


Disclosure Seminar Agenda

Thursday 18 January
09:00 – 13:00

Rose Court, 2 Southwark Bridge, London, SE1 9HS



TIME	ITEM	LEAD
09:00	Welcome and Introductions	Alison Saunders Director of Public Prosecutions
09:10	'Making it Fair' and the Mouncher Report - <i>What have we done since the report and what do we need to do?</i>	All
09:30	Reasonable lines of enquiry?	All
10:15	Training	All
BREAK		
11:00	Legislation – is it fit for purpose?	All
11:30	AG review of Disclosure	 Attorney General's Office
11:45	Case management	All
12:30	Technology in the Disclosure process	Mark Gray CPS Director of Digital Transformation
12:50	AOB and next steps	All

Questions for Consideration by Attendees - Disclosure Seminar Thursday 22 January 2018

1. Could some of the recurring problems characterised as disclosure failings be minimised by ensuring all reasonable lines of enquiry are pursued at the investigative stage?
2. What should the role of the police officer be? How do we improve understanding of disclosure and ensure it is a priority?
3. What should we consider the role of the prosecutor to be? Should the prosecutor be more challenging in directing officers to follow all reasonable lines of enquiry?
4. What is the role of the judiciary? In particular, should disclosure be the subject of “robust case management”? How might this be best achieved?
5. The Review of Disclosure by Lord Justice Gross, published in 2011, recommended no change to the CPIA disclosure test, or to the test for relevance, and argued against an “integrated” prosecution model which would blur the line between investigation and prosecution. In these and other regards, does the Gross Review hold true in 2018?
6. Should the Criminal Procedure Investigations Act 1996 (CPIA) still be considered fit for purpose, especially in light of the substantial amount of digital unused material gathered in many investigations? Given the rise in digital material, do the AG Guidelines require amendment?

Pre-Reading - Disclosure Seminar Thursday 22 January 2018

1. Joint thematic inspection of Crown Court disclosure

Early in 2017, inspectors from Her Majesty's Inspectorate of Constabulary (HMIC, as was) and Her Majesty's CPS Inspectorate (HMCPSI) conducted a joint assessment of disclosure in 'volume' Crown Court cases. The aim of the inspection was to "assess how the disclosure process operates in relation to cases dealt with by CPS Crown Court teams." Four geographical CPS areas were subject to inspection: London, the North West, West Midlands and Yorkshire and Humberside. The methodology included file assessments, interviews with staff from the areas and CPS HQ, and court observations.

The resulting report, ['Making it Fair – a Joint Inspection of the Disclosure of Unused Material in Volume Crown Court Cases'](#) was published on 18 July 2017. The report was critical of the police and CPS, particularly in the following areas:

- Police disclosure schedules were often inadequate, and had not been challenged by the CPS;
- Evidence was found of a basic lack of knowledge of disclosure and the scheduling process;
- Supervision was often poor;
- There was evidence of poor decision making by prosecutors on the CPIA test for disclosure;
- Defence statements were routinely not reviewed by the prosecutor before being sent to the police;
- There was a poor audit trail of decisions made and actions taken in connection to disclosure;
- Technological limitations hindered the exchange of information between the police and CPS.

The report made nine recommendations of the police and CPS. The recommendations spanned the breadth of the disclosure process, from police training on disclosure, through to the identification of issues at the charging stage, and ultimately the quality assurance process as relates to disclosure:

	'Making it Fair' recommendation	CPS response
1	Immediately, police or CPS must correctly identify all disclosure issues relating to unused material at the charging stage and this must be reflected fully in an action plan.	CCPs will work with local senior police leaders to ensure police officers identify relevant material and that it is considered by prosecutors and prosecutorial decisions are recorded.
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	It is vital that the police have sight of the Defence Statement as soon as possible upon receipt from the defence in order that secondary disclosure is provided promptly. It is also vital that the

	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.	prosecutor assists the police in identifying any possible relevant material. We will review how this is best achieved in consultation with the police and the Attorney General's Office.
3	Within 12 months the College of Policing should produce guidance on training that is of sufficient depth to enable police forces to provide effective training on the disclosure of unused material to all staff involved in the investigation process. The guidance, which may best be served by the use of classroom based or a similar form of interactive training, should concentrate on ensuring that staff fully understand their responsibilities in relation to the revelation of both sensitive and non-sensitive material and how to schedule material correctly.	n/a
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.	n/a
5	Within six months, the CPS Compliance and Assurance Team should commence six monthly disclosure dip samples of volume Crown Court files from each CPS Area, with the findings included in the CPS Area Quarterly Performance Review process.	This recommendation is accepted in part. We accept that more can be done to monitor our performance and to learn from it so our Compliance and Assurance Team will work with Deputy Chief Crown Prosecutors (DCCPs) to ensure that disclosure dip samples are undertaken in addition to Individual Quality Assessments (IQA) in each CPS Area. This will ensure that CPS areas better understand where improvements need to be made and what action needs to be taken. Appropriate focussed action will then be taken to address the findings.

