HMCPSI
HM Crown Prosecution Service Inspectorate

Disclosure of unused material in the Crown Court

Inspection of the CPS's handling of the disclosure of unused material in volume Crown Court cases

January 2020

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HMCPSI Publication No. CP001:1267

Who we are

HM Crown Prosecution Service Inspectorate inspects prosecution services, providing evidence to make the prosecution process better and more accountable.

We have a statutory duty to inspect the work of the Crown Prosecution Service and Serious Fraud Office. By special arrangement, we also share our expertise with other prosecution services in the UK and overseas.

We are independent of the organisations we inspect, and our methods of gathering evidence and reporting are open and transparent. We do not judge or enforce; we inform prosecution services' strategies and activities by presenting evidence of good practice and issues to address. Independent inspections like these help to maintain trust in the prosecution process.

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1. Chief Inspector's foreword

1.1. In 2017 I published the joint inspection report *Making it fair: the disclosure of unused material in volume Crown Court cases*, in which I set out that the failure to deal effectively with disclosure has a corrosive effect on the criminal justice system. Poor handling of disclosure undermines the principles of a fair trial, which is the foundation of our system. It adds delay and cost and increases the stress faced by witnesses, victims and defendants. It may result in a complete failure of proper process, either by stopping a trial from going ahead, thereby depriving the victim of justice, or by convicting an innocent defendant. Both amount to miscarriages of justice.

1.2. The 2017 report's findings stated that across the criminal justice system there appears to be a culture of defeated acceptance that issues of disclosure will often only be dealt with at the last moment, if at all. If the police and the Crown Prosecution Service (CPS) are ever going to comply fully with what the law requires of them by way of disclosure, then there needs to be a determined cultural change.

1.3. Since the report was published, the police and CPS have worked together to develop a series of measures designed to improve performance. Some of these, such as the National Disclosure Improvement Plan (NDIP) published in January 2018 and the establishment of the NDIP Board with police partners, have set out to increase the focus on disclosure and are fully supported at the most senior levels in both the CPS and police. Linked to the plan, a range of internal measures are being implemented by both the police and the CPS, including extensive training programmes. Within the CPS, more rigorous internal quality assurance has been introduced to assess if prosecutors dealing with the disclosure of unused material are doing it correctly.

1.4. Also, in November 2018 the Attorney General published a review of the handling of the disclosure of unused material. This review welcomed the steps taken by the CPS and the police to address issues through the National Disclosure Improvement Plan. But the review also recognised the challenges that investigators and prosecutors faced on a daily basis, given the complexity of the issues and the amount of unused material in even the most straightforward case.

1.5. In May 2018 the CPS invited HMCPSI to undertake an extensive examination of live files to give an independent assessment of progress. Given the concern that I had expressed in 2017, I agreed that undertaking some target follow-up activity would be useful and would set out if any progress was being made.

1.6. What this inspection has found is that the CPS takes its responsibilities on disclosure seriously. In relation to serious and complex casework, difficulties

with disclosure rarely arise. Cases involving homicide, terrorism or complex fraud, for instance, are mostly dealt with by specialist police teams and CPS units that understand the law and have the resources and experience to ensure that disclosure is dealt with effectively and in compliance with the law and guidance.

1.7. It is in the day to day work in the Crown Court that disclosure problems arise. This work, which we describe as "volume Crown Court" work, suffers from the impact of stretched police resources and the lack of understanding of criminal justice matters by large numbers of inexperienced police officers who are only infrequently required to compile a prosecution file. The quality of case preparation, and thus the handling of disclosure, is also often undermined by under-resourced CPS staff who are struggling to cope with the sheer volume of work. Over the past few years HMCPSI has, in a number of reports, found fault with the CPS and identified areas where it could improve. Almost without exception, those faults have been caused or exacerbated by the problem of too few legal staff being spread too thinly over a volume of work of ever increasing complexity.

1.8. There are signs of improvement in this inspection. Our file examination shows that the focus on disclosure in both the police and the CPS is having some impact. This is heartening, but some of the improvements come from a low baseline of performance.

1.9. Both the police and CPS have been provided with additional resources in this year's spending review, which will result in increases in the numbers of police officers and CPS lawyers. If the improvements in case quality and compliance with disclosure we have seen in this inspection are to continue then effective training is crucial. Training, which is central to the joint National Disclosure Improvement Plan, is intended to achieve this. The CPS has a proven record of dealing with disclosure in serious and complex crime and so there should be little reason to doubt that, with additional resources and effective training, the same can be achieved in volume Crown Court work.

1.10. What is of greater concern is that, however good the training of the police, unless those tasked with putting files together get regular and frequent exposure to disclosure issues the training will not bed in and improvements may not materialise. If the early signs of improvement found in this inspection are to be sustained, the focus of the National Disclosure Improvement Plan must be maintained and extended to ensure that activity by the police and CPS results in a cultural change at the operational as well as the strategic level.

1.11. The publication of this report was delayed by the December 2019 General Election.

2. Headlines

2.1. In any trial, the defendant has a right to know the evidence against them which the prosecution says proves they are guilty. Equally, subject to very limited exceptions, the defendant has the right to know what unused material the prosecution has which undermines their case, or assists the defence's case. This inspection assessed how well the CPS, and to some extent the police, were complying with the statutory duty to disclose this unused material. Where appropriate, it also assessed how well the defence were complying with their obligations.

2.2. Files were examined in six tranches. Two tranches looked only at how the disclosure of unused material was handled at the charging stage. The other four looked more widely at how disclosure was being handled in live Crown Court trial files.

2.3. Many aspects of performance showed continuous improvement as the file examination progressed through the six tranches, from earlier to more recent files. This indicates that the intensive training programme instigated by the CPS and the National Disclosure Improvement Plan are starting to reap benefits. However, in some aspects the performance baseline from the initial file examination was very low, and although there was progress, there is still a long way to go before an acceptable standard is reached.

2.4. We found evidence of significant improvements in the CPS's performance in our live trial file sample – for example, in:

- whether the CPS advised the police about reasonable lines of enquiry, up from 46.3% of the earliest tranche to 73.7% of the most recent tranche
- whether the CPS's charging advice dealt properly with disclosable and non-disclosable unused material, up from 28.6% to 49.2%, fully meet the required standard
- prosecutors' compliance with the post-charge duty of initial disclosure (not timeliness) in relation to non-disclosable unused material, up from 55.4% to 63.4%, and in relation to disclosable unused material, up from 62.0% to 72.3%
- prosecutors' compliance with the duty of continuing disclosure (not timeliness) in relation to non-disclosable unused material, up from 69.8% to 83.8%, and in relation to disclosable unused material, up from 72.6% to 82.8%

- compliance with the requirement for the prosecutor to review the defence statement and provide comments and advice to the police, up from 41.2% to 60.0%.

2.5. We inspected one of the two tranches of pre-charge decision cases at the start of the inspection, and the other at the end. The second of these tranches therefore had the most potential to show the performance improvement in aspects related to the charging process. This proved to be the case but, again, in some aspects from a low baseline. We observed improvements in, for example:

- the CPS identifying and feeding back to the police any failings with the police's dealings with unused material at charge, and feeding these back to the police, up from 5.6% of tranche one to 15.5% of tranche two

- the CPS's charging advice dealing properly with disclosable and non-disclosable unused material, up from 33.2% to 55.8%

- whether the CPS advised the police about reasonable lines of enquiry in the Manual of Guidance Form 3, up from 75.9% to 93.8%.

2.6. We also observed improvements in the police's performance in our inspection of the live trial file sample – for example, in the provision of either unused material or an adequate report about the material at the charging stage, up from 58.2% of the earliest tranche to 78.0% of the most recent tranche.

2.7. Whilst the police almost always used the correct forms, they were only completed fully in 20.9% of the cases in the live trial file sample. In those forms that did not meet the required standard, the most common error was the omission of items which should have been listed. When looked at in the context of the poor rate of feedback by the CPS to the police, improving this aspect of performance will remain challenging.

2.8. The timeliness of the service of the defence statement, which has a knock on effect on other aspects of case progression, deteriorated from 44.1% to 37.6%. However, the adequacy of the defence statement was good, and improved from 86.3% to 90.3%.

2.9. There were very few cases where the prosecution and defence were ultimately unable to agree on what material should be disclosed. The defence made a formal application to the court for the disclosure of unused material in only six of the 555 live trials we examined.

2.10. There were good examples of prosecutors who really understood what was required of them and the police, and challenged partners where necessary. Others are still accepting inadequate schedules from the police and not giving them guidance when required.

2.11. It is encouraging that the overall direction of travel is positive across many aspects of performance. As always, there is no room for complacency and the CPS will need to continue to assess performance rigorously through its internal quality assurance processes.

3. Context and methodology

The disclosure regime

3.1. Every criminal investigation will generate two types of material. The first type is evidential and may include, for example, statements from witnesses who see the crime, CCTV, forensic analysis or admissions by the suspect. The second is material gathered in the course of the investigation that the Crown Prosecution Service (CPS) does not intend to use as evidence against the suspect. This "unused material" may include, for example, the crime log, investigators' pocket notebooks, and search records.

3.2. Some investigations may generate a third type of material: that which is categorised as irrelevant.

3.3. Unused material may be sensitive or non-sensitive. Sensitive material can include, for example, information from an informant or that which would reveal the police's investigative techniques. The category material falls into determines which schedule it is listed on by the police. The schedule for non-sensitive material is called an MG6C, while the schedule for sensitive material is an MG6D.

3.4. The unused material may not be disclosable to the defence. Material which is disclosable is that which undermines the prosecution ("undermining material") or which may assist the defence case ("assisting material"). Material which falls into these categories includes, for example, an alibi witness, identification parade forms for witnesses who fail to pick out the defendant, matters which speak to the credibility of the victim or witness, and negative forensic analyses.

3.5. The Criminal Procedure and Investigation Act 1996,[1] supplemented by a statutory Code of Practice[2] and a range of other guidance, sets out the obligations on the CPS, defence and police with regard to the disclosure of unused material. Once these statutory provisions are triggered, the prosecution must disclose undermining or assisting material (initial disclosure).[3]

3.6. The rare exception is if material that meets these criteria is sensitive. In those circumstances, the prosecution must apply to a judge to withhold the material. This is known as a public interest immunity hearing, which can have two outcomes: the judge can agree that the material can be withheld or they can

1 legislation.gov.uk/ukpga/1996/25/contents
2 gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice
3 In certain limited circumstances there is an obligation on the prosecution to disclose material before the Act kicks in (see paragraph 5.14).

order it to be disclosed. If the latter, the prosecution must decide whether to disclose the material or discontinue the case.

3.7. Unused material can be generated by the police (crime logs, for example) or by a third party (NHS records, for example). In some instances, the victim will have to consent for the material to be disclosed. For Social Services material specifically, there are agreed protocols on how it is handled and processes for determining what should be disclosed.

3.8. It is the duty of the investigator to reveal all relevant unused material to the prosecutor and to provide copies of any which undermine the prosecution or assist the defence. Every item should be listed on the correct schedule with a description sufficiently full for the prosecutor to be able to assess whether it is undermining or assisting material. Any schedule that does not meet the required standard should be returned to the police. Where the investigator has identified undermining or assisting material, it should be listed on a form known as an MG6E and cross-referenced to its number on the MG6C or MG6D. An MG6E should still be sent even if there is no material that requires disclosing.

3.9. It is the duty of the police to follow all reasonable lines of enquiry which may lead away from the suspect being responsible for the crime. Sometimes these will be raised by the defendant in interview. For example, the defendant may say that their mobile phone will not show any texts relating to drug dealing. If the police have the defendant's phone then they would need to download messages to confirm (or not) what the defendant was saying. The case of R v E[4] provides useful judicial guidance on what amounts to a reasonable line of enquiry, which in some cases may include the need to examine the victim's phone.

3.10. Our findings did not suggest that this duty was happening in every case. Once the prosecution has made initial disclosure, the defence must serve a defence statement within a set timescale.[5] This should set out the defence case, the details of any alibi, any further reasonable lines of enquiry the defence believe should be carried out, and any further material they consider should be disclosed. The defence's reasoning for further reasonable lines of enquiry or disclosure must be explained in the context of the defence case. The prosecutor should reject any defence statement which does not meet the required standard.

3.11. The prosecutor should send the defence statement to the police, giving them guidance on what, if anything, needs to be done in the light of its content. The police must then review the unused material and carry out any further

4 bailii.org/ew/cases/EWCA/Crim/2018/2426.html
5 Although it is always expressed as mandatory, the defence cannot be forced to serve a defence statement, but adverse inferences can be drawn from their failure to do so.

reasonable lines of enquiry. They must then submit another MG6E (and MG6C and MG6D if necessary) either identifying further material for potential disclosure or saying there is none. This is all part of the process of continuing disclosure, which makes it the responsibility of the investigator and the prosecutor to keep unused material under review at whatever stage in the process it is generated.

3.12. If the prosecution and defence cannot agree on what should be disclosed, the defence may make an application to the court for it to determine whether the material meets the disclosure test.[6]

Context

3.13. In 2017 HMCPSI and Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services published a joint report on compliance by the police and the CPS with their responsibilities with regard to the handling and disclosure of unused material.[7] That report identified a number of serious concerns about how well the agencies were performing and concluded that disclosure performance was unacceptable on a number of levels. Additionally there were high profile trials which collapsed because crucial undermining material was not disclosed to the defence until after the trial had started.

3.14. Investigators and prosecutors are also faced with ever increasing potential sources of unused material – for example, from mobile phones and social media platforms.

3.15. In light of these concerns, the CPS instigated a number of measures designed to improve performance. One example is the National Disclosure Improvement Plan (NDIP),[8] published in January 2018, and the establishment of the NDIP Board with police partners. Others were internal measures, including an extensive training programme and more rigorous internal quality assurance of how well prosecutors were dealing with the disclosure of unused material.

