There were a number of instances of police officers not fully describing items on the schedules of unused material passed to the CPS. Frequently the inadequacy of these descriptions was not challenged and the items were not examined by the prosecutor during the review process. When looked at on the morning of the trial some of these items were actually pieces of evidence that would have strengthened the prosecution case and should have been served as such. Specific examples, and others inspectors were told of, related to 999 calls from the victims of crime at the time or shortly after the incident, photographs and documentary evidence in road traffic cases and corroborative material relating to identification in a robbery case.

Sensitive material and public interest immunity

26 Sensitive material is that which, if disclosed, creates a real risk of serious prejudice to an important public interest. Police should compile a sensitive material schedule (form MG6D) setting out the sensitive material, or providing a nil return. The disclosure officer should include the reason for regarding the material as sensitive, using the definition above. The crown prosecutor will apply the usual disclosure test and, in the relatively rare instances when the material meets the test, determine with the 'owner' of the material whether it should be disclosed or a public interest immunity (PII) sought from the court for non-disclosure.

27 At present police are inclined to place too much material on the MG6D that clearly does not meet the "real risk" test. In only 15 out of 77 relevant cases did inspectors consider the material listed as sensitive capable of meeting the real risk test. Greater involvement of senior police officers is needed to substantiate the use of the MG6D. The dangers are that material of which the defence should be aware is never transferred to the MG6C so that its existence is not known to them, or that prosecutors do not examine truly sensitive material because of it being obscured in lists of items that do not really belong on the sensitive schedule.

28 Any applications to the court for PII should follow the guidance and be supported by a written note of the reasons provided by a senior police officer. Inspectors considered that records of these applications should be kept securely, as there was a lack of clarity about the extent of such applications.

Third party material

29 There are cases in which material is held by a third party, for example a social services department or a medical doctor. If the material might meet the disclosure test prosecutors should take appropriate steps to obtain it. Inspectors considered that earlier consideration should be given to material held by third parties by the prosecutor, in conjunction with the investigating police officer.

30 Thereafter either the prosecution, or the defence, should follow the proper procedures to obtain such material. It is necessary for the owner of the information, and at the discretion of the court any individual the subject of it e.g. the patient, to be given notice of the hearing. The Crown Court Protocol requires these hearings to be made at an early stage. There is also the possibility of the hearings developing into applications for non-disclosure on the grounds of PII. It is anomalous and inequitable that neither of these parties who are drawn into the criminal court process can recoup their costs from central funds.

Prosecution resources

31 Inspectors also have concern about the resourcing of CPS Areas for disclosure handling. On the current activity based costings budget allocation there is no specific time allocation for disclosure handling. The assumption is that these activities are built into existing review and consideration time. The activity based costings do not provide for large or very large and complex cases and it is not designed to do so - Areas are expected to absorb this work from their budget allocation. Areas tend to 'ring-fence' legal staff for the more complex and high profile cases and this can have the effect of starving resources from the more routine ones.

Confidence in the disclosure regime

32 Many defence, and some prosecuting, practitioners spoken to consider that there should be routine disclosure of certain items such as crime reports, incident logs and all previous convictions of prosecution witnesses in all contested cases. They considered that whilst this would not by itself increase confidence in disclosure handling, it would remove a significant aspect of concern and reduce the number of requests for material, which almost invariably include those items.

33 Some experienced practitioners considered that the current regime could never work, as the requirement for continuing review makes the CPIA impracticable and unworkable. The point was made that unless the lawyer who considered the material and made all disclosure decisions on the file was present throughout the entirety of the trial, there was no way of ensuring that all earlier disclosure decisions would be reviewed at the time there was a change to the evidence or the way the case was presented.

Conclusions

34 Inspectors recognise that it is impossible to gain the whole hearted acceptance of all parties to the existing disclosure regime. Some defence practitioners will never trust the prosecution to take the appropriate view on what may assist the defence or undermine the prosecution case.

It is arguable that the present arrangements require police officers to make decisions which they are not equipped to take. The police find it too onerous within their priorities and resources. The arrangements for describing material in schedules as the basis for prosecutorial consideration means that many decisions by crown prosecutors are taken on the basis of inadequate information and they do not always examine sufficient material themselves or record the reasons for their decisions in appropriate detail. The single regime for all cases calls into question its proportionality within the field of summary justice in the magistrates' courts, whilst leading to some huge resource demands in large and complex fraud cases. There is concern amongst the senior judiciary to make the regime work within the CPIA, but this can be undermined in individual cases if an 'open' approach is taken to encourage the prosecution to disclose all non-sensitive unused material.

