‘Fair Disclosure for a Fair Trial’

An inspection of disclosure procedures and practices within the Criminal Justice system

Contents

Foreword

This report has identified a number of aspects of concern in the way the disclosure of unused material process is managed within the criminal justice system. 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 has drawn strong criticism from the judiciary and attracted significant media interest. This has led to an over-concentration on serious case work promulgated by those at the top of both the Crown Prosecution Service (CPS) and police, which in turn has resulted in a too narrow approach to the overall disclosure problem. A two-tier attitude towards disclosure has evolved, with significantly less attention being given to the majority of volume cases that proceed through Crown Courts.

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 efficiency over effectiveness that focuses on achieving deadlines under the Crown Court Better Case Management (BCM) process rather than ensuring that 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 (CPIA) has been commented on in many previous reviews and is an effective piece of legislation. Equally the BCM process affords ample opportunity for the disclosure process to work if the relevant parties comply with their disclosure requirement at the right time. 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 engaged in an investigation or prosecution to ensure that a common aim is achieved: a 'fair disclosure for a fair trial'.

Executive Summary

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, 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 CPIA, by common law and by Codes of Practice and Guidance.

This inspection has analysed the process in detail. It has reviewed both 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 un-announced Crown Court observations.

The inspection found that routine poor police scheduling of both sensitive and non-sensitive material is endemic and revelation by police to the prosecutor of material that may undermine the prosecution case or assist the defence case non-existent. 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 on-going disclosure. To compound matters, the auditing process surrounding disclosure decision-making is non–existent. The failure to grip disclosure issues early often leads to chaotic scenes later at court, where last minute and often unauthorised disclosure between

counsel, unnecessary adjournments and ultimately case discontinuances are common occurrences.

This inspection has identified a number of reasons for this wholesale failure in the process of disclosure and they form the basis of our recommendations. There needs to be improvement in the training and supervision provided to both police and prosecutors, in the communication between the two parties and in the Information 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 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 add-on. 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.

Key Recommendations

Recommendation 1

- **Any issues relating to unused material must be identified by the police or CPS at the charging stage and reflected fully in an action plan.**

Recommendation 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.**

Recommendation 3

- **Within twelve months the College of Policing should introduce a training package that enables police forces to provide classroom-based training on the disclosure of unused material to all staff involved in the investigation process, and 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.

Recommendation 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.**

Recommendation 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 and the findings included in the CPS Area Quarterly Performance Review process.**

Recommendation 6

- **Within six months, all police forces should establish the role of dedicated disclosure champion and ensure that there is national consistency in terms of the role and grade or rank. The post holder should 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.**

Recommendation 7

- **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.**

Recommendation 8

- **Within six months, 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.

Introduction

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]

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]

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]

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

[1] Criminal Cases Review Commission Annual report and accounts 2015/16 p 7
[2] Attorney General's Guidelines on Disclosure For investigators, prosecutors and defence practitioners (Dec 2013) and Judicial Protocol on the Disclosure of Unused Material in Criminal Cases (Dec 2013)
[3] Attorney General's Guidelines on Disclosure For investigators, prosecutors and defence practitioners (Dec 2013)

number of critical judgments in relation to the management of unused material by the police and CPS [4]

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. The latest Her Majesty's Courts and Tribunal Services (HMCTS) figures for trials vacated due to disclosure reasons show that in the last four years, over a thousand magistrates' and Crown Court cases per year have proved ineffective on the day of trial owing to a failure by the prosecution to disclose unused material and over 1500 cases owing to defence not being ready because of disclosure problems. [5]

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

It is against this background of failure that a joint inspection by HMIC and 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 Review of CPS Complex Casework Units (CCU) Management Report in 2011[6] 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*

[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
[5] https://www.gov.uk/government/collections/criminal-court-statistics
[6] HMCPSI publication March 2011

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'.[7]

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.

As a result, a decision was made to undertake an inspection which focussed on Crown Court cases dealt with by 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 particularly those handled by CPS Rape and a Serious Sexual Assault Units (RASSO), carry significant reputational risk and include the type of work highlighted in two of the 2015 Court of Appeal judgments.

The inspection included the examination of 146 Crown Court case files. These cases originated from various police teams, both specialist and non-specialist, and which were dealt with at CPS Area level. It excluded casework dealt with by Complex Casework Units 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 this report.. Inspectors found that the outcome for 23 of these cases (41%) was incorrectly recorded (For example, some did have disclosure issues but the case stopped for other reasons). The poor finalisation recording Inspectors found highlights that there may be more cases with disclosure issues that have not been recorded correctly.