3.16. In November 2018 the Attorney-General published a review of the handling of the disclosure of unused material[9] which welcomed the steps taken

6 This is known as a Section 8 application.
7 *Making it fair: a joint inspection of the disclosure of unused material in volume Crown Court cases*; HMCPSI and HMICFRS; July 2017
justiceinspectorates.gov.uk/hmicfrs/publications/making-it-fair-disclosure-of-unused-material-in-crown-court-cases/
8 *National Disclosure Improvement Plan*; CPS; May 2018
cps.gov.uk/publication/national-disclosure-improvement-plan
(See also cps.gov.uk/disclosure)
9 *Review of the efficiency and effectiveness of disclosure in the criminal justice system*; Attorney General's Office; November 2018
gov.uk/government/publications/review-of-the-efficiency-and-effectiveness-of-disclosure-in-the-criminal-justice-system

by the CPS and the police to address issues through the NDIP. That review also recognised the challenges that investigators and prosecutors faced.

3.17. In May 2018, the CPS invited HMCPSI to undertake an extensive examination of live files, to assess independently the progress that was being made. This report sets out the findings of that review. The text makes clear where improvement is still required but we make no recommendations. Any such recommendations would merely restate the need to comply with the requirements of the statutory regime.

3.18. Our role is to identify what is working well and what is not. Where something is not working well, we objectively evaluate the evidence and identify what improvements are needed. It is not our role to recommend changes in legislation.

Methodology

3.19. The aims of the inspection were to examine the quality of the CPS's charging decisions in relation to the disclosure of unused material and the post-charge management of disclosure in cases, whether those cases were charged by the CPS or the police.

3.20. To make sure we could assess progress and conduct the inspection within our established resources, we split the file examination into six tranches. Four tranches examined live files listed for trial in the Crown Court, where inspectors assessed the quality of disclosure at charging and any post-charge handling. We also conducted two tranches which looked only at the CPS's decision making at the charging stage, to assess whether the focus and extensive training package delivered by the CPS was leading to improvement. The following table sets out the chronology of our work.

Tranches	Dates of sample[10]
Tranche One: Pre-Charge Decision	August to October 2018
Tranche One: Live Trial Files	November 2018 to January 2019
Tranche Two: Live Trial Files	January 2019 to February 2019
Tranche Three: Live Trial Files	March 2019 to April 2019
Tranche Four: Live Trial Files	April 2019 to May 2019
Tranche Two: Pre-Charge Decision	April to June 2019

[10] In some tranches, a small number of the files we examined were outside these date ranges, to make sure we examined an equal number of cases from each CPS Area.

3.21. In every case, our overarching focus was on compliance by the police and the CPS with their obligations under the disclosure of unused material regime. These timeframes enabled us to consider whether the measures implemented by the CPS (see Context) were leading to performance improvements. However, we recognise that some of the cases may have taken some time to reach trial in the Crown Court and therefore predate those measures, including the mandatory training.

3.22. Overall we examined 555 live trial files and 560 pre-charge decisions. These included cases from each one of the 14 geographical CPS Areas. You can find a more detailed breakdown of the file sample in annex A.

3.23. Throughout this report, we present key data from our file examination in a series of figures. The figures compare performance across the tranches. To assist the reader, we have shown the comparative performance across the two pre-charge decision tranches (tranches one and two) and across the four live trial file tranches (tranches one to four) in separate figures. Other data reflects our cumulative findings, unless stated otherwise. You can find a full breakdown of the findings in Annexes D and E.

3.24. We also state the percentages of files that demonstrated compliance with particular obligations under the disclosure regime. Many of these percentages are of sub-sets of the file sample, rather than the full sample. This is in the interests of fairness and accuracy. For example, if an obligation only applies when unused material is available at the charging stage, it would not be fair or accurate to compare the number of cases that meet this obligation to the full file sample, which also includes cases where the obligation does not apply. So instead, we compare the number of cases that meet the obligation to the sub-set of the file sample where the obligation is applicable, and calculate the percentage compliance based on these figures.

3.25. The question sets for both the pre-charge decision file sample and the live Crown Court trial file sample mirror one another. Therefore, when looking at performance at the pre-charge stage, we refer to both the 555 live trial files and the 560 pre-charge decisions together – 1,115 cases in all – and when looking at post-charge performance, we refer only to the 555 cases in the live trial file sample.

4. Working with partners

The types of unused material

4.1. As we set out in chapter 3, there are two types of unused material: non-sensitive and sensitive. For each file in our file examination, we assessed under which category the material was categorised.

4.2. In the cases where we only looked at the pre-charge decision stage, 510 of the decisions related to the strength of the case against the suspect. Of these 510 decisions, 504 (98.8%) fully met the obligations under the disclosure of unused material regime. The small remainder related to whether or not it was in the public interest to prosecute the suspect.

4.3. Of these same 510 cases, 394 (77.3%) only generated non-sensitive material, 96 (18.8%) contained a mix of both categories, and 20 (3.9%) contained sensitive material only. The primary reason for material being categorised as sensitive was because it related to the private life of a witness – for example, material contained in Social Services records. The next most common reason was that the information was given in confidence. Unsurprisingly, among the rape and serious sexual offences (RASSO) cases, there were far more cases that generated both of these types of sensitive material.

4.4. In 311 of the cases in the pre-charge decision file sample, the most significant type of unused material was that which related to the victim's or witnesses' credibility. Commonly this related to their record of offending, but included instances such as where they had made inconsistent statements. Of these 311 decisions, 139 (44.7%) fully met the disclosure obligations. In 94 of these 139 cases (54.0%), the presence of previous convictions was the primary factor which brought the unused material into this category.

4.5. It is of note that communications (whether by phone, text, social media or some other medium) were the primary category of unused material in only 25 of the 311 applicable cases in the pre-charge decision file sample (8.0%). Very little unused material related to direct contact[11] between the defendant and the victim, or the defendant and a non-witness. Throughout this inspection, the findings did not indicate that unused material contained on social media platforms, or generated by direct contact, was a primary cause of concern.

4.6. There was little difference in the findings from the live Crown Court trial file sample, which also covered cases from charge onwards, suggesting that the nature and type of the unused material had been identified by the first stage.

11 By letter, telephone or text message.

The service received by the CPS

Police performance at the charging stage

4.7. In 997[12] of the 1,115 files we examined (89.4%), it was apparent at the charging stage that the case included some form of unused material over and above that which would routinely be created in the course of an investigation.[13] Although there was some variation across the tranches, the figure never dropped below 87.0%.

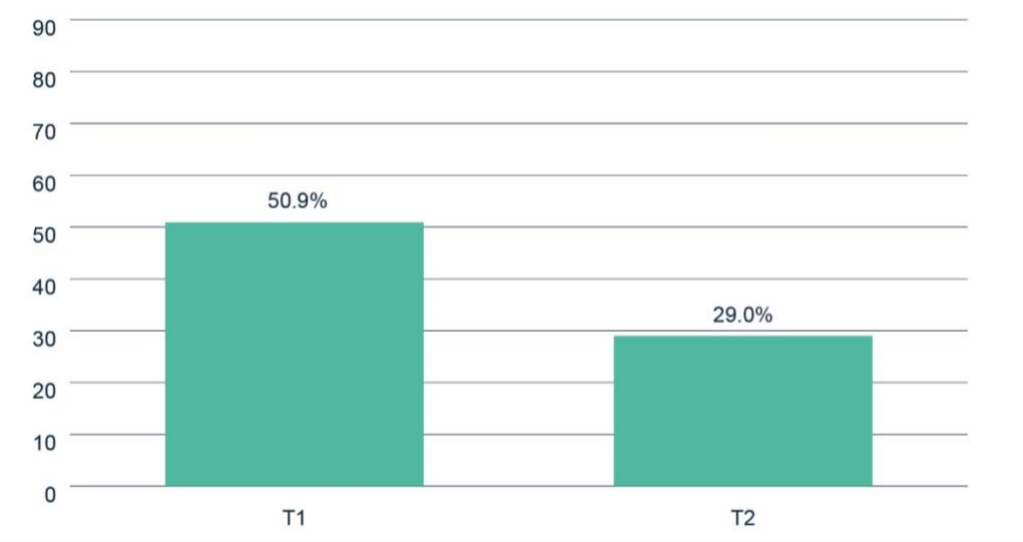
4.8. There is no expectation that all the material to be disclosed will be available at charge in every case. In particular, in cases where the defendant is charged while still in custody, there will have been little or no time for the police to carry out phone downloads or undertake full forensic testing, for example. In these cases it is important for the police to inform the CPS of the likelihood of there being further unused material. In our full file sample, all the unused material was available at charge in 430 cases (42.8%) and some was available in 476 (47.4%).

4.9. A key aspect of performance is whether more unused material would have been available at the charging stage if the police had carried out all practicable and reasonable lines of enquiry before that point. In 345 of the applicable cases (46.2%), we assessed that there would have been additional unused material if the police had carried out all practicable and reasonable lines of enquiry before the charging stage. Doing all that can be done before the charging stage prevents delay further down the line when the case is before the court, and enables the prosecutor to better assess the strength of the evidence.

[12] This figure includes those cases where routinely generated documents also contained undermining or assisting material.
[13] Routinely generated material will include incident logs, custody records, crime reports, and police officers' pocket notebooks.

Figure 1: Cases where additional unused material would have been available if the police had carried out reasonable lines of enquiry (lower is better)

Pre-charge decision



Live trial

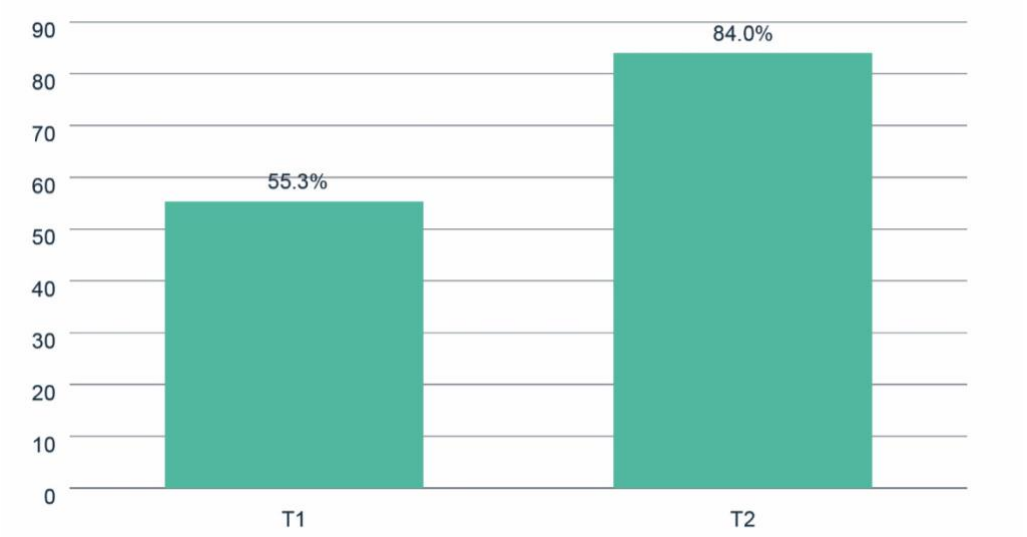


4.10. It is of note that police performance improved across each of the tranches, except between tranches three and four of the live Crown Court trial file sample, where it stayed the same. Performance was particularly good in this aspect in cases involving rape and serious sexual offences (RASSO). In this category of cases, by tranche four of the live Crown Court trial file sample, we assessed that the police could have done more in only three of the live trial cases (18.8%) and one of the pre-charge decision cases (5.0%).

4.11. If unused material is available at the charging stage, it is important that the police provide the CPS with either the material itself or an adequate report of what it contains. This occurred in 694 of the applicable cases (68.6%).

Figure 2: Cases where the police provided the CPS with either the unused material itself or an adequate report about it for the pre-charge decision (higher is better)

Pre-charge decision



Live trial



4.12. Again, overall police performance improved between the earlier and more recent tranches, including in RASSO cases.

4.13. It is important to note that not every case will have undermining or assisting material. In our file sample, 489 cases (49.0%) had undermining or assisting material at the charging stage.[14] A key issue is how effective the police are at identifying the material that falls into those categories, or which is disclosable under DPP v Lee,[15] to the prosecutor. This is particularly important at this stage, as the police will usually not yet have compiled the unused material schedules which should list all the items. In 214 of these 489 cases (43.8%), relevant items were identified correctly..

Figure 3: Cases where the police identified to the CPS that the unused material included material that could undermine the prosecution case or assist the defence, or was disclosable under DPP v Lee (higher is better)

Pre-charge decision



[14] This excludes a small number of cases where it was not possible to tell at the charging stage whether the material undermined or assisted.
[15] *R v DPP ex parte Lee [1999] 2 All ER 737* retains the common law duty of disclosure, particularly where it might assist the defence in a bail application or the early preparation of their case.

Live trial



4.14. Police performance overall is improving in this key aspect, but declining in respect of RASSO cases.[16] In three of the four applicable RASSO cases (75.0%) in tranche one of the live Crown Court trial file sample, the police identified all the undermining or assisting material, but this fell to 66.7% in tranche four (six out of nine cases). In the pre-charge decision file sample, performance fell from a very good 94.1% (16 out of 17 cases) in tranche one to 50.0% (14 out of 28 cases) in tranche two.

4.15. The majority of unused material which potentially meets the disclosure test falls into three categories: that which speaks to the credibility of the victim or witness; material relating to communications involving (in any combination) the defendant, victim and witnesses; and third party material. The latter can, for example, include NHS records, forensic science reports and Social Services files.

4.16. Communication and third party material can often be voluminous, particularly if it involves mobile phone downloads or extensive Social Services records. It is therefore essential that the prosecutor is informed fully at the charging stage of the likelihood of there being this type of material. Whilst it is not always practicable to provide the material, there should at the least be an adequate report.