35 The present arrangements do not lend themselves to a consistent and authoritative application of the regime and, consequently, the prosecution lacks confidence in its own role. Non compliance with the CPIA, throughout the disclosure chain, has also resulted in a lack of confidence in the process on the part of practitioners and the judiciary. It hampers effective case progression, can result in significant delay and adjournments and has resulted in material that would have supported the case not being included as evidence. On the other hand, in cases where the prosecution has handled disclosure in accordance with the CPIA, the disclosure of material which does not meet the statutory test on the morning of the trial has undermined the efforts of the crown prosecutors to deal with disclosure appropriately. This can then lead to a lack of care and individual responsibility for handling disclosure on the grounds that it 'will all be sorted out at court in any event'. A vicious circle then exists.

36 For there to be any real prospect of the current regime succeeding there needs to be a unified and agreed process, which is understood fully by all those who are involved and upheld and supported by all. This means that there must be clear, positive and demonstrable compliance with the statutory disclosure regime at all stages by all parties. Compliance should be managed and monitored on a consistent basis by all relevant criminal justice agencies, both at an individual and multi-agency level.

37 Throughout this report inspectors have made recommendations in order to secure improvement not only in actual compliance with CPIA, but also in demonstrating compliance with it. One of the repeated themes throughout this review has been the lack of a clear audit trail as to what unused material has been examined, when and by whom, and why the decisions taken have been reached. Inspectors have also highlighted good practice found throughout the course of this review. Some of this relates to systems and processes which have been adopted throughout an Area and are in widespread usage. In other instances they are suggestions and good working practices being undertaken by individuals or a prosecution team on a particular case. Where this could be of benefit in the wider criminal justice field, it is highlighted in the findings.

Recommendations

38 Inspectors have made the following 21 recommendations:

1 Chief Crown Prosecutors should ensure:

- pre-charge revelation to the prosecutor of unused material which may undermine the prosecution case or assist the defence is received from the police in accordance with the existing Director's Guidance on Charging, and this is monitored;
- feedback is given to police officers and prosecutors in cases of non compliance; and
- performance in respect of compliance is considered by the CPS and police at Prosecution Team Performance Management meetings (paragraph 6.6).

2 Crown prosecutors handling complex cases with voluminous unused material should encourage the police to consult them at an early stage about scheduling and submission of the unused material (paragraph 6.6).

3 CPS Business Development Directorate should assess cost implications and the potential benefits of an amendment to the case management system to include a separate disclosure review tab and an updatable electronic disclosure record sheet (paragraph 7.13).

4 CPS Business Development Directorate seeks to agree with the Association of Chief Police Officers that, in addition to the crime report and log of messages, all unused material created contemporaneously with events should be routinely revealed (physically or copied) to the prosecutor and the Disclosure Manual amended to reflect this. Prosecutors should demonstrate close scrutiny of these items and clearly record their review decision and subsequent disclosure decisions when applying the statutory disclosure test (paragraph 7.23).

5 CPS Business Development Directorate, in conjunction with the Association of Chief Police Officers, considers amending forms MG6C, MG6D and MG6E and the main endorsements used on them, so as to provide greater clarity and transparency in the decision-making process and to indicate whether the lawyer has examined the item (paragraph 7.40).

6 CPS Policy Directorate should consider, in conjunction with the Office for Criminal Justice Reform and the judiciary, the merits of the prosecution lodging previous convictions of prosecution witnesses with the judge in Crown Court trials and amending the Crown Court Protocol (paragraph 7.44).

7 CPS Business Development Directorate consults with the Association of Chief Police Officers as to providing (initially on a pilot or experimental basis) unused material in magistrates' courts' cases directly to the crown prosecutor for examination instead of the disclosure officer describing them (paragraph 7.46).

8 Crown prosecutors should examine items of unused material in which the description provided by police is not adequate to provide a sound basis for an informed decision as to the application of the disclosure test (paragraph 7.48).

9 CPS Business Development Directorate should consult with the Association of Chief Police Officers to devise and implement an effective performance management scheme to raise the standard of the descriptions of material on the MG6C and the provision of copies of material if incapable of adequate descriptions (paragraph 7.48).

10 CPS Business Development Directorate provides guidance to crown prosecutors about steps to take to ensure that the details of non-sensitive unused material not initially on the MG6C are provided to the defence at the earliest opportunity in order to avoid delay (paragraph 7.50).

11 Crown prosecutors object appropriately to any defence applications to the court for disclosure which do not comply with section 8 Criminal Procedure and Investigations Act procedures (paragraph 8.8).

12 CPS Business Development Directorate, in consultation and conjunction with the Association of Chief Police Officers, should take steps to ensure that disclosure officers only seek to withhold items listed on the sensitive material schedule when there is a real risk of serious harm to an important public interest and that such assertions are ratified by a senior officer; and

Crown prosecutors examine all material on sensitive material schedules, or are fully informed about it by a senior police officer (paragraph 9.13).

13 Chief Crown Prosecutors ensure that a log is maintained of all public interest immunity applications, together with a record of all parties involved in the decision-making process, and the results of ex parte applications without notice are collated nationally (paragraph 9.19).

14 Crown prosecutors ensure that in any case with sensitive material a complete record is maintained of the application of the disclosure test and the decisions made in relation to such material, and that the trial advocate is fully informed of those decisions (paragraph 9.26).