6	Within six months, all police forces should establish the role of dedicated disclosure champion and ensure that the role holder is of sufficient seniority to ensure they are able to work closely with the CPS Area Disclosure Champions using the existing meetings structure to ensure that disclosure failures are closely monitored and good practice promulgated on a regular basis.	n/a
7	Within six months the CPS should provide a system of information sharing between the Areas and Headquarters that enables the effective analysis of Area performance on disclosure.	We will review the current process for reporting on Area Disclosure performance.
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.	The cost of updating our Case Management System (CMS) to place digital unused material in one location is prohibitive. However, we will seek to maximise opportunities to develop CMS to enhance accessibility to this material as part of scheduled CMS upgrades. In addition, CCPs will ensure that prosecutors record their disclosure decisions in the relevant documents.
9	Within six months, the CPS and police should develop effective communication processes that enable officers in charge of investigations and the allocated prosecutor to resolve unused material disclosure issues in a timely and effective manner.	CCPs will work with local senior police leaders in their Areas to ensure systems are in place to resolve disclosure issues in a timely and effective manner. We will monitor compliance through the disclosure dip samples and Individual Quality Assessments referred to above.

In response to 'Making it Fair', the CPS accepted the majority of the recommendations relating specifically to its own performance. In particular, the CPS resolved to work with local police leaders to help officers identify relevant material, and to put systems in place with police forces to resolve disclosure issues in a timely and effective manner. A [College of Policing statement](#) addressed the findings relating specifically to police performance.

2. The Mouncher Investigation Report – Richard Horwell

Published the same day as the HMCPSI/HMIC report, this report concerned the collapse of the ‘R v Mouncher and others’ trial in 2011.

The report was very critical of the prosecution’s handling of the case in several regards, including disclosure. It recommended a review of quality assurance processes, and advised that a policy of “If in doubt, disclose” should be followed moving forward. The report argued against an overly strict interpretation of the statutory framework.

3. ‘Review of Disclosure in Criminal Proceedings’ by Lord Justice Gross.

LJ Gross’s review of disclosure, published in 2011, was conducted at the request of the Lord Chief Justice. It was established to consider the practical operation of the CPIA disclosure regime in ‘disclosure heavy’ cases, with a particular focus on the proportionality of time and costs involved in that process.

LJ Gross made a number of wide-reaching findings and related recommendations, of which the following seem particularly relevant to the present conversation:

- The existing statutory framework (including the CPIA, and versions of the AG’s Guidelines and Judicial Protocol then in place) were sufficient to allow robust case management. Legislative intervention was not deemed necessary;
- Neither the relevance test nor disclosure test were considered to be in need of amendment;
- Fuller use of ‘block listing’ was recommended, especially in cases with “enormous volumes’ of digital material;
- The CPS’s proposal to introduce a disclosure management document (which was novel at the time) was commended;
- Proper training in disclosure should be “part and parcel of the professional development of a police investigator.”

4. Attorney General’s Guidelines on Disclosure

The third iteration of the [Attorney General’s Guidelines on Disclosure for Investigators, Prosecutors and Defence Practitioners](#) was published in December 2013, following the recommendations of Lord Justice Gross in his, ‘Review of Disclosure in Criminal Proceedings.’ The Guidelines are intended to emphasise the importance of prosecution-led disclosure and the importance of applying the CPIA regime in a ‘thinking

manner', tailored, where appropriate, to the type of investigation or prosecution in question. In effect, the Guidelines offer a practical interpretation of the statutory framework for the benefit of all principle participants in criminal proceedings, namely: the investigator and disclosure officer; prosecutor; prosecution advocate; and defence.

The Guidelines are a succinct document, and it is not necessary to reiterate them at length here, save to emphasise the following passages:

- A fair investigation involves the pursuit of all material following all lines of enquiry, whether they point towards or away from the suspect. What is 'reasonable' will depend on the context of the case (paragraph 17);
- Prosecutors only have knowledge of matters which are revealed to them by investigators and disclosure officers, and the schedules are the written means by which that revelation takes place (paragraph 22).