4.17. In our file sample, it was apparent that there was likely to be communications material in 800 cases. Of these 800 cases, 375 (46.9%) fully met the disclosure obligations. The police provided the material itself or an

[16] In some categories, the low number of cases which meet the relevant criteria in each tranche can have a significant impact on the overall percentages.

adequate report about it in 234 of those 375 cases (62.4%). Out of the remaining 141 cases, where there was either no report or an inadequate report, the police could have done more by undertaking reasonable lines of enquiry in 107 cases (75.8%).

4.18. The picture with regard to RASSO cases was mixed. The police were much better at providing the material or an adequate report at the charging stage. But based on a comparison with their overall performance across the whole file sample, they could have done more in those cases where no material or adequate was provided.

4.19. Overall, in terms of providing the material or an adequate report, police performance improved across the two pre-charge decision tranches (from 65.0% to 75.0%) and between tranches one and four in the live Crown Court trial file sample (from 61.7% to 69.1%).

4.20. There was likely to be relevant third party material in 944 cases in our file sample. Of these 944 cases, 601 (63.7%) fully met the disclosure obligations. The police provided the material or an adequate report in 417 of those 601 cases (69.3%). In the 527 other cases, where there was either no report or an inadequate report, the police could have done more by undertaking reasonable lines of enquiry in 146 cases (80.7%).

4.21. In the pre-charge decision file sample, in terms of providing the third party material or an adequate report, police performance improved across the two tranches (from 61.1% to 76.8%). Across the four live trial file tranches, performance in this aspect declined slightly (from 77.3% to 70.8%).

Police performance after charge

4.22. After charge, the statutory provisions apply once the defendant is sent to the Crown Court from the magistrates' court, which usually takes place at the first hearing. The police must submit adequate schedules which list and fully describe the unused material. Non-sensitive material must be listed and described on an MG6C and sensitive material on an MG6D. The police must also provide copies of any undermining or assisting material.

4.23. In practice, we found that the police were more likely than not to send copies of all the paper based unused material. We also found that the timely provision of unused CCTV in a playable format continues to be problematic.

4.24. The police were good at using the correct form to list the unused material, and their timeliness was acceptable. They were much less effective in filling the forms out completely or accurately. In our file sample, 549 of the cases we examined had complete and accurate schedules. Only 115 of these 549

cases (20.9%) fully met the disclosure obligations, although there was gradual improvement across the four live Crown Court trial file tranches. The most common error was missing items off the schedules (45.4%) followed by inaccurate descriptions (29.0%). A common omission was the previous convictions of the victim or witnesses, even when they had been referenced in the police report and copies supplied. Inadequate descriptions included just listing the title of the document without providing any description of what it contained and whether that might undermine or assist.

4.25. If the police identify what they consider to be undermining or assisting material, it should be sent to the CPS, noted on an MG6E and cross-referenced with where the item is listed on either the MG6C or MG6D. The police sent these items in 352 of the 537 cases where they were required (65.5%), and the MG6E was completed correctly in 257 of the 535 cases where one was required (48.0%) – but in only 98 (39.8%) of sensitive cases (which includes RASSO cases). Again, we saw cases where the police had clearly recognised the existence of disclosable material and sent it to the CPS, but had failed to reference this on the MG6E.

4.26. Performance improved in tranches two and three, but then fell back in tranche four to where it was at the start.

4.27. Performance was much better, and improving, after service of the defence statement (see paragraph 4.31), with an accurate and complete MG6E sent in 214 of the 322 cases where one was required (66.5%).

4.28. In 539 cases, unused material provided by the police after the charging decision could have materially affected the advice provided by the prosecutor. Of these 539 cases, 25 (4.6%) fully met the disclosure obligations.

4.29. From paragraph 4.33, we discuss the value added by the CPS when police performance fell short of the required standard.

The role of the defence

4.30. In Crown Court not guilty cases, after the prosecution have carried out initial disclosure the defence are required to submit a defence statement.[17] That statement must cover a number of things, such as the nature of the defence, which of the facts asserted by the prosecution the defence are challenging, and any alibi details. Although it is not required by the Criminal Procedure Rules, this document is commonly used by the defence to list the further unused material to which they consider they are entitled.

[17] This is optional in magistrates' court cases.

4.31. A defence statement was served in 408 of the 539 cases (75.7%) where one was required. The statement was served in a timely manner in only 173 of these cases (42.4%), and was adequate in 359 (88.0%). In every tranche, we found there was a higher percentage of adequate defence statements in non-sensitive cases.

4.32. From paragraph 4.39, we discuss what the CPS does when the defence's performance falls below the required standard.

Challenging others

The police

4.33. We have noted that overall police performance has been improving, but there remain aspects where it could improve further (see The service received by the CPS). In our file examination, we looked at what the CPS did in those cases where police performance fell short of the required standard.

4.34. In 70 of the 442 cases where police performance fell short of the standard (15.8%), the prosecutor identified the police's failing and fed this back at the charging stage. In another 50 cases (11.3%), the prosecutor identified the failing but did not feed it back. In the remaining cases, based on the MG3 (Manual of Guidance Form 3 – the record of the charging decision), they did not identify what had not been done correctly.

Figure 4: Cases where the CPS identified any failings in the police's dealings with unused material at charge and fed them back to the police (higher is better)

Pre-charge decision



Live trial



4.35. Although it is starting from a very low baseline, there is some evidence that performance is improving. The percentage of cases where there was feedback increased from 18.6% to 28.3% between tranches one and four of the live Crown Court trial file sample, and from 5.6% to 15.5% between tranches one and two of the pre-charge decision file sample.

4.36. The CPS has recently introduced amendments to the MG3 which should assist in driving up this aspect of CPS performance at the charge stage. As of the end of June 2019, the MG3 compels the prosecutor to consider disclosure actions and issues and mandates the prosecutor to answer the following questions:

- Are you satisfied that all reasonable lines of enquiry have been considered?
- Did the Police identify/record/provide all relevant information about unused/unexamined material?

4.37. At the post-charge stage, there was some improvement in the provision of feedback to the police, and we saw commendable examples of prosecutors not accepting below standard schedules. In 91 of the 488 cases where the disclosure schedules were below standard (18.6%), the prosecutor identified and fed back all the issues with the schedules, and identified and fed back some of the issues in another 169 cases (34.6%). The percentage of applicable cases where all issues were identified improved from 15.6% in tranche one to 23.9% in tranche four.

Figure 5: Cases where the prosecutor identified any failings at the post-charge stage and fed these back to the police (higher is better)

Live trial



4.38. As with the charging stage, in June 2019 the CPS introduced a requirement for the prosecutor to consider disclosure actions and issues in all post-charge reviews. It also introduced two mandatory questions, one of which will focus the prosecutor's mind on whether a disclosure assessment is required. The other question deals with where the defence are applying to the court to direct disclosure of material.

The defence

4.39. In contested cases, at the pre-trial preparation hearing, the court will set down dates by which certain actions must be completed. These actions include the prosecution serving initial disclosure (if they have not done this already), the service of the defence case and the prosecution's response to the defence case. To ensure rigorous case management, compliance with these stages is essential; if this is not possible, applications must be made to the court to extend the dates set down. The defence are therefore reliant on the prosecution serving initial disclosure within the time allowed and the prosecution are reliant on the defence to serve their statement.

4.40. In 235 of the 408 cases where a defence statement was required (57.6%), the statement was late (tranche four was above this overall figure, at 62.4%). Of the 318 cases where the defence statement was late, the prosecutor chased the defence in 178 cases (56.0%). Performance varied across the CPS Areas. We noted some who were very pro-active, writing on the day the

statement should have been served, both to the defence and to the court to request an extension to the time for them to respond. Others would write to the defence some time after the deadline, if at all.

4.41. Of the 48 cases where the defence statement was inadequate, it was challenged by the prosecution in 12 cases (25.0%).

5. The service the CPS provides

Service to the police

5.1. At the charging stage, the prosecutor can do a number of things to ensure compliance with the disclosure regime throughout the life of the case. These can include requiring sight of undermining or assisting material, providing advice on the level of mobile phone download material to expect, and identifying reasonable lines of enquiry not already carried out or in hand by the police.

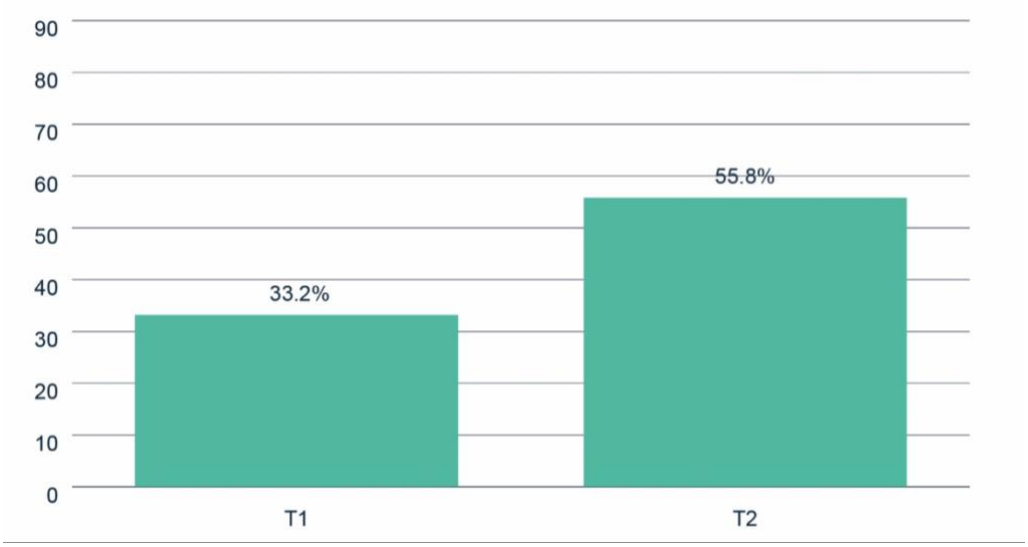
5.2. In 486 of the 735 cases where this was necessary (66.1%), the prosecutor advised the police correctly about reasonable lines of enquiry at the charging stage. This is an aspect of performance which is showing substantial improvement: from 61.7% of tranche one to 77.6% of tranche two of the pre-charge decision file sample, and from 46.3% of tranche one to 73.7% of tranche four of the live Crown Court trial file sample. The types of enquiry were varied, but enquiries about communications, forensics and crime scenes were among the most common.

5.3. The better the quality of the prosecutor's MG3, in respect of their assessment of the position with regard to unused material, the better informed the police will be as the case proceeds. A better quality MG3 also aids subsequent prosecutors' understanding of the rationale behind disclosure decisions.

5.4. We assessed the quality of the prosecutor's MG3 in respect of this aspect in each case where the CPS directed the charge. In 439 of these 1,059 applicable cases (41.5%), the prosecutor dealt fully with all the disclosure aspects. In another 279 cases (26.3%), they dealt with some disclosure aspects.

Figure 6: Cases where the CPS's charging advice dealt properly with disclosable and non-disclosable unused material (higher is better)

Pre-charge decision



Live trial



5.5. Although there is still some way to go, the direction of travel is encouraging. In the pre-charge decision file sample, the level of full compliance improved from 33.2% of tranche one to 55.8% of tranche two. In the live Crown Court trial file sample, the level improved from 28.6% of tranche one to 49.2% of tranche four.

Case Study
The defendant was alleged to have sexually assaulted a 13 year old girl. There were two good pieces of charging advice, with effective use of an action plan to request third party material, medical evidence and occurrence logs. In the second charging advice, there was a good analysis of what material was disclosable. Later in the case, the prosecutor rejected inadequate unused material schedules.

5.6. Inspectors concluded that the primary reason for not fully meeting the required standard was a complete failure to consider unused material, in which case we assessed the standard as not met at all. This occurred in 121 of the applicable cases (39.8%) in the live Crown Court trial file sample and 141 of the applicable cases (46.1%) in the pre-charge decision file sample. We saw examples of MG3s which were perfectly adequate in other aspects but silent on disclosure. We also saw examples where the prosecutor correctly identified unused material which needed disclosing in the body of the MG3, but then went on to use a standard paragraph saying there was nothing to disclose. In one example, immediately below this standard paragraph the prosecutor correctly listed three pieces of information that needed disclosing. To assist the police and the prosecutor at court, lawyers need to ensure that their charging advice is clear about their assessment of what needs to be disclosed.

5.7. Another aspect which needed improving was the assessment of the impact of the unused material on the trial strategy. In tranche two of the pre-charge decision file sample, this was the primary reason for the required standard not being met fully. Although the cases in question were small in number, it was also rare to note the prosecutor asking the police at the pre-charge stage whether there was intelligence based material which should be revealed to the prosecution. In some, it was obvious that there would be such material, such as when the offending came to light after the execution of a search warrant.

Case Study
The defendant's home and business premises were searched under the authority of a search warrant. At the business premises, the police found approximately £53,000 worth of cocaine and paraphernalia associated with drug dealing. In the charging advice the prosecutor stated: "I have discussed the unused material with the officer and there is none which undermines the prosecution case nor assists the defence case at the present time. Obviously, further review to be conducted when all reasonable lines of enquiry are complete. I have discussed the intelligence which led to the warrants being issued and it would appear that it is consistent with the suspect being member of OCG [organised crime group] and involved with drug supply at relatively high level i.e. does not undermine the case. No material required to be

disclosed under common law R v DPP (R v DPP ex parte Lee [1999] 2 All ER 737.)"

5.8. Very few prosecutors analysed the impact of their charging decisions on disclosable material. For example, when deciding not to proceed against some suspects, there was no assessment of whether that decision created disclosable material in respect of those who were charged.

Case Study
The defendant was alleged to have cleaned and disposed of a knife used in a stabbing. They were charged with assisting an offender, not perverting the course of justice. To prove assisting an offender, the prosecution have to be able to prove "a person committed a relevant offence". The prosecutor did not then analyse what material undermined the alleged offence in which the knife was used.