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 of relevant staff in various roles and ranks within the police forces and CPS areas, as well as interviews with strategic leads from CPS and police at both regional and national levels. In addition, unannounced visits to Crown Courts 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 a more far reaching feedback on the disclosure process.

The Disclosure Process: Initial Disclosure Requirements

Early identification of disclosure issues

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 victim'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. [8]

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 and undermine the prosecution case.

[8] 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.

The inspection found that 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 been 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% 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 1

Any issues relating to unused material must be identified by the police or CPS at the charging stage and reflected fully in an action plan.

The Disclosure Process: Police Initial disclosure responsibilities under CPIA

Under the Criminal Procedure and Investigations Act 1996 (s. 23(1)) Code of Practice, 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[9] to the case. This material should in turn be divided into sensitive[10] and non-sensitive material. For cases going to trial at 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

[9] Relevant material is defined as material that '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'

[10] Sensitive material is defined as material, the disclosure of which would give rise to a real risk of serious prejudice to an important public interest

non-sensitive or sensitive disclosure schedules, which satisfies the disclosure test in that it assists the defence case or undermines the prosecution case. [11]

The scheduling process for unused non-sensitive material

The non-sensitive disclosure schedule[12] (known as form MG6C) 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[13].

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 items 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[14] and nothing else.

An Example of an MG6C with only reference numbers removed

1	CPS / JOINT ACPO DV CHECKLIST	ON FILE	CND
2	OASIS LOG: xxxxx	ON FILE	CND
3	OASIS LOG: xxxxx	ON FILE	CND

[11] Criminal Procedure and Investigations Act 1996 (s. 23(1)) Code of Practice

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

[13] Para 6.11 Ibid

[14] 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 Crown Prosecution Service 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.

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

One case reviewed related to an allegation of attempted rape by the defendant on a passerby 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.

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. [15] The issue of training is discussed in greater detail later in this report

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

[15] 'Fair Investigations for Fair Trials' is a computer-based training package published by the College of Policing on 31/1/2017 via the MLE and gives an introductory overview of the disclosure process

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.

The scheduling process for unused sensitive material

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[16]

Our findings show that the police do not understand what constitutes sensitive material and are routinely not scheduling sensitive materiel correctly. Whilst 60% of 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%),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 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

[16] Criminal Procedure and Investigations Act 1996 (s. 23(1)) Code of Practice (para 6.14)

standards of the relevant force on the grounds that crucial disclosure that undermined the prosecution case had not been forthcoming.

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 CPS would also be shared with the defence whether deliberately, or in error, although a few were able to provide details of cases when this had occurred.

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

The disclosure officer's certificate (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. [17] 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.

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.

[17] Criminal Procedure and Investigations Act 1996 (s. 23(1)) Code of Practice (para 7.2

The Disclosure Process: Prosecution Initial disclosure responsibilities under CPIA

The Prosecutor Review of Schedules prepared by the Police

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.[18]

Prosecutors are also expected to reject[19] 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.

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:

[18] Para 29 Attorney General's Guidelines on Disclosure For investigators, prosecutors and defence practitioners (Dec 2013)
[19] Para 30 Attorney General's Guidelines on Disclosure For investigators, prosecutors and defence practitioners (Dec 2013)

- revelation of certain standard documents from police to CPS well beyond those required to satisfy routine revelation, effectively passing the duty to describe and assess the items to the reviewing prosecutor;
- prosecutors either drafting their own MG6C or creating addendums on letters to the defence;
- 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.

Making decisions and endorsing the schedules

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.

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 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.[20]

Handling of sensitive material by prosecutors

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[21]. 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

[20] UNSM-4
[21] Para 24 Attorney General's Guidelines on Disclosure For investigators, prosecutors and defence practitioners (Dec 2013)

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.

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. The figure could well have been higher if not for the fact that of the 45.6% of cases where we did find 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.

The 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 our case file samples, which had unresolved disclosure issues relating to witness credibility.

The Disclosure Process: Ongoing Police and Prosecution disclosure and the Defence Statement (DS)

Ongoing disclosure responsibilities

The CPIA[22] imposes a continuing duty on the prosecution team to disclose material which satisfies the test for disclosure. 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.

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 cases where an MG6 was submitted (86 files), only 41.9% were rated as good and in 13.9% 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.

