

National Disclosure Improvement Plan

Phase Two – Embedding
Culture Change and
Continuous Improvement

Foreword

Disclosure is a vital part of every investigation and the preparation of every case for prosecution and trial. The National Disclosure Improvement Plan (NDIP) published in January 2018 demonstrated the unprecedented joint commitment and focus of the police, the CPS and the College of Policing to finding solutions to the problem of getting disclosure right. We have recently published [our report](#) on the extensive action that we have already taken in accordance with that plan to bring about the necessary changes, not just in how cases are handled, but in the wider culture within investigations and prosecutions. Public confidence in the system of disclosure needs to be rebuilt and this continues to be a priority for all three of our organisations, both individually and working together.

The vision, priorities and drivers of improvement we identified in the NDIP remain as true and as important now as they were when it was published at the beginning of the year. However, while all of the actions under the first published plan have either been completed or are on track, there is considerable work still needed to embed the improvement measures and ensure that the changes are having the intended effect throughout police forces and CPS Areas.

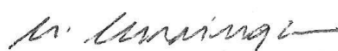
Our primary aim is to continue to drive improvements in the way disclosure is dealt with in every criminal investigation and those cases which go forward to prosecution. To make that happen we will focus on:

- forging strong local partnerships so that police forces and CPS Areas deliver the changes required at every level;
- developing the core skill of disclosure as part of the investigative process for all investigators;
- utilising the opportunities of innovative technological solutions and making these tools available to frontline staff in their work;
- ensuring a clear line of sight between local and national expectations to ensure that national changes are embedded and taking effect at a local level;
- improving communication between the police, the CPS and the defence, including at the pre-charge stage;
- monitoring the impact of improvement activity and setting success measures to assess their effectiveness in investigations and prosecutions; and
- focusing on disclosure performance in the magistrates' and youth courts.

Each of our organisations remains committed to concentrating relentlessly on the implementation of disclosure improvement measures. Working together, the task now is to ensure that we embed these changes we have already introduced and use them to continue to improve organisational performance. We will maintain this momentum to bring lasting improvements to how disclosure is managed in the criminal justice system.



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Background

The National Disclosure Improvement Plan is the definitive plan for our collective work on disclosure improvement and this document outlines the next phase of it. Since the publication of the NDIP in January 2018, the Justice Select Committee have published their report 'Disclosure of evidence in criminal cases' and the Attorney General has concluded his review. We welcome the insights of both of these reports, which build on previous reports, inspections and reviews which have captured and highlighted similar problems over a number of years. We have reflected their respective recommendations in this next phase of our disclosure improvement activity.

The Criminal Justice Board has created a disclosure sub-group to support its functions and oversee the implementation of the cross-system recommendations in the Attorney General's review of disclosure. NDIP will support and co-ordinate with that work and will also report separately to the main Criminal Justice Board.

Key Priorities of NDIP Phase Two

This plan builds on the substantial progress under the NDIP and is designed to help us continue to align and deliver our collective improvement activities across the criminal justice system; galvanising our efforts and addressing our key priorities. Our strategic priorities remain as:

- Strengthening the **capacity** to deal with disclosure, ensuring we have the flexibility to meet the challenges we face, both now and in the future;
- Improving the **capability** of police officers and prosecutors and equipping them with the right skills, particularly in the context of handling large volumes of digital material;
- **Leading** the transformation of the culture of investigators, so that disclosure is viewed as an integral part of the investigation and any subsequent prosecution;
- Engaging more effectively in our **partnerships** in the criminal justice system and improving communication between the prosecution and defence throughout criminal investigations and proceedings; and
- Embedding the actions taken at a national level into local police forces and CPS Areas by robust **governance** on both national and local improvement plans.

That is a challenging agenda and the long-standing disclosure problems require a long-term commitment. Disclosure cannot be remedied in isolation; it is an element of case preparation, review and progression and requires a system wide, concerted plan for continuous improvement. In this next phase of our improvement plan we focus again on ensuring the skills of our people reflect our current and future needs and on technological innovation as a means to drive service improvements and efficiencies. Our long term strategic objectives will be delivered through the implementation of both the national and the local action plans.

We are confident of our collective abilities to transform our performance in this area and to rebuild public trust in the fairness of the disclosure process. This plan sets out the next stage of how we will do this.

Capacity

Capacity refers to the resource we have available in individuals and our systems to perform our disclosure duties and functions effectively, efficiently and sustainably.

Our strategic objective is to continue to improve and develop capacities and to consider the opportunities of technology to assist in managing ever increasing quantities of digital evidence.