Case Study
The defendant was alleged to have committed a number of offences of indecent exposure, all of which were very similar in the manner in which they were carried out. However, the identification evidence was only sufficient in one offence, which was correctly charged. In the other alleged incidents, the victims either stated that they would not be able to identify the offender or failed to pick the defendant out in a formal identification procedure. In one instance, a victim said that none of the pictures they were shown was the offender. In the section on the charging advice which deals with unused material, the lawyer said: "I have not been advised of any material which is likely to undermine the Crown's case or assist the defence."
They failed completely to analyse the undermining impact of the negative identifications.

5.9. As we stated in chapter 4, the revised MG3 introduced in June 2019 should prevent prosecutors from entirely omitting any reference to disclosure decisions.

5.10. There were 62 cases in our live Crown Court trial file sample where the prosecutor disagreed with the police's assessment that there was disclosable material at the initial disclosure stage. The police were only informed of the prosecutor's decision in 16 of these cases (25.8%). Informing the police helps them understand better how to handle subsequent cases. There were 12 cases at the continuing disclosure stage that fell into this category, and the police were notified in four of them (33.3%).

5.11. In chapter 4, we commented on how well the defence complied with the requirement to serve a defence statement. Once that statement is served, the prosecutor should pass it promptly to the police and give them any required guidance on the disclosure issues it raises, including any further identified reasonable lines of enquiry. As the clock is running from the time the statement is served, it is important that it is passed promptly to the police. The handover was prompt in 309 of the 399 applicable cases (77.4%) and was consistently better in RASSO cases in every tranche and overall (89.3%).

5.12. However, the prosecutor only reviewed the defence statement and provided comments and advice to the police in 194 of the 391 applicable cases (49.6%). The direction of travel is more encouraging (Figure 7).

Figure 7: Cases where the prosecutor reviewed the defence statement and provided comments and advice to the police (higher is better)

Live trial



5.13. Of the 216 cases where prosecutors did comment to the police about the defence statement, they correctly identified further reasonable lines of enquiry in 140 cases (64.8%). Again, performance is improving, reaching 70.2% in tranche four.

Service to the defence and the court

5.14. There is some unused material that should be disclosed to the defence as soon as possible and no later than the first hearing. Primarily this is material which may assist the defence in making a bail application, such as material that speaks to the credibility of the complainant. However, it is not limited to this category and can include material that would assist the defence in the early preparation of their case. This is usually referred to as common law disclosure and follows the decision in DDP v Lee.

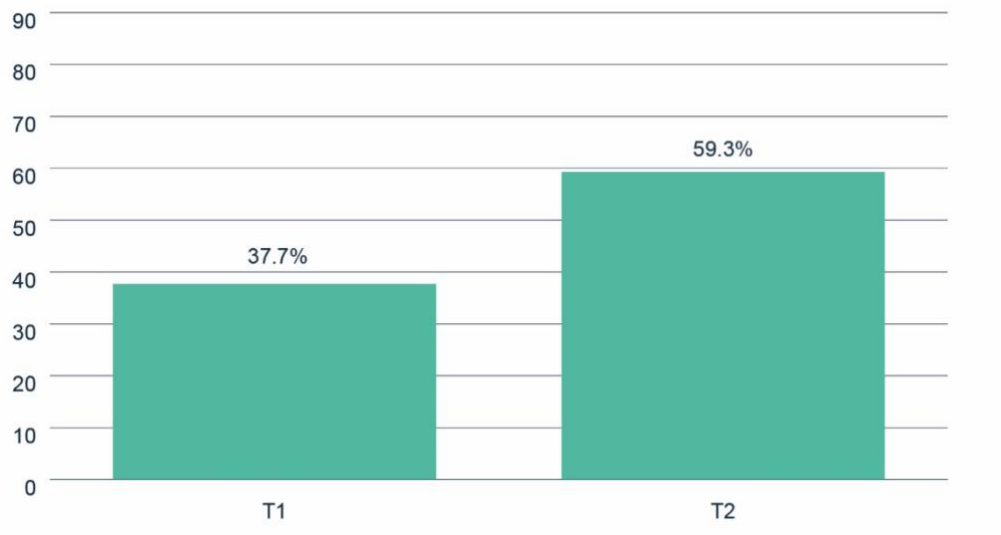
5.15. For this process to work effectively, the police have to reveal the material to the prosecutor at the charging stage. The prosecutor then has to consider it and determine whether it is disclosable – and if so, whether it needs to be disclosed straight away, in compliance with the common law requirement.

5.16. In 219 of the 896 cases where the prosecutor had to make such a determination (24.4%), there was material which met the common law disclosure test. The prosecutor correctly identified the material in 41.0% of those 219 cases.

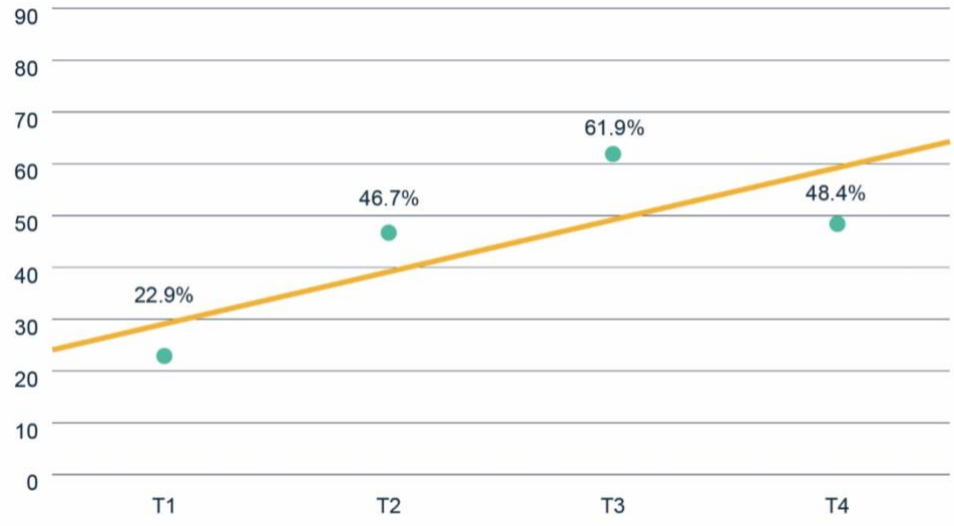
5.17. CPS Direct prosecutors were generally better at identifying this material. They did so in 32 of the 43 of the applicable cases (74.4%) in tranche two of the pre-charge decision file sample, compared to Area prosecutors who identified the material in three of the 16 applicable cases (18.8%). One explanation for the variation in performance is that CPS Direct prosecutors are likely to deal with more cases where the suspect is in custody and the police intend to keep them there after charge, pending their court appearance. They are therefore more alert to the possibility of bail applications. CPS Area prosecutors generally deal more with suspects who are either on police bail already or have been released under investigation. Therefore their common law duties are not necessarily as pertinent at the charging stage.

Figure 8: Cases where the charging lawyer identified any material that needed to be disclosed at the first hearing, under DPP v Lee (higher is better)

Pre-charge decision



Live trial



5.18. Once the defendant is sent to the Crown Court from the magistrates' court, the statutory requirement to provide the defence with initial disclosure is triggered.

5.19. In most cases in our file sample, the initial disclosure took place after the pre-trial preparation hearing. A date for service of the prosecution cases and

initial disclosure is set at that hearing (known as Stage 1). In 463 of the applicable cases (83.6%), initial disclosure took place as part of the Stage 1 process. In 66 cases (11.9%), it took place between the magistrates' court hearing and the pre-trial preparation hearing. There were contested cases in our file sample where prosecutors were proactive and provided initial disclosure before it was formally required.

5.20. Overall disclosure was timely in 453 of the 552 applicable cases (82.1%), including those where the prosecution applied in time for an extension of the date for service. Performance in this aspect was better in RASSO cases (87.4%).

5.21. We assessed how prosecutors dealt with non-disclosable and disclosable unused material separately. In relation to non-disclosable material, they complied with their duty in 53.7% of applicable cases overall, and in 63.4% of applicable cases in tranche four. Whilst the overall figure is low, in over a quarter of the cases the non-compliance was a failure to sign the MG6D sensitive material schedule (which would often have no entries). Although this may appear trivial, prosecutors need to show that they have actively considered whether the police's assessment is correct. We noted blank unsigned MG6Ds in cases where it was clear that, at the very least, there was potentially sensitive material.

5.22. The next most common failing (21.6% of applicable cases) was saying material was disclosable when it did not undermine the prosecution or assist the defence. There were very few cases (2.0%) where the prosecutor failed completely to consider disclosure.

5.23. There was a much better compliance rate when considering disclosable unused material: 70.4% of applicable cases overall, and 72.3% of applicable cases in tranche four. However, in 46 of the cases where there was non-compliance (31.3%), the overall primary reason for it was assessing disclosable material incorrectly as not disclosable. In five of the 46 cases (10.9%), the error had not been rectified by or at the continuing disclosure stage. Of those five, two were guilty pleas, one was a conviction after trial, one was an acquittal and one was still awaiting trial at the time of writing.

5.24. Continuing disclosure was timely in 65.7% of applicable cases overall, but in 64.5% of applicable cases in tranche four. Compliance with the duty of continuing disclosure was significantly better than at the initial disclosure stage. Prosecutors complied with their duty in relation to non-disclosable unused material in 73.2% of applicable cases overall, and in 83.8% of the applicable

cases in tranche four. The most common cause of non-compliance with this duty was saying that non-disclosable material was disclosable (29.7%).

5.25. At this stage, prosecutors complied with their statutory duty in 77.0% of cases with disclosable unused material overall, and 82.8% of such cases in tranche four. In the 23.0% of non-compliant cases, the biggest single factor was not dealing at all with continuing disclosure. There were eight cases (11.0%) at this stage where the prosecutor incorrectly said material was not disclosable. This included the five where the error at the initial disclosure stage had not been rectified (see paragraph 5.23). Of the additional three cases, one was a guilty plea, one was a conviction after trial and one was still awaiting trial at the time of writing.

5.26. In these eight cases, we cannot discount the possibility that the outstanding disclosure issues were addressed in the period after we examined the file. This was usually at least two weeks before the date initially set down for trial.

5.27. There were only six cases in our file sample where the defence made an application to the court to order the CPS to disclose material. The prosecutor handled the process correctly in four of the six cases. We noted cases where there were robust exchanges of views between the prosecution and defence as to why or why not material was disclosable. However, the very small number of cases where the court was asked to intervene suggests that at the end of the process the defence were satisfied that the prosecutor had met their statutory obligation.

5.28. Throughout the life of the case, the prosecutor must keep continuing disclosure under review. They should not just be reactive to defence requests. In many cases, unused material was drip fed to the CPS by the police. This is often unavoidable, because certain investigative tasks take a substantial amount of time – for example, analysing mobile phone content, particularly where the defendant refuses to give the unlock code. Additionally, the police may be waiting on material from a third party, such as medical records.

5.29. One of the consequences of this drip feed of unused material is that the police submit a number of unused material schedules.[18] This can make it difficult for prosecutors to identify which schedule contains the most recent material. One police force had a practice of giving each schedule a number, which was a considerable advantage in understanding the chronology of the case with regard to unused material.

[18] Additional items should be consecutively numbered on the schedule.

Figure 9: Cases where the prosecutor kept unused material under continuous review (higher is better)

Live trial



5.30. Prosecutors should record their decisions about the disclosure of unused material on a disclosure record sheet (DRS). Completed properly, this provides an accurate record of decision making and an audit trail of the history of the case in relation to the disclosure of unused material.

5.31. Prosecutors fully completed one or more DRSs throughout the life of the case in 314 of the 549 applicable cases (57.2%), and in 67.2% of the applicable cases in tranche four of the live Crown Court trial file sample.[19]

[19] There is no requirement to start a DRS at the charging stage.

Service to victims, witnesses and the public

5.32. Although the focus of this inspection was on the disclosure of unused material, we also assessed whether the Code for Crown Prosecutors[20] was applied correctly at the charging and post-charge stages, as we do in almost all casework based inspections. If a wholly unreasonable decision is taken at these key points, it can lead to the victim or witnesses having unrealistic expectations, or a defendant having a prosecution hanging over them when there is no realistic prospect of conviction.[21]

5.33. There were very few cases where a wholly unreasonable decision was taken by the prosecutor at the charging stage. This happened in only 12 of the 1,047 applicable cases (1.1%).[22] Therefore the Code was applied correctly in 98.9% of cases. In two of the 12 cases (16.7%), we considered that the failure to assess the unused material correctly was the primary reason for the wholly unreasonable decision.

Case Study
The defendant was a carer charged with assaulting a patient in a care home. Another member of staff said that two patients witnessed the incident and looked shocked. However, the police occurrence report, which was available to the prosecutor at the charging stage, had an entry which said that neither patient recalled anything untoward. This was clearly undermining material – to such an extent that there was no realistic prospect of conviction.

5.34. After the charging stage, there was a wholly unreasonable decision to continue with the prosecution in six of the 12 cases, including the one which had been charged by the police. In one further case, the decision to charge was reasonable under the threshold test. However, once the undermining material became available post-charge, the initial decision to continue with the offence originally charged was wholly unreasonable.

5.35. The most common category of unused material in our file sample was that which speaks to the credibility of the victim or witness (42.0% and 44.7% respectively). Of the material in that category, the most common type was material related to previous convictions (43.0% and 54.0%).

5.36. There is no automatic disclosure of the previous convictions of victims or witnesses. Like all other material, previous convictions must satisfy the

20 cps.gov.uk/publication/code-crown-prosecutors
21 We did not look at cases where no further action was directed at the charging stage.
22 One of these 12 cases was charged by the police.

undermining or assisting test. The CPS guidance[23] recognises that in most cases previous convictions will meet the test for disclosure. In terms of provision of previous convictions at the charging stage, the police's performance was good, but it was much less so in terms of listing the fact of the previous convictions on the unused material schedule.