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 formal practice between 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 as well as 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 (DS)

Despite there being a requirement to continue to review the disclosure, in most cases the trigger for the next review takes place upon the receipt of the defence statement. 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

[22] Section 7A CPIA 1996

to take. Inspectors did not measure timeliness of DS submissions by the defence, but it was noted in many 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 in most cases.

Upon receipt of the DS, the Attorney General's guidelines 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. "[23]

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 guidelines, the DS would be routinely referred to a reviewing prosecutor for comment. However, there is a national CPS instruction[24] in place which states that the DS should be sent directly to the officer in charge of the investigation and then copied to the prosecutor. This arrangement was broadly supported by the majority of prosecutors on the basis that they 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.

Whilst late receipt of the DS may partly explain the need to send the DS promptly to the police, it is of concern that CPS adds no value to this process and simply moved the document along. 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. Additionally officers felt that it demonstrated that the prosecutor did not care about the case.

[23] Para 31 Attorney General's Guidelines on Disclosure For investigators, prosecutors and defence practitioners (Dec 2013)
[24] Chapter 15 The Disclosure Manual

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 certificate. [25] However, police failed to adequately identify any new disclosure in over a quarter (26.5%) of 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 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.

Timeliness of disclosure

BCM sets down a timetable for disclosure in contested Crown Court cases[26]. Of the 90 cases read for the inspection the prosecution did not discharge its disclosure duties in a timely manner in 54.4% of 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 that we spoke to confirmed that there were occasions when the defence supplied the DS late but stated that often the items being requested by defence should have been flagged up at the initial disclosure stage.

[25] Criminal Procedure and Investigations Act 1996 (s. 23(1)) Code of Practice (para 9.1)
[26] See BCM flowchart in Annex

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 in 81 of the 90 files that required ongoing disclosure by the CPS, in 32.2% of cases the prosecutor only partially complied with their duty of continuing disclosure and in 7.8% of cases we found that ongoing disclosure was not complied with at all. Fortunately these did not lead to a miscarriage of justice.

The audit trail

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.

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 file sample revealed a less than effective approach to its use. Only 13.3% 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.[27]

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

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

Date	Events and actions

[27] (CDH-4).

xx xx	Receipt of Defence Case Statement
xx xx	Sent Defence Case Statement

Line mangers 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 the fulfilling the requirements of the disclosure process there was very often no coherent audit trail to demonstrate it.

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) were retained by the police but not revealed to the prosecution. The Defence the existence of this material in a Defence statement 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 were 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. The judge removed the case from the list and put it off to allow the CPS to complete the exercise

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.

Our observations confirmed the practice of last minute counsel to counsel disclosure despite this being contrary to the AG Guidelines[28] 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 judge for not putting the items on an MG6C, the officers continued to pass documents to the CPS in the form of a letter.

Cases discontinued as a result of a disclosure issues.

As previously mentioned at the beginning of this report, the inspection team looked at a further 56 finalised cases where disclosure was stated to be the main reason for discontinuance. Some of these files pre-dated the BCM process. Inspectors found a number of common themes between the two file samples.

Whilst 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, it was clear from both examination of the files and through conversations with

[28] Para 38 Attorney General's Guidelines on Disclosure For investigators, prosecutors and defence practitioners (Dec 2013)

police, prosecutors, judges, counsel and defence that these are issues of long standing, predating recent budget reductions.

The support mechanisms behind the disclosure process

Whilst our inspection has identified a number of key failings in the disclosure process, none were 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

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.' [29]In relation to providing adequate training on disclosure it is our view that it is not fulfilling this responsibility. The basic on-line training package currently offered is confusing and lacks sufficient detail of the process. Beyond this the College offers little outside of the disclosure training contained within the national accreditation programme for police officers.

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[30] process, 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 country who expressed deep

[29] www.college.plice.uk/About/Pages/default.aspx
[30] 'PIP' Professionalising the Investigation Process, is a national detective training accreditation course.

concern at the lack of knowledge and correct application of disclosure principles by officers completing case files.

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.

Recommendation 3

Within twelve months the College of Policing should introduce a training package that enables police forces to provide classroom-based training on the disclosure of unused material to all staff involved in the investigation process, and 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

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 courses 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 the RASSO teams additionally received complex disclosure training and were available to offer their assistance to less experienced colleagues.

One good practice identified was in a CPS Area which had weak disclosure practices in their region. It identified a number of themes where disclosure was weak amongst its prosecutors and police. CPS national training was then adapted to focus on reducing the problems with a programme of training delivered across the area. This included a webinar[31] system in order to get the message to the widest police audience and was well subscribed and positively received by police. The inspection found other examples of good partnership working between CPS and police in a bid to improve standards around disclosure, but it was inconsistent across the areas.