The explosion in both the capacity and use of digital technology brings new and significant challenges to criminal investigations and prosecutions. This has an impact on the volume and complexity of material that is of potential relevance to the investigation, on making decisions on what is a reasonable line of inquiry and reviewing material to assess whether there is anything that undermines the prosecution or assists the defence. Investigators and prosecutors need to keep pace with continuing developments. Pilots of increasingly advanced search and analytics products are already underway.

Early and meaningful engagement between prosecutors and defence representatives needs to take place from the outset of criminal proceedings, particularly in investigations that feature digital devices and communications evidence. The CPS have piloted the use of Disclosure Management Documents (DMD), adapted from our serious casework regime, in all rape and serious sexual offences and cases dealt with by the CPS Complex Casework Units in the Crown Court. We are working with the judiciary and Criminal Procedure Rules Committee to integrate the DMD into the Plea and Trial Preparation Hearing and we will now be extending the use of DMDs to other Crown Court cases.

The vast majority of criminal cases are dealt with in magistrates' courts and we agree with both the Justice Select Committee and the Attorney General that there is a need to review the effectiveness of disclosure performance there. We will also be examining how disclosure is working in youth court cases, which can often be both serious and complex, to ensure that we are driving improvements in all types of criminal proceedings, not just in our Crown Court work.

New and ongoing improvement activity:

- Learning from the on-going pilots led by our cross-agency technology working group will be coupled with evidence from a more detailed wider landscape review undertaken by the NPCC Digital Policing Portfolio. As per the Justice Select Committee recommendation, this work will inform the Home Office, in consultation with the CPS, the National Police Chiefs' Council and the College of Policing, in their production of a comprehensive strategy to ensure that all 43 police forces are equipped to handle the increasing volume and complexity of digital evidence;
- Developing processes to ensure that when the investigator seeks a charging decision, whether from a supervising officer or from a prosecutor, information on the lines of inquiry that have been pursued will be supplied as part of the pre-charge file;
- Continue working with HMCTS to develop a section in the Crown Court Digital Case System accommodating the transfer of unused material and a record of disclosure decisions;

- Evaluating the third party material protocol in 12 months' time and assess whether it is improving the quality of third party disclosure handling;
- Rolling out the use of DMDs across Crown Court cases and in magistrates' and youth court cases in which there are significant volumes of digital material, communications evidence or third party material; and
- Exploring standardisation of terminology in the preparation of disclosure schedules and the recommendation of the Attorney General's Review that a standard system be developed to provide more information about the nature of material and its potential relevance to the case.

Capability

Building our capability is about developing and supporting our people to acquire the skills that help us deliver better as organisations.

Our strategic objective is to identify capability and skills gaps, to meet these through learning and development and to make progress on priority areas.

We have made considerable progress since the publication of the January NDIP in delivering training to investigators and prosecutors on disclosure through a combination of e-learning products and classroom-based teaching. The College of Policing will lead work to monitor the impact of NDIP actions on disclosure performance and monitor the uptake of the centrally designed training products. We will examine performance and quality information to ensure that the measures we have undertaken to improve skills form part of an effective system and are driving improvements in disclosure practice.

Building capability is also about effective support and leadership to deliver high standards and identify further development need. We want all new police officers and staff, and all new prosecutors, to develop as enquiring professionals who are highly confident in applying the disclosure test in their investigation and casework, understanding the questions they need to ask and applying a “thinking approach”.

We acknowledge the recommendation of the Attorney General that although the handling of sensitive material is done well in complex cases, there are some gaps in skills in volume crime cases and we will update training products to ensure consistency in handling and oversight of sensitive unused material.

Strengthening performance management will also be a priority, and in the CPS there will be a continuing focus on disclosure-themed Individual Quality Assessments (IQA) to monitor how prosecutors are performing their disclosure obligations in their cases and clear objectives set for disclosure responsibilities. IQA results will also support improvement in police performance on completion of schedules and this will be fed back at supervisor level.

Digitisation has changed both the nature and the extent of material people record about themselves and others, and the increase in volume of personal data that may be relevant to a criminal investigation, has implications for our data protection responsibilities. We recognise that the need to examine personal devices of a person making an allegation of crime, which need will arise in many but not all cases, may be a barrier to reporting serious offences, particularly in the context of sexual offences. We will develop transparent explanations in order to help them understand how we decide what data to collect, how we collect it as part of a criminal investigation and prosecution and how it might be used. We will develop guidance on how to balance the needs of the investigation with the right to privacy, including where personal information should be redacted before disclosure.