5.37. If a prosecutor determines that the previous convictions of the victim or witness do not meet the disclosure test, this decision should ratified by a legal manager. We saw cases where it was clear that this process had been undertaken correctly, but in other cases it was not apparent.

5.38. The likelihood of there being relevant communication material between the defendant, victim, witnesses, others or any combination of these was apparent at the charging stage in 205 of the 555 cases in the live Crown Court trial file sample (36.9%) and 170 of the 345 applicable cases in the pre-charge decision file sample (49.3%). However, this included cases where the only relevant device would be the defendant's mobile phone – for example, to show whether or not it contained evidence of drug dealing, or whether multiple defendants were in contact with each other.

5.39. We did not collect file examination data on the number of cases where a victim or witness handed over their mobile phone. Nor did we specifically record the nature of the case where this did take place.

5.40. The following example from our file sample demonstrates how effectively cases can be handled when dealing with unused material and how that can impact positively on the victim's experience.

Case Study

The victim, a 71-year-old woman, was at home when the defendant forced his way in despite her efforts to keep him out. He forcibly demanded her cash and jewellery, and raped her. A passer-by had seen events on the doorstep and alerted the police. The defendant was arrested inside the victim's home, partly undressed, and with her belongings on him. At the scene and in interview, he made very unpleasant suggestions about the victim's conduct which she doubtless found distressing. The defendant pleaded not guilty to rape and robbery, and the victim therefore had to give evidence and be cross-examined about his version of events. He was convicted of both offences at the trial, and given discretionary life sentences with a minimum term of ten years' imprisonment. The charging advice by CPS Direct and the subsequent handling by the Area lawyer were of a very high standard. A clear disclosure strategy was set out and shared with the defence, and unused material was considered carefully at each stage. The Area lawyer bore in mind

23 cps.gov.uk/legal-guidance/disclosure-previous-convictions-prosecution-witnesses

proportionality and the possible impact on the victim when determining reasonable lines of enquiry, and appropriately challenged defence requests. After the trial, the lawyer wrote to the victim commending her bravery and thanking her for her part in ensuring the defendant was no longer in a position to hurt others.

Direction of travel

5.41. One of the main reasons why we examined cases in tranches was to enable us to assess whether the CPS, and to some extent the police, were making progress in complying with the requirements of the disclosure regime over a period of time. We recognised from the outset that cases in the early tranches may have started before the implementation of the many initiatives to drive up performance. We were therefore anticipating that comparisons between the data from the earlier and later tranches would show that performance was improving.

5.42. In all the key categories in the live Crown Court trial file sample, there has been a discernible, and in some cases significant, improvement in the CPS's performance. However, in some areas this improvement started from a low tranche one baseline, and performance needs to improve further before it reaches an acceptable standard.

5.43. Some examples from our live Crown Court trial file sample include significant improvements in:

- whether the CPS advised the police about reasonable lines of enquiry in the MG3, up from 46.3% of tranche one to 73.7% of tranche four
- whether the CPS's charging advice dealt properly with disclosable and non-disclosable unused material, up from 28.6% to 49.2%, to fully meet the required standard.
- prosecutors' compliance with the duty of initial disclosure (not timeliness):
  - up from 55.4% to 63.4% in relation to non-disclosable unused material
  - up from 62.0% to 72.3% in relation to disclosable unused material
- prosecutors' compliance with the duty of continuing disclosure (not timeliness):
  - up from 69.8% to 83.8% in relation to non-disclosable unused material

  - up from 72.6% to 82.8% in relation to disclosable unused material

- compliance with the requirement for the prosecutor to review the defence statement and provide comments and advice to the police, up from 41.2% to 60.0%.

5.44. Our two tranches of pre-charge decision cases were at the start and finish of the inspection. Tranche two was therefore potentially going to show the most performance improvement in those aspects that related to the charging process. This proved to be the case, but again, in some aspects from a low baseline.

- The percentage of cases where the CPS any failings with the police's dealings with unused material at charge, and fed these back to the police, improved from 5.6% of tranche one to 15.5% of tranche two.

- The percentage of cases where the CPS's charging advice dealt properly with disclosable and non-disclosable unused material improved from 33.2% to 55.8%

- The percentage of cases where the CPS advised the police about reasonable lines of enquiry in the MG3 improved from 75.9% to 93.8%.

Annex A
Methodology

The live Crown Court trial file sample

We examined, in four tranches, 555 live Crown Court trial files drawn from the 14 geographical CPS Areas. Of those 555 files, 282 (50.8%) were charged by CPS Direct, 233 (42.0%) by CPS Areas, and the other 40 (7.2%) by the police. The trials were listed from mid-November 2018 (the start of tranche one) to the end of May 2019 (the start of tranche two).

The files were selected at random from those listed for trial within the date parameters. This is subject to the caveat that we tried, where possible, to include at least one case of rape from each Area.

Eighty-eight of the 555 files (15.9%) were categorised as rape and serious sexual offences (RASSO) cases. A further 169 (30.5%) fell into one of the other sensitive categories – for example, child abuse or domestic abuse. We only record the primary category but some cases do involve more than one – for example, both RASSO and domestic abuse.

The pre-charge decision file sample

We examined, in two tranches, the CPS pre-charge decision in 560 cases drawn from the 14 geographical CPS Areas. These were all cases where one or more charges were directed. We sought to identify cases that, because of their seriousness, were more likely to be destined for the Crown Court. However, 50 (8.9%) were finalised in the magistrates' courts. In addition, a few defendants were committed to the Crown Court for sentence having pleaded guilty in the lower court.

Of those 560 files, CPS Direct took the charging decision in 365 (65.2%) and CPS Areas took it in the other 195 (34.8%).

Sixty-eight of the 560 (12.1%) files were categorised as RASSO cases. A further 168 (30.0%) fell into one of the other sensitive categories.

The question set

In our examination of the Crown Court live trial file sample, we applied a set of 95 questions, 31 of which concerned pre-charge decisions. In our examination of the pre-charge decision file sample, we applied a set of 31 questions, which mirrored the 31 pre-charge questions in full 95-question set.

Annex B
Pre-charge decision: question set

Throughout this annex, the abbreviation ‘UM’ refers specifically to *relevant* unused material.

No.	Question	Options
General		
1	Was it apparent at charge that there was likely to be UM in this case, over and above the usual items?	Yes No NA
2	Was all the expected UM (per Q1) available to the police at the point at which the CPS were being invited to give charging advice?	Yes No, only some available No, none available NA
3	Was there UM that would have been available at charge if the police had carried out reasonable lines of enquiry?	Yes No NA
4	Did the police provide the UM or an adequate report on it to the CPS for PCD?	Yes, the material was provided Yes, an adequate report was provided No, not provided and report was inadequate No, not provided and no report NA
5	Did the UM (revealed by the police or otherwise apparent from the papers) include material that undermined the P case or assisted the defence?	Yes No Not known NA
6	Was there any material that fell to be disclosed immediately under DPP v Lee?	Yes No Not known NA
7	Did the police identify to the CPS that the UM included material that could undermine the prosecution case or assist the defence, or was disclosable under DPP v Lee?	Yes No NA
8	Did the police submission accurately set out the P case, any likely defences and any other relevant information, so as to enable the CPS to assess the impact of any UM?	Yes No NA

No.	Question	Options
CPS at charge		
9	Did the CPS identify and feed back to the police any failings with the police dealings with unused material at charge?	Yes, identified and fed back No, identified but not fed back No, not identified and not fed back NA
10	Did the CPS charging advice deal properly with disclosable and non-disclosable UM?	Fully met Partially met Not met NA
11	If Q10 is PM or NM, what was the main or most significant failing with UM?	Did not address UM at all Did not address how disclosable UM undermined the P case or assisted the D case Did not discuss the impact of UM (revealed by police or not) on the evidence and public interest Did not discuss any sensitivity of UM Did not set appropriate actions in the action plan in relation to UM Other (please note) NA
12	If Q10 is PM or NM, what was the next most significant failing with UM?	Did not address UM at all Did not address how disclosable UM undermined the P case or assisted the D case Did not discuss the impact of UM (revealed by police or not) on the evidence and public interest Did not discuss any sensitivity of UM Did not set appropriate actions in the action plan in relation to UM Other (please note) NA

No.	Question	Options
13	Did the CPS advise the police in the MG3 on reasonable lines of enquiry?	Yes No NA
14	What was the primary nature of the reasonable lines of enquiry on which the CPS did or should have advised?	Cell site analysis Comms Forensic and crime scene Other third party Expert Other (please note) NA
15	Did the CPS charging advice give sufficient instructions to the court prosecutor and reviewing lawyer about UM?	Yes No NA
16	Did the charging lawyer identify any material that needed to be disclosed at the first hearing under DPP v Lee?	Yes No NA
17	If there was a breach of the Code for Crown Prosecutors at charge, did it relate to UM?	Yes No NA
General – all UM		
18	Did the UM relate primarily to evidence or public interest?	Evidence Public interest NA
19	Was the UM non-sensitive or sensitive?	Non-sensitive Sensitive Both NA
20	What was the primary reason for any UM being sensitive?	National security CHIS or UCO Police techniques Where disclosure could hinder prevention or detection of crime Search warrant information Information given in confidence Material relating to private life of a witness Other (please note) NA

No.	Question	Options
21	What type was the most significant disclosable UM?	Victim credibility Witness credibility CSI or forensic evidence (includes negative results) Medical evidence (including psychiatric) Other expert evidence Comms: contact between D and V, W or others; contact from V or W to others Third party material Other (please note) NA
22	What type was the next most significant disclosable UM?	Victim credibility Witness credibility CSI or forensic evidence (includes negative results) Medical evidence (including psychiatric) Other expert evidence Comms: contact between D and V, W or others; contact from V or W to others Third party material Other (please note) NA
23	What was the main type of the material impacting on victim or witness credibility?	V or W precons V or W has made inconsistent statements Other V or W credibility NA
24	What was the main type of the UM relating to comms/contact from/between parties?	Direct contact between D and V (text, letter, phone call or in person) Social media contact between D and V Direct contact between D and a W Social media contact between D and a W Contact between D and another Contact between V and another Other contact (please note) NA

No.	Question	Options
25	What was the main type of third party UM?	Forensic science provider Social services NHS Education Family proceedings Other (please note) NA
Communications material		
26	At charge, was it apparent that there was likely to be relevant comms material?	Yes No NA
27	Did the police provide the relevant comms material or an adequate report on it to the CPS at charge?	Yes, the material was provided Yes, an adequate report was provided No, not provided and report was inadequate No, not provided and no report NA
28	If no, were there obvious further lines of enquiry that could have been undertaken before charge to enable the police to obtain and reveal the comms material?	Yes No NA
Third party material		
29	At charge, was it apparent that there was likely to be relevant third party material?	Yes No NA
30	Did the police provide the relevant TP material or an adequate report on it?	Yes, the material was provided Yes, an adequate report was provided No, not provided and report was inadequate No, not provided and no report NA
31	If no, were there obvious further lines of enquiry that could have been undertaken before charge to enable the police to obtain and reveal the TP material?	Yes No NA

Annex C
Live trial: question set

Throughout this annex, the abbreviation ‘UM’ refers specifically to *relevant* unused material.

No.	Question	Options
General		
1	Was it apparent at charge that there was likely to be UM in this case?	Yes No NA
2	Was all the expected UM available at charge?	Yes No, only some available No, none available NA
3	Was there UM that would have been available at charge if the police had carried out reasonable lines of enquiry?	Yes No NA
4	Did the police provide the UM or an adequate report on it to the CPS at charge?	Yes, the material was provided Yes, an adequate report was provided No, not provided and report was inadequate No, not provided and no report NA
5	Did the UM (revealed by the police or otherwise apparent from the papers) include material that undermined the P case or assisted the defence?	Yes No Not known NA
6	Was there any material that fell to be disclosed immediately under DPP v Lee?	Yes No Not known NA
7	Did the police identify to the CPS that the UM included material that could undermine the prosecution case or assist the defence, or was disclosable under DPP v Lee?	Yes No NA
8	Did the police submission accurately set out the P case, any likely defences and any other relevant information, so as to enable the CPS to assess the impact of any UM?	Yes No NA

No.	Question	Options
CPS at charge		
9	Did the CPS identify and feed back to the police any failings with the police dealings with unused material at charge?	Yes, identified and fed back No, identified but not fed back No, not identified and not fed back NA
10	Did the CPS charging advice deal properly with disclosable and non-disclosable UM?	Fully met Partially met Not met NA
11	If Q10 is PM or NM, what was the main or most significant failing with UM?	Did not address UM at all Did not address how disclosable UM undermined the P case or assisted the D case Did not discuss the impact of UM (either disclosed by police or not) on the evidence and public interest Did not discuss any sensitivity of UM Did not set appropriate actions in the action plan in relation to UM Other (please note) NA
12	If Q10 is PM or NM, what was the next most significant failing with UM?	Did not address UM at all Did not address how disclosable UM undermined the P case or assisted the D case Did not discuss the impact of UM (either disclosed by police or not) on the evidence and public interest Did not discuss any sensitivity of UM Did not set appropriate actions in the action plan in relation to UM Other (please note) NA

No.	Question	Options
13	Did the CPS advise the police in the MG3 on reasonable lines of enquiry?	Yes No NA
14	What was the primary nature of the reasonable lines of enquiry on which the CPS did or should have advised?	Cell site analysis Comms Forensic and crime scene Other third party Expert 999 calls Potential witnesses Other NA
15	Did the CPS charging advice give sufficient instructions to the court prosecutor and reviewing lawyer about UM?	Yes No NA
16	Did the charging lawyer identify any material that needed to be disclosed at the first hearing under DPP v Lee?	Yes No NA
17	If there was a breach of the Code for Crown Prosecutors at charge, did it relate to UM?	Yes No NA
Communications material		
18	At charge, was it apparent that there was likely to be relevant comms material?	Yes No
19	Did the police provide the relevant comms material or an adequate report on it to the CPS at charge?	Yes, the material was provided Yes, an adequate report was provided No, not provided and report was inadequate No, not provided and no report NA
20	If no, were there further reasonable lines of enquiry that could have been undertaken before charge to enable the police to obtain and reveal the comms material?	Yes No NA
Third party material		