15 CPS Business Development Directorate, in conjunction with the Association of Chief Police Officers, considers amending the form MG3 to include a prompt for prosecutors to confirm that the possible existence of third party material and any appropriate action in relation to it has been considered and discussed with the officer (paragraph 10.9).

16 The Ministry of Justice considers the case for providing courts with the power to award costs out of central funds to third parties and interested individuals drawn into the criminal court process and who have acted reasonably (paragraph 10.12).

17 Chief Crown Prosecutors liaise with the police, local authorities and local health services to agree effective third party unused material protocols (where this has not already been achieved) and ensure that all protocols are regularly reviewed and updated (paragraph 10.17).

18 CPS Business Development Directorate considers establishing uniform performance targets for disclosure against agreed criteria; and

Chief Crown Prosecutors ensure their Area's performance is monitored and achieves the agreed target (paragraph 13.11).

19 CPS Headquarters undertakes the necessary research to determine accurately the complexity profile of trial cases in the Crown Court and magistrates' courts, and clarifies if large and more serious cases are causing disclosure resource issues for the less serious cases (paragraph 14.34).

20 Chief Crown Prosecutors should consider in those cases where examination of unused material represents a significant burden on the prosecution, whether the detailed work should be done by a specially instructed external disclosure counsel on a fixed fee basis attributed to the prosecution costs budget, and ensure that the guidance on the management of large scale cases is followed (paragraph 14.35).

21 CPS Policy Directorate undertakes the collation of all relevant law and guidance on disclosure and provides itemised electronic links to this with the Disclosure Manual (paragraph 16.4).

Good practice

39 The following items of good practice were identified, which might warrant adoption nationally.

Issues of practice

1 Storing the MG20 forms (which accompany additional prosecution material received by the prosecution after service of the case on the defence) with the unused material schedules, clearly endorsed with the decisions taken, e.g. 'serve as evidence' or 'disclosure officer to add to next phase of unused material schedules' (paragraph 7.13).

2 Using a bright coloured card disclosure record sheet, which is easy to identify in the file (paragraph 7.13).

Review and decision-making procedures

3 Any pre-charge liaison by the crown prosecutor with Major Incident Teams should routinely include discussion with the disclosure officer of how unused material schedules will be presented (descriptions, cross-referencing etc) and a timetable agreed for the phasing of the supply of unused material after charge. This should be documented and recorded in

	any action plan agreed. In addition, any issues over unused material in Major Incident Team cases should routinely be discussed in post-case de-briefings to learn lessons and help with training (paragraph 6.6).
4	Prosecutors recording on the schedules their decisions and whether an item had been seen by them in order to determine the decision to disclose (paragraph 7.31).
5	The lawyer including in the initial disclosure letter any defences that have been taken into account by the prosecutor when determining whether an item of unused material may assist the defence (paragraph 7.42).
6	The disclosure officer (or officer in the case) confirming all witnesses have been checked for previous convictions and informing the prosecutor in writing of the results (paragraph 7.43).
7	Lawyers re-endorsing the unused material schedules (as well as the disclosure record sheet) when significant changes occur to the case (paragraph 8.6).
8	A covering advice by the prosecutor sent along with the defence statement to the disclosure officer identifying the matters to be considered and emphasising that they should not only consider items which could assist the defence, but also items which could equally rebut the defence (paragraph 8.14).
9	In cases where there are significant ongoing disclosure issues, any uncertainly and misunderstanding can be avoided by making it clear to the defence in correspondence that all disclosure issues have now been dealt with (paragraph 8.16).
10	Continuity and retention of file ownership and decision-making through the early identification and involvement of the prosecution team – investigating officer, disclosure officer, senior officer, reviewing lawyer, caseworker, trial counsel (paragraph 15.9).
	Case progression
11	Local arrangements under which the judge requires initial disclosure and the provision of a defence case statement to be served before the plea and case management hearing (as should take place under the Criminal Procedure Rules and in accordance with the Crown Court Protocol) (paragraph 8.11).
12	Regular case progression meetings between court staff and a senior CPS lawyer or caseworkers to ensure that cases are trial ready (paragraph 13.12).

Learning from experience

13	Managers checking the quality of initial disclosure letters as part of Casework Quality Assurance (paragraph 7.42).
14	Feedback sessions by Higher Court Advocates to other CPS staff on all aspects of Crown Court work, including the handling of unused material (paragraph 11.4).
15	Focussed and systematic examination of a sample of files in order to benchmark disclosure performance. Thereafter, monitoring to be repeated quarterly and a report prepared for the consideration of the Area management team (paragraph 13.11).

The full text of the report may be obtained from the Corporate Services Group at HMCPS Inspectorate (telephone 020 7210 1197) and is also available online at www.hmcpsi.gov.uk.

HMCPSI
May 2008

HMCPSI Publication No. 780