New and ongoing improvement activity:

- Assessing the training needs of prosecutors – ensuring new starters have the opportunity to undertake disclosure training as part of their induction and that recruits receive training appropriate to their level of experience;

- Evaluating the training provided to prosecutors and plan accordingly for future training based on organisational assessment of user needs;
- Continuing the development of the disclosure champions' network across policing and the CPS, making sure that there is sufficient capacity and capability to drive change;
- Updating and nationalising police guidelines on data protection and the legal basis for data extraction from digital devices. We will work with victims groups and relevant Commissioners, including the Investigatory Powers Commissioner, to create clear explanations so that complainants and witnesses understand when, how and why their information will be accessed and processed;
- Refreshing the Disclosure Manual to reflect new guidance and processes under the NDIP;
- Developing training and toolkits on digital extraction and analytical tools for investigators and prosecutors and raising awareness of developments with stakeholders across the criminal justice system;
- Reviewing processes for handling sensitive disclosure outside specialist police units and the CPS central casework divisions. This will involve ensuring investigators and prosecutors have the knowledge and skills to deal with cases involving sensitive lines of inquiry and sensitive unused material;
- Evaluating the impact of the National Disclosure Standards in the next 12 months to assess whether they have achieved improvements in the service of properly completed and endorsed disclosure schedules;
- Ensuring that investigators document what has been considered a reasonable line of inquiry in the circumstances of the case in all requests to prosecutors for charging decisions; and
- Considering, in accordance with the timescales contained in the NDIP Phase One, whether a licence to practise could drive up police standards in disclosure.

Leadership

The quality and impact of leadership at all levels is key to delivering culture change and lasting improvements.

Leading change requires us to build common purpose within our organisations and across our stakeholders and partners.

Changing culture takes time and starts with our leaders. The Justice Committee welcomed the leadership of the signatories to this National Disclosure Improvement Plan and the personal accountability of the leaders of our organisations to delivering improvements pursuant to it. We need to take conscious action to create the culture we want and we will develop the leadership we need throughout our organisations to sustain and embed the improvement measures we have already introduced.

To support our ambition we need to ensure that leadership on the critical importance of disclosure is replicated at all levels across police forces and CPS Areas. We need to set clear responsibilities, standards and expectations, as part of moving to a culture where we grip our disclosure responsibilities from the outset of the investigation and get things right first time.

To drive a change in investigation and prosecution culture, and earlier consideration of the impact of disclosable material on the decision to charge, the need to consider disclosure has now been included in the Code for Crown Prosecutors. This underlines the importance of disclosure as an integral feature of investigations and in the assessment of whether there is a realistic prospect of conviction in every single case.

We have appointed a network of disclosure champions in each of the 43 Home Office forces of England and Wales and in all units in the 14 CPS Areas and we will utilise them further in driving home the messages on disclosure. We have strategic leads and tactical leads in every force feeding into the network of practitioner champions. The College of Policing will support leadership, irrespective of rank and role, to embed disclosure as a core skill right through policing. Our champions also lead on identifying issues arising in investigations and prosecutions on the ground in practice and raising them with senior leaders and managers.

The recent scrutiny of disclosure and focus on performance have been challenging for investigators and prosecutors, individually and collectively. We still need to do more to support and engage staff across our organisations, particularly in leading and managing change and establishing disclosure as an integral part of a good investigation.

We need to do more to address public perceptions of our performance and to explain what we achieve, as well as acknowledging openly where we need to improve, building confidence in our organisations for the future.

New and ongoing improvement activity:

- Bringing together police and prosecutor champions at local events and national conferences to further embed the force champions network and the links with the CPS champions;

- Utilising the CPS Disclosure Champions to perform a key role in compliance and assurance at a local level including undertaking local observation to assess the impact of change;
- Encouraging the inclusion of disclosure as part of Continuing Professional Development for police practitioners and driving learning through all levels within forces;
- Raising awareness of disclosure improvement initiatives such as the Disclosure Management Document throughout the criminal justice system;
- Maintaining the leadership momentum in the CPS by repeating the Disclosure Seminar, chaired by the Director of Public Prosecutions on a bi-annual basis and replicating the National Disclosure Forum at local levels chaired by police and CPS leaders in local forces and Areas;
- Focussing on disclosure in the magistrates' and youth courts and bringing together disclosure champions in these units to accelerate change at a local level; and
- Making disclosure improvement in the Area a specific objective for Chief Crown Prosecutors against which their performance will be measured.

Partnership

Partnership covers collaboration and accountability at national and local levels. It is about police and prosecutor partnerships in all roles. It is also about facilitating communications with defence representatives and working with magistrates and the judiciary in building disclosure into case management.

Our strategic objective is to strengthen partnerships and to replicate the successes of national relationships at local levels.