No.	Question	Options
21	At charge, was it apparent that there was likely to be relevant third party material?	Yes No
22	Did the police provide the relevant TP material or an adequate report on it?	Yes, the material was provided Yes, an adequate report was provided No, not provided and report was inadequate No, not provided and no report NA
23	If no, were there further reasonable lines of enquiry that could have been undertaken before charge to enable the police to obtain and reveal the TP material?	Yes No NA
Initial submission of UM documents – all cases		
24	Did the police accurately identify *disclosable* UM at initial file submission on an MG6E or by other means?	Yes, on MG6E Yes, other means No NA
25	Did the police respond appropriately to any actions relating to UM which were set by the CPS in the MG3 at PCD?	Yes No NA
26	Did the police respond in a timely manner to actions set in the MG3 relating to UM?	Yes No NA
27	For the first hearing, did the police accurately complete the section of the MG5 relating to any UM which may impact on bail or other prep of the D case?	Yes, in case with no disclosable UM Yes, in case with disclosable UM No, in case with no disclosable UM No, in case with disclosable UM NA
28	For the first hearing, did the police accurately complete the section of the MG6 relating to any UM which may undermine the P case or assist the defence?	Yes, in case with no disclosable UM Yes, in case with disclosable UM No, in case with no disclosable UM

No.	Question	Options
		No, in case with disclosable UM NA
29	Did the police include the right UM form(s) for the type of case?	Yes No NA
30	If no, what was the main or most significant failing?	No form(s) sent SDC sent instead of schedules or v.v. No MG6B No MG6C or SDC No MG6D No MG6E Other NA
31	Was the information on the form(s) (SDC or schedules) complete and accurate?	Yes No NA
32	If Q31 is no, what was the main or most significant failing?	Item(s) missed off an SDC or MG6C Item(s) missed off an MG6D Item(s) listed on MG6C in error Item(s) listed on MG6D in error Item(s) description inadequate Failed to explain why UM was sensitive Irrelevant material was included Evidential material was included Other (please note) NA
33	If Q31 is no, what was the next most significant failing?	Item(s) missed off an SDC or MG6C Item(s) missed off an MG6D Item(s) listed on MG6C in error Item(s) listed on MG6D in error Item(s) description inadequate Failed to explain why UM was sensitive Irrelevant material was included Evidential material was included Other (please note)

No.	Question	Options
		NA
34	Was the police MG6E accurate and complete?	Yes No, identified only some of the disclosable UM No, identified none of the disclosable UM No, identified UM as disclosable when it was not NA
35	Were the police submissions of the UM form(s) timely?	Yes No NA
36	Did the police supply copies of any items they ought to have sent?	Yes No NA
Initial disclosure – all cases		
37	Did the prosecutor challenge identify and feedback to the police any police failings identified in Q24-36?	Fully met Partially met Not met NA
38	At what stage was initial disclosure served?	Before first hearing At first hearing After first hearing before PTPH At PTPH After PTPH Not served NA?
39	Was initial disclosure timely?	Yes No NA
Initial disclosure – questions re the non-disclosable unused material (NDUM)		
40	Did the prosecutor comply with the duty of initial disclosure (not timeliness) in relation to NDUM?	Yes No NA
41	If Q40 is no, what was the main or most significant failing?	Did not carry out initial disclosure at all Did not endorse any decisions on the MG6C

No.	Question	Options
		Failed to endorse/sign a blank MG6D Did not endorse any decisions on a non-blank MG6D Said non-sensitive NDUM was disclosable Said sensitive NDUM was disclosable Did not specify the right test for disclosure Used the wrong endorsements (CND, ND etc.) Did not identify reasonable lines of enquiry Other (please note) NA
42	If Q40 is no, what was the next most significant failing?	Did not endorse any decisions on the MG6C Failed to endorse/sign a blank MG6D Did not endorse any decisions on a non-blank MG6D Said non-sensitive NDUM was disclosable Said sensitive NDUM was disclosable Did not specify the right test for disclosure Used the wrong endorsements (CND, ND etc.) Did not identify reasonable lines of enquiry Other (please note) NA
43	If the prosecutor at initial disclosure identified as not disclosable UM that the police had considered was disclosable, did the prosecutor inform the police why it was not disclosable?	Yes No NA
Initial disclosure – questions re any disclosable unused material (DUM)		
44	Did the prosecutor comply with the duty of initial disclosure (not timeliness) in relation to DUM?	Yes No NA

No.	Question	Options
45	If Q44 is no, what was the main or most significant failing?	Did not carry out initial disclosure at all Did not endorse any decisions on the MG6C Failed to endorse/sign a blank MG6D Did not endorse any decisions on a non-blank MG6D Said non-sensitive DUM was not disclosable Said sensitive DUM was not disclosable Did not specify the right test for disclosure Used the wrong endorsements (CND, ND etc) Did not identify reasonable lines of enquiry Other (please note) NA
46	If Q44 is no, what was the next most significant failing?	Did not endorse any decisions on the MG6C Failed to endorse/sign a blank MG6D Did not endorse any decisions on a non-blank MG6D Said non-sensitive DUM was not disclosable Said sensitive DUM was not disclosable Did not specify the right test for disclosure Used the wrong endorsements (CND, ND etc.) Did not identify reasonable lines of enquiry Other (please note) NA
47	If the prosecutor at initial disclosure identified as disclosable UM that the police had considered was not disclosable, did the prosecutor inform the police why it was disclosable?	Yes No NA
Continuing disclosure – all cases		

No.	Question	Options
48	Was a defence statement (DS) served?	Yes No NA
49	Was it served on time?	Yes No NA
50	Did the prosecutor chase a late DS?	Yes No NA
51	Was the DS adequate?	Yes No NA
52	Did the prosecutor challenge an inadequate DS?	Yes No NA
53	Was the DS sent to the police disclosure officer in a timely manner?	Yes No NA
54	Did the prosecutor review the DS and provide comments and advice to the police?	Yes No NA
55	If no, what was the main or most significant failing?	Did not provide any comments on the DS Did not adequately relate the DS to the P case and trial strategy Other (please note) NA
56	Did the comments or advice from the prosecutor when sending the DS to the police include identification of reasonable lines of enquiry?	Yes No NA
57	Was it apparent upon receipt of the DS that there was likely to be further UM to be revealed to the pros at this stage?	Yes No NA
58	Should that further UM have been identified earlier?	Yes by police Yes by pros Yes by both No

No.	Question	Options
		NA
59	Was the police MG6E submitted in response to the DS accurate and complete?	Yes No, identified only some of the disclosable UM No, identified none of the disclosable UM No, identified UM as disclosable when it was not NA
60	In response to the DS, did the police supply an additional, properly completed MG6C and/or MG6D?	Yes No, further items not identified at all No, further items identified but not scheduled No, not all items listed on the new MG6C No, new MG6C has incorrect numbering No, other problem with MG6C (please note) No, not all items listed on the new MG6D No, other issue (please note) NA
61	Was continuing disclosure timely?	Yes No NA
Continuing disclosure – questions re the non-disclosable unused material (NDUM)		
62	Did the prosecutor comply with the duty of continuing disclosure (not timeliness) in relation to NDUM?	Yes No NA
63	If Q62 is no, what was the main or most significant failing?	Did not carry out continuing disclosure at all Did not endorse decisions about non-sensitive NDUM Did not endorse decisions about sensitive NDUM Said non-sensitive NDUM was disclosable Said sensitive NDUM was disclosable Did not specify the right test for disclosure

No.	Question	Options
		Did not identify RLE/ask the police to deal with obvious questions arising from the DS Other (please note) NA
64	If Q62 is no, what was the next most significant failing?	Did not endorse decisions about non-sensitive NDUM Did not endorse decisions about sensitive NDUM Said non-sensitive NDUM was disclosable Said sensitive NDUM was disclosable Did not specify the right test for disclosure Did not identify RLE/ask the police to deal with obvious questions arising from the DS Other (please note) NA
65	If the prosecutor at continuing disclosure identified as not disclosable UM that the police had considered disclosable, did the prosecutor inform the police why it was not disclosable?	Yes No NA
Continuing disclosure – questions re any disclosable unused material (DUM)		
66	Did the prosecutor comply with the duty of continuing disclosure (not timeliness) in relation to DUM?	Yes No NA
67	If Q66 is no, what was the main or most significant failing?	Did not carry out continuing disclosure at all Did not endorse decisions about non-sensitive DUM Did not endorse decisions about sensitive DUM Said non-sensitive DUM was not disclosable Said sensitive DUM was not disclosable Did not specify the right test for disclosure Did not identify RLE/ask the police to deal with obvious questions arising from the DS

No.	Question	Options
		Other (please note) NA
68	If Q66 is no, what was the next most significant failing?	Did not endorse decisions about non-sensitive DUM Did not endorse decisions about sensitive DUM Said non-sensitive DUM was not disclosable Said sensitive DUM was not disclosable Did not specify the right test for disclosure Did not identify RLE/ask the police to deal with obvious questions arising from the DS Other (please note) NA
69	If the prosecutor at continuing disclosure identified as DUM that the police had considered not disclosable, did the prosecutor inform the police why it was disclosable?	Yes No NA
Defence Section 8 application		
70	If the defence made a s.8 application, did the prosecutor respond appropriately and in a timely manner?	Yes No, late response No, inadequate response No, both NA
Other – all cases, throughout the life of the case		
71	Was there unused material in this case, over and above the usual items?	Yes No NA
72	If there was a breach of the Code for Crown Prosecutors post-charge, did it relate to UM?	Yes No NA
73	Did the UM relate primarily to evidence or public interest?	Evidence PI NA
74	Was the UM non-sensitive or sensitive?	Non-sensitive Sensitive Both NA

No.	Question	Options
75	What was the primary reason for any UM being sensitive?	National security CHIS or UCO Police techniques Where disclosure could hinder prevention or detection of crime Search warrant information Information given in confidence Material relating to private life of a witness Other (please note) NA
76	What type was the most significant UM?	Victim credibility Witness credibility W account CSI or forensic evidence (includes negative results) Medical evidence (including psychiatric) Other expert evidence Contact between D and V, W or others; contact from V or W to others Third party material Other material (eg re identification, mens rea, PI) NA
77	What type was the next most significant UM?	Victim credibility Witness credibility W account CSI or forensic evidence (includes negative results) Medical evidence (including psychiatric) Other expert evidence Contact between D and V, W or others Third party material Other material (eg re identification, mens rea, PI) NA
78	What was the main type of the material relating to victim or witness credibility?	V or W precons V or W previous inconsistent statement Other V or W credibility NA

No.	Question	Options
79	What was the main type of the UM relating to contact from/between parties?	Direct contact between D and V (text, letter, phone call or in person) Social media contact between D and V Direct contact between D and a W Social media contact between D and a W Contact between D and another Contact between V and another Other contact (please note) NA

79	What was the main type of the UM relating to contact from/between parties?	Direct contact between D and V (text, letter, phone call or in person) Social media contact between D and V Direct contact between D and a W Social media contact between D and a W Contact between D and another Contact between V and another Other contact (please note) NA
80	What was the main type of third party UM?	Forensic science provider Social services NHS Education Family proceedings Other (please note) NA
81	Was there a disclosure management document where required?	Yes No NA
82	Was it completed accurately and fully at the pre-charge stage?	Yes, by police and CPS Yes, police supplied info

No.	Question	Options
		Yes, CPS completed DMD No by neither NA
83	Was it completed accurately and fully post-charge?	Yes No NA
84	Did the prosecutor keep UM under continuous review?	Yes No NA
85	Did the prosecutor properly complete a disclosure record sheet?	Yes, one DRS fully completed throughout the life of the case No, more than one DRS but no other issues No, some decisions and/or actions are missing from the DRS No, DRS only completed for initial disclosure No, there is no DRS and no explanation why not Other (please note) NA
86	Did the police correctly identify what was evidence and what was UM?	Yes No, identified some of the evidence as UM No, identified some of the UM as evidence No, did not distinguish between evidence and UM when submitting material NA
87	Did the police supply copies of UM where appropriate?	Yes No NA
88	Did the prosecutor ask to see items of UM where appropriate?	Yes for ID and CD Yes for ID and CD not reached yet Yes, no need to ask as already supplied for both stages No, asked for ID but not for CD No, asked for CD but not for ID

No.	Question	Options
		No, did not ask for ID and CD not reached yet Other NA
89	Was a PII application made where it was appropriate to do so?	Yes No NA
90	Could any UM disclosed by the police at any stage after charge have materially affected the pre-charge advice provided?	Yes No NA
91	Could any UM disclosed by the police at any stage after the initial review have materially affected the initial review by the prosecutor?	Yes No NA
92	If Q90 and/or Q91 are yes, did the CPS identify the failings and feed back to the police?	Yes, identified and fed back No, identified but not fed back No, not identified and not fed back NA
93	Was there evidence that at any stage the police had failed to retain UM?	Yes No NA
94	Was there evidence that at any stage the police had failed to record UM that was not originally in a recorded format?	Yes No NA
95	If Q93 and/or Q94 are yes, did the CPS identify the failings and feed back to the police?	Yes, identified and fed back No, identified but not fed back No, not identified and not fed back NA

Annex D
Pre-charge decision: file examination data

Pre-charge decision – breakdown by Area

Note: The figure numbers in this Annex relate to the figure numbers in the main report.