Supervision of the disclosure process

Police

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 the BCM which does not require any active supervision in the form of a supervisory signature at the point the disclosure schedules are completed.

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 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 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 certificate was often no

[31] A live online educational presentation during which participants can submit questions and comments

better than those completed by the officer in charge of the investigation therefore neutralising the positive impact of such units.

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 read, 114 (78.8%) were either poor or fair.

Rate the overall quality of handling of unused material by Police	All Files (%)	Theme One (%)	Theme Two (%)
Excellent	0	0	0
Good	22	28	12.5
Fair	36	43	25
Poor	42	29	62.5
NA	0	0	0

Recommendation 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.

CPS

The CPS operates a quality assurance programme of legal decision making known as 'Individual Quality Assessments' (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.

The CPS Compliance and Assurance Team does carry out an analysis of the IQA results and provides IQA workshops which focus on improving the quality of IQA assessments and 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 country specifically on the disclosure process would improve the awareness of disclosure issues as they arise and provide better analysis.

The following 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 CPS	All Files (%)	Theme One (%)	Theme Two (%)
Excellent	0	0	0
Good	23	27	18
Fair	44	50	34
Poor	33	23	48
NA	0	0	0

Recommendation 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 and the findings included in the CPS Area Quarterly Performance Review process.

Inspectors were also concerned to see 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

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 report[32] 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.

[32] HMCPSI publication - Disclosure Handling in R v Mouncher and Others (South Wales) 2013

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 on disclosure of those officers conducting volume investigations.

Recommendation 6

Within six months, all police forces should establish the role of dedicated disclosure champion and ensure that there is national consistency in terms of the role and grade or rank. The post holder should 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

The CPS as a single national organisation in contrast to the forty-three 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

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 level;
- engagement with 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 where appropriate.

However she does not see her role as having direct responsibility for, or overview of, operational performance, which is left to the CPS Area disclosure champions.

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 country and this lack of clarity is unhelpful. 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.

An example of good practice was noted in one area, where the area disclosure champion, recognising their limitations in dealing with so many prosecutors in one area, 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.

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. The reports are analysed by the National Disclosure Champion (working with CPS policy advisors) and the Director of Public Prosecutions is briefed from these documents. The Area Chief Crown Prosecutors receive general feedback on these reports and specific feedback is provided where there is anything of more local relevance.

Based upon interviews with disclosure champions and the National Disclosure champion it is clear that the DAR process does not capture the significant aspects of poor performance our inspection has identified and there are missed opportunities to rectify common issues and learn lessons. A 'realistic' approach needs to be taken concerning the role of the Area Disclosure Champions and how they complete the reports.

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 overreliance on standard templates and acceptance of assertions from the Area. Whilst the CPS clearly appreciates the risks associated with disclosure handling on high profile or sensitive cases there needs to be a greater balance reflected within the Disclosure Assurance Report Process between 'serious' and 'volume'.

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.

Information and communications technology

Police and CPS

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 system's worked compounded the issues.

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.

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 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.

The handling of sensitive material using existing digital systems also poses problems. Existing systems are not sufficiently secure enough 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 Disclosure Record Sheet.

The DRS is a living document and is held on the 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.

At the time of the inspection, we found there was inconsistency in the way disclosure material is uploaded and stored on to the case management system, 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.

The effectiveness of the CMS system is also a cause for concern. CMS 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 and was a serious cause for concern as it was likely to lead to disclosable items not being revealed or disclosed.

Recommendation 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.

Communication between police and CPS

Police and CPS

As a final point, it is important to acknowledge that the ability to maintain a good working relationship between 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 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.

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 to potential disclosure issues.

Recommendation 9

Within six months, 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.

Conclusion

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. The law, Rules and Guidance that apply to the processing of unused material are not complex or difficult to understand.

While acknowledging that the sheer bulk of unused material can cause significant issues in some cases, our inspection has found an apparent decision by both police and the CPS that a continuing non-compliance with the law in volume Crown Court work is an acceptable risk to take. This non-compliance is not new and has been common knowledge for many years amongst those who are engaged with the criminal justice system. It is hard, therefore, to understand why progress has not been made in addressing the issue. It is not for this inspection to comment on whether the police and CPS are under-resourced. If they are then, that is a matter the Director of Public Prosecutions and Chief Constables and Police and Crime Commissioners need to take up with ministers. But until the police and CPS take their responsibilities in dealing with unused material in volume cases more seriously, no improvement will result.