One of the successes of the National Disclosure Improvement Plan has been the level of collaborative working between our organisations at a national level. The next challenge is to replicate this at a local level through the close monitoring of the Area Disclosure Improvement Plans, ensuring that Chief Constables and Chief Crown Prosecutors make the priorities of the national plan a reality in their forces and their Areas.

As the Attorney General reflected in his Review, early and meaningful engagement between the prosecution team and the defence is crucial to improve the disclosure process and the increases in the volume and complexity of digital material encountered in investigations make this ever more important. As we extend the use of Disclosure Management Documents to more Crown Court cases this engagement will become more effective, and we will also examine how this might be done more effectively at the pre-charge stage.

The judiciary and magistrates already have a case progression function ensuring that identification of issues in the case is done properly and we will work with them to build disclosure into case progression. As we focus on improving performance in the magistrates' and youth court, we will work with the magistracy to understand where there are issues in the summary justice process as part of the case progression review to inform our improvement plan.

The National Disclosure Forum has, through monthly meetings with representatives from the leaders of the external bar, defence solicitor organisations, the judiciary and police and prosecution, opened channels of communications to discuss disclosure issues at a national level. We consider there would be real benefit in replicating these into existing local structures as they provide an invaluable mechanism for local issues to be discussed and solutions proposed and worked through.

The Director of Public Prosecutions repeated the disclosure seminar hosted at the beginning of the year in the Autumn, with senior representatives from across the criminal justice system coming together to discuss the systemic issues and have meaningful input into improvement measures. This will be repeated bi-annually.

New and ongoing improvement activity:

- Bringing compliance with disclosure obligations forward, for example in the provision of schedules at the pre-charge stage, has brought significant benefits in some case types. Senior police leaders and prosecutors will work together to identify where this could be achieved in each force;
- Exploring the possibility of bringing a formalised structure to pre-charge engagement between investigators and prosecutors and those representing the suspect, particularly in

cases where there is a large volume of digital material that is potentially relevant. The potential to formalise this process is being considered with input from defence stakeholder groups;

- Replicating the National Disclosure Forum at a local level to facilitate monthly discussions between stakeholders on issues that arise locally;
- Working with the judiciary to embed the use of the Disclosure Management Document into the Better Case Management processes, including a section on the Plea and Trial Preparation Form; and
- Building on the experiences of what works well in our most complex casework, a streamlined version of the Early Case Planning Conference will be adopted in all Threshold Test charged cases to facilitate communication between the investigative team and the prosecutor.

Governance

Governance is effective, system-wide planning, reporting and analysis as part of the National Disclosure Improvement Plan which will help to secure improvement in disclosure.

The strategic objective is to ensure our performance matches our ambition – essentially, have we made a difference?

We have acknowledged that data collection measures have not previously allowed us to capture, analyse and use management information effectively enough, and to understand the number of cases in which disclosure has not been performed as well as it ought to have been. Work is already underway to address this. New points of data collection have been designed to provide a much stronger end-to-end view, including all prosecutors being required to confirm at the conclusion of a case whether disclosure had an impact on the outcome and to drill down deeper into the reason for that.

Further development of data analytics will deliver a necessary change in how we collect information and measure improvement. We are developing a number of measures within our case management systems to monitor disclosure performance in the CPS at team, unit, and Area level, as well as measuring the adequacy of schedule completion by the investigator and compliance with service of the defence statement. This will allow us to capture data on cases in which disclosure does not ultimately cause the case to end but in which it has not been handled properly, as well as measuring when it has been done well.

Disclosure-themed Individual Quality Assessments have been introduced in the CPS and are now undertaken in the first month of each quarter. These will provide the baseline for success measures, together with the data from the first quarter of the new disclosure focus outcome codes. We intend to create a balanced scorecard which brings together police, CPS and College of Policing data that ensures both qualitative and quantitative performance improvements at local, regional and national level.

The Criminal Justice Board, which brings together ministers and a range of other senior partners across the criminal justice system, including the Director of Public Prosecutions and police leaders, has taken oversight of disclosure improvement. The NDIP will report on progress to the CJB.

New and ongoing improvement activity:

- Delivery against the commitments in this plan will continue to be overseen by the National Police Chiefs' Council, the Director of Public Prosecutions and the College of Policing. An update on progress will be published quarterly;
- Improving the granularity of data captured in cases which did not result in a conviction but where disclosure was the primary or contributory reason for the decision to stop the case; and
- Developing automated data collection in relation to key stages of the disclosure process which will show levels of compliance by both the police and CPS such as the identification of reasonable lines of inquiry (pre-charge), creation/management of the Disclosure Management Document/Disclosure Record Sheet and completion of schedules.