Figure 1: Cases where additional unused material would have been available if the police had carried out reasonable lines of enquiry (lower is better)

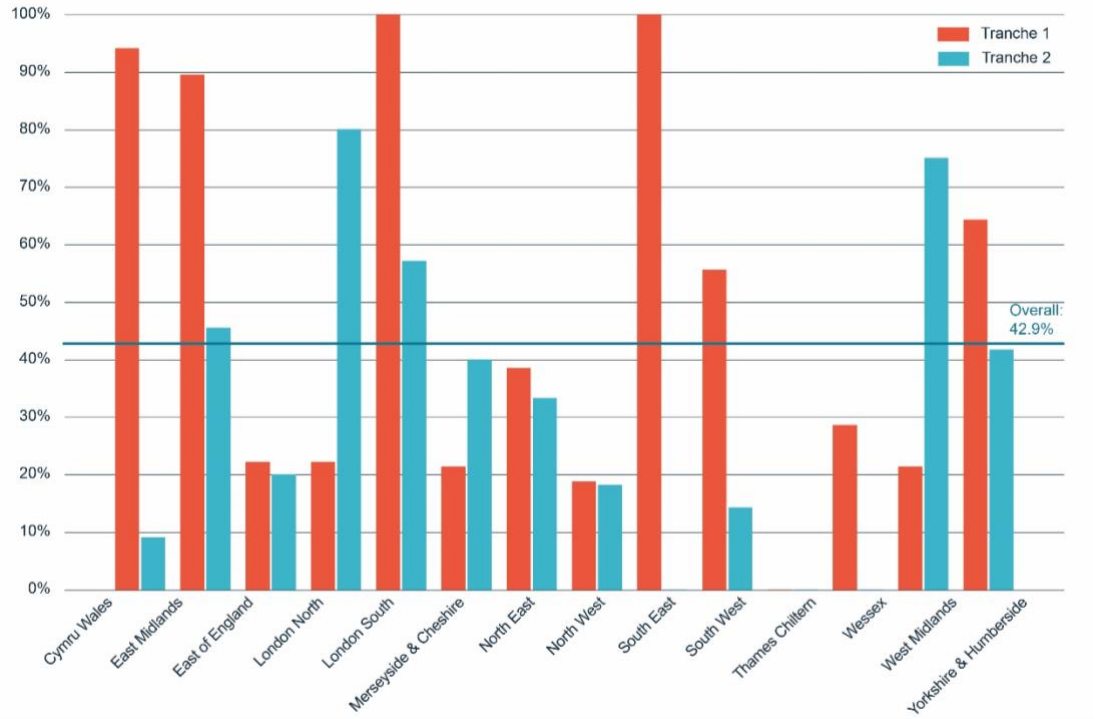


Figure 2: Cases where the police provided the CPS with either the unused material itself or an adequate report about it for the pre-charge decision (higher is better)

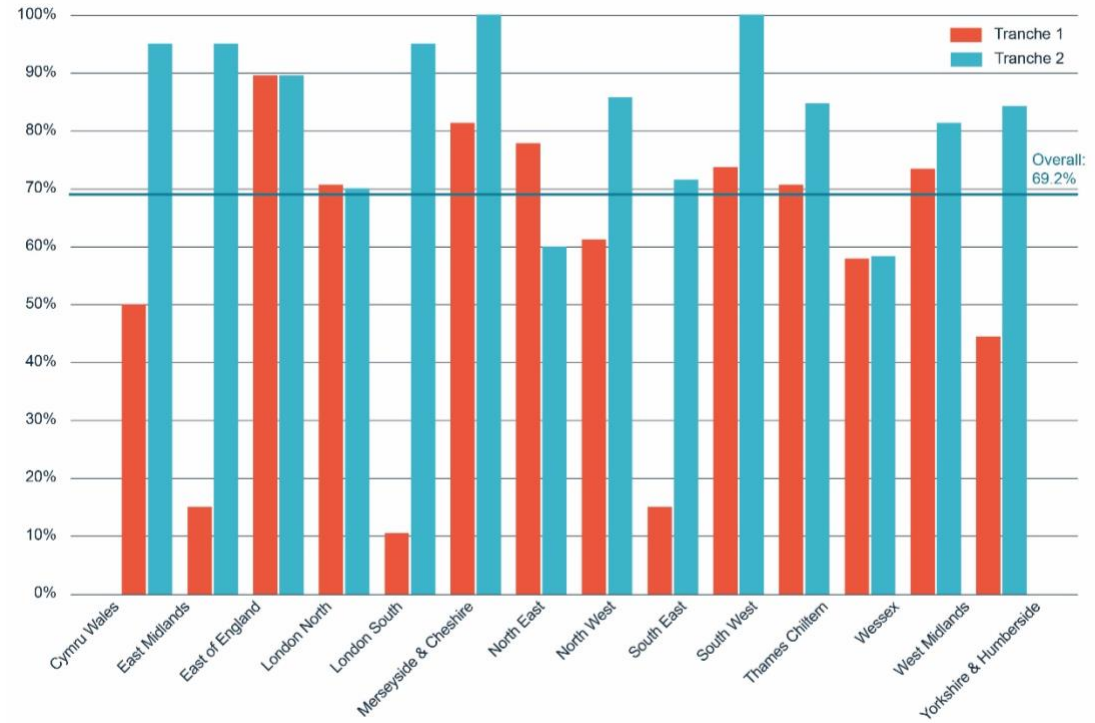


Figure 3: Cases where the police identified to the CPS that the unused material included material that could undermine the prosecution case or assist the defence, or was disclosable under DPP v Lee (higher is better)

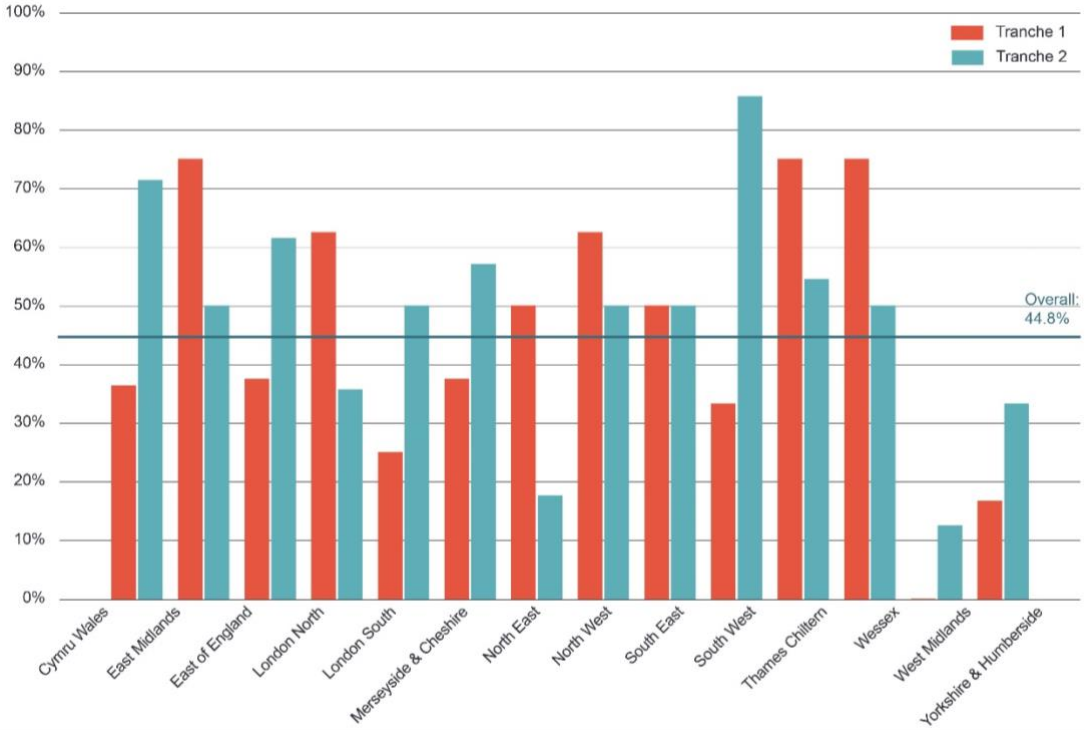


Figure 4: Cases where the CPS identified any failings in the police's dealings with unused material at charge and fed them back to the police (higher is better)

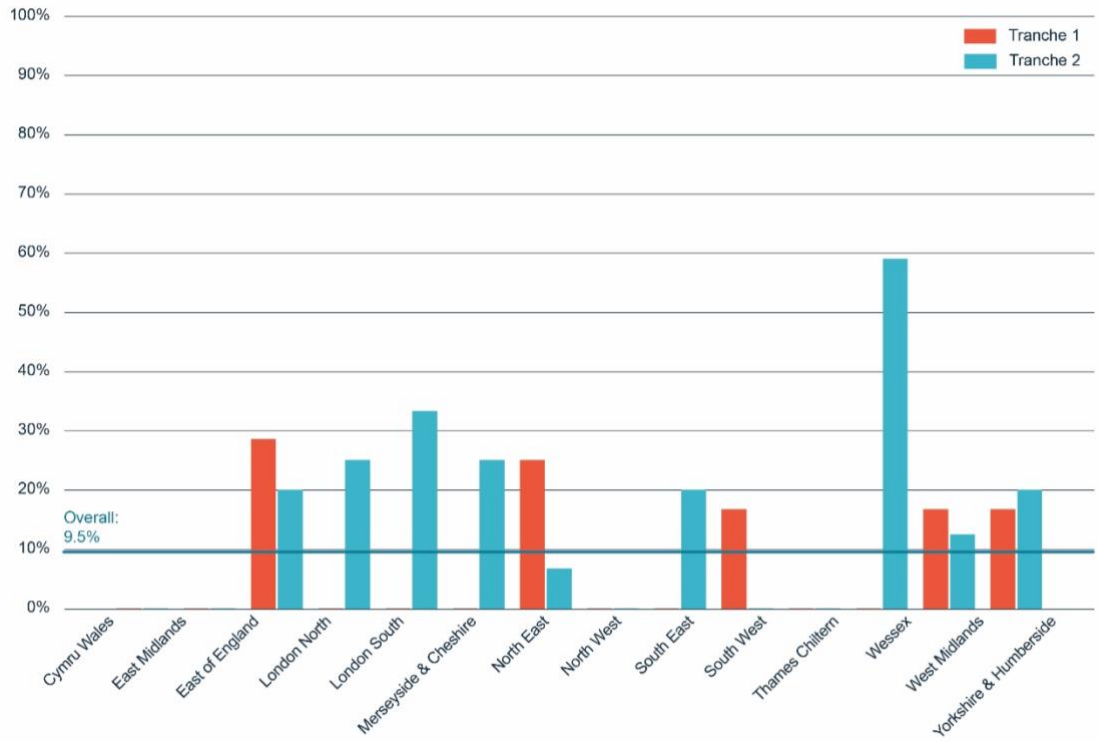


Figure 6: Cases where the CPS's charging advice dealt properly with disclosable and non-disclosable unused material (higher is better)

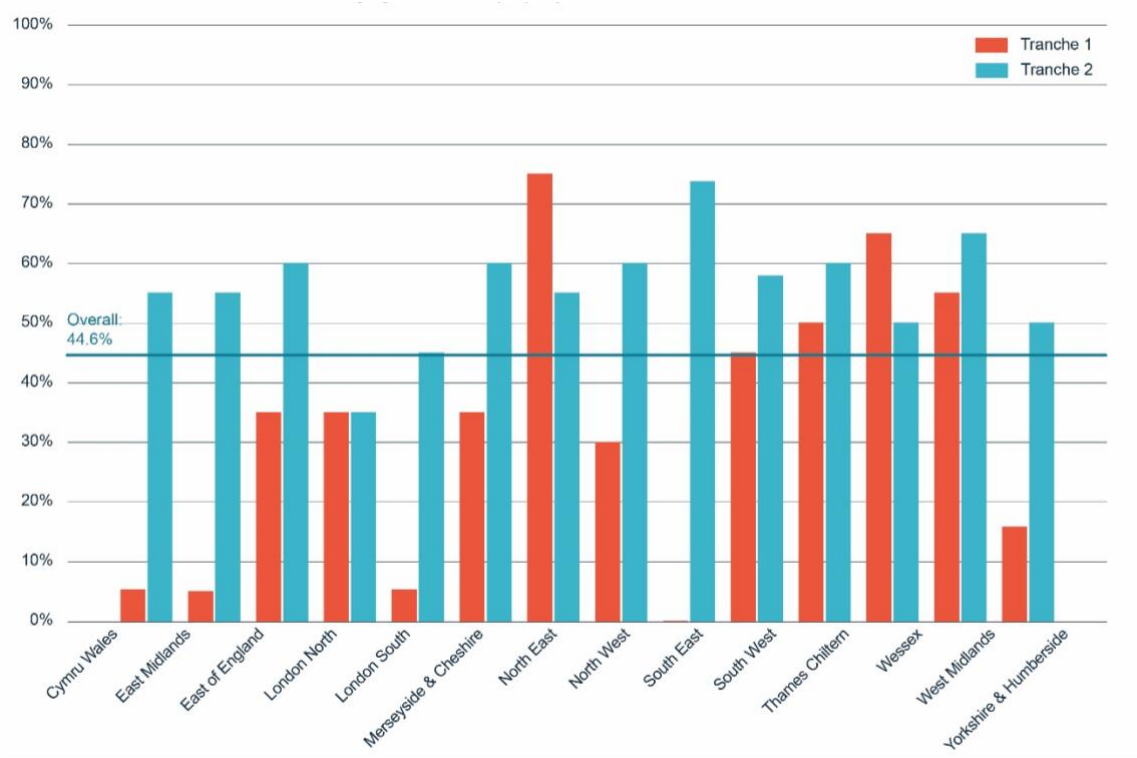
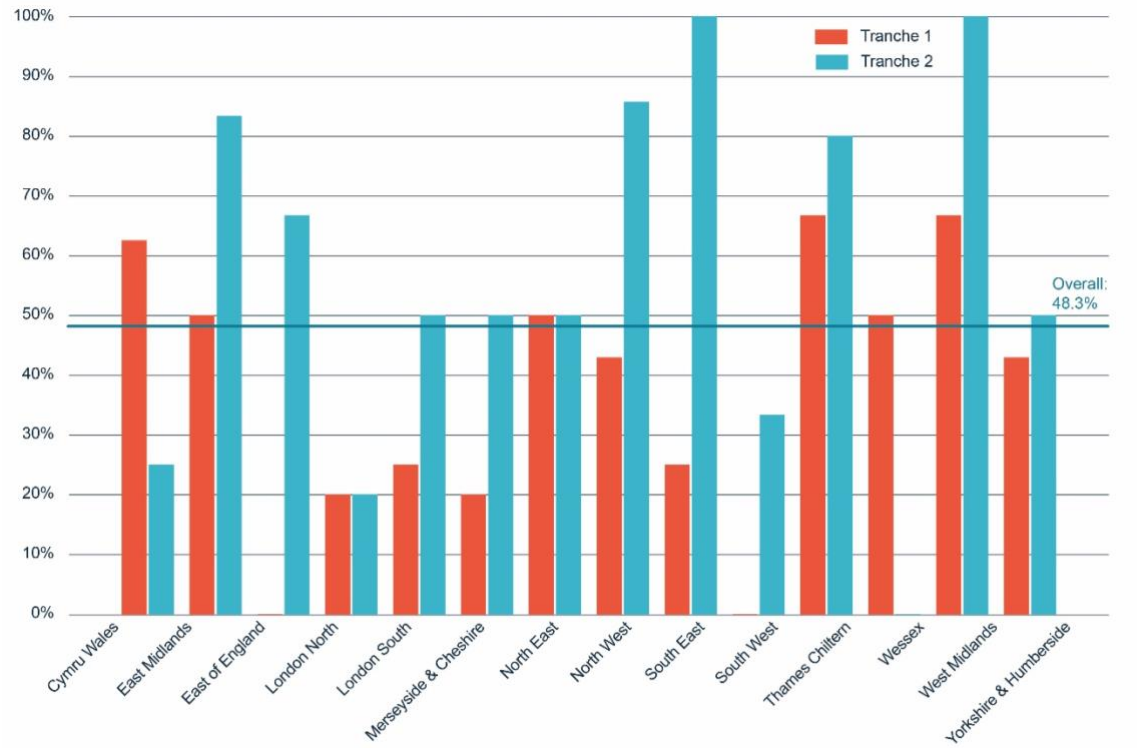


Figure 8: Cases where the charging lawyer identified any material that needed to be disclosed at the first hearing, under DPP v Lee (higher is better)



Annex E
Live trial: file examination data

Live trial – breakdown by Area

Note: The figure numbers in this Annex relate to the figure numbers in the main report.

Figure 1: Cases where additional unused material would have been available if the police had carried out reasonable lines of enquiry (lower is better)

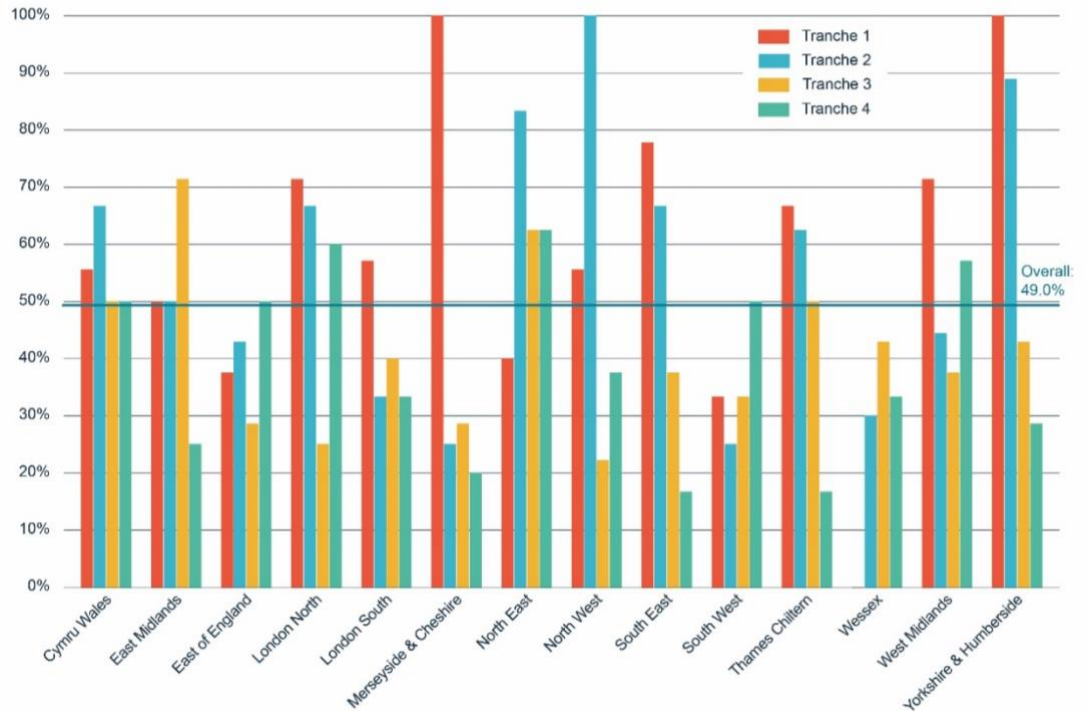


Figure 2: Cases where the police provided the CPS with either the unused material itself or an adequate report about it for the pre-charge decision (higher is better)

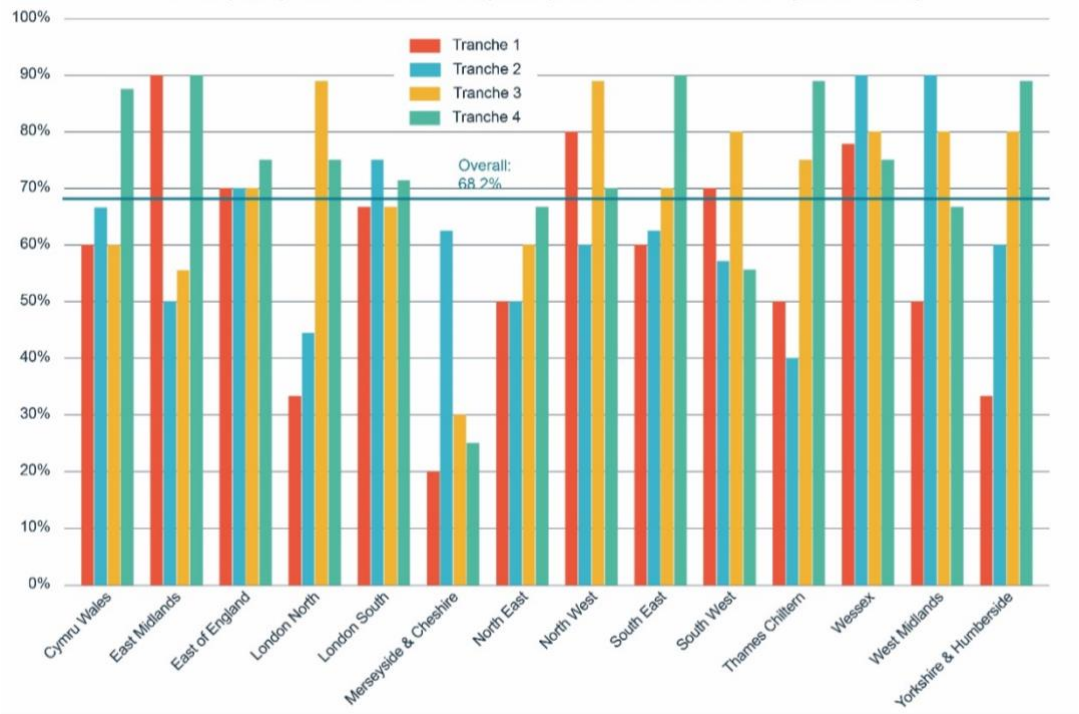


Figure 3: Cases where the police identified to the CPS that the unused material included material that could undermine the prosecution case or assist the defence, or was disclosable under DPP v Lee (higher is better)

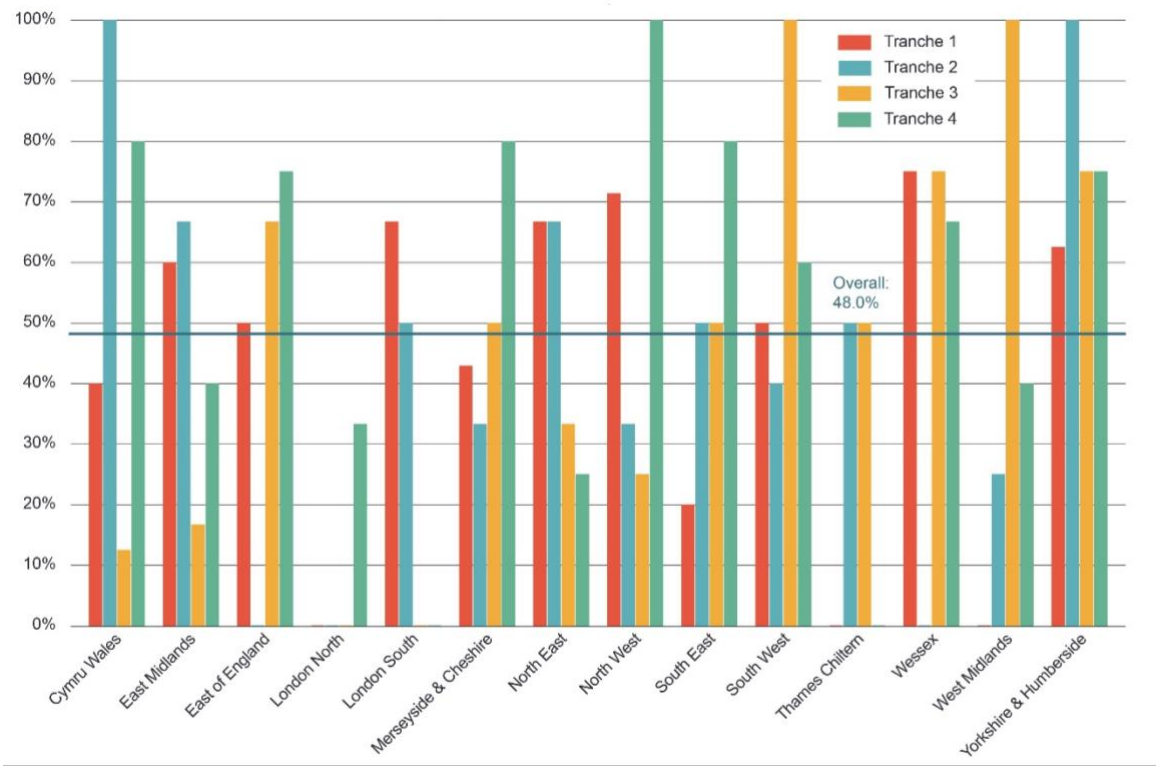


Figure 4: Cases where the CPS identified any failings in the police's dealings with unused material at charge and fed them back to the police (higher is better)

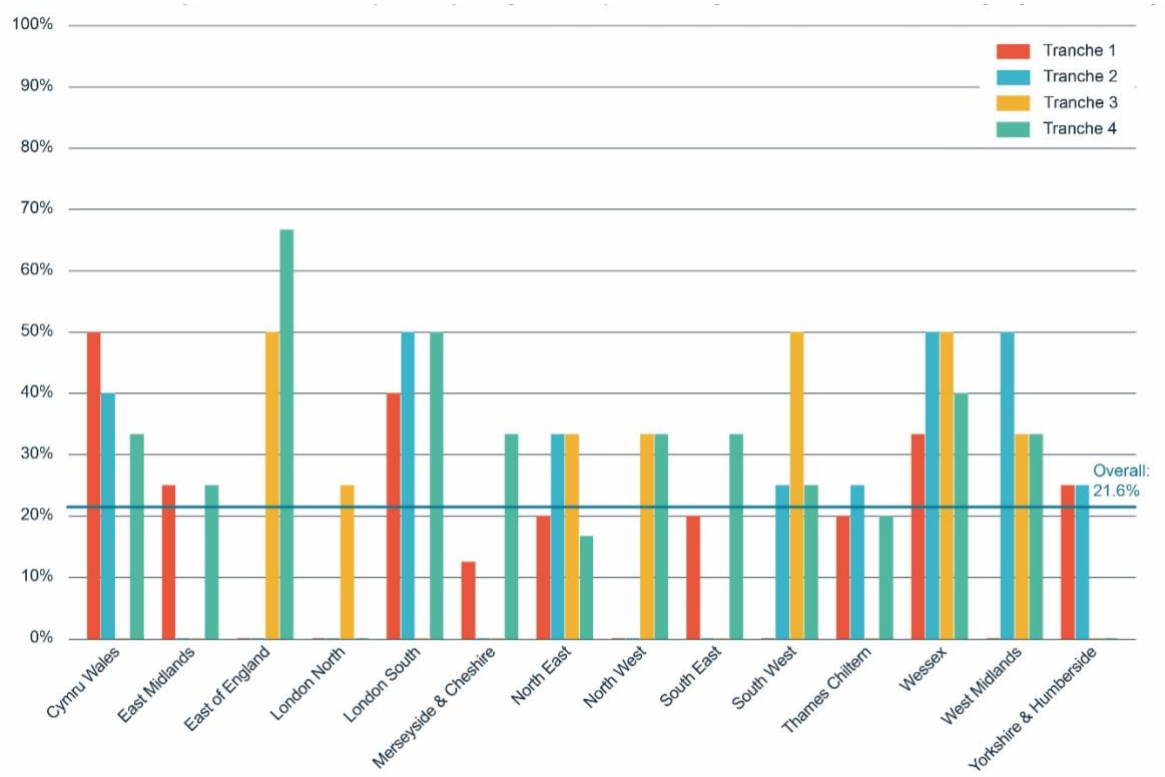


Figure 5: Cases where the prosecutor identified any failings at the post-charge stage and fed these back to the police (higher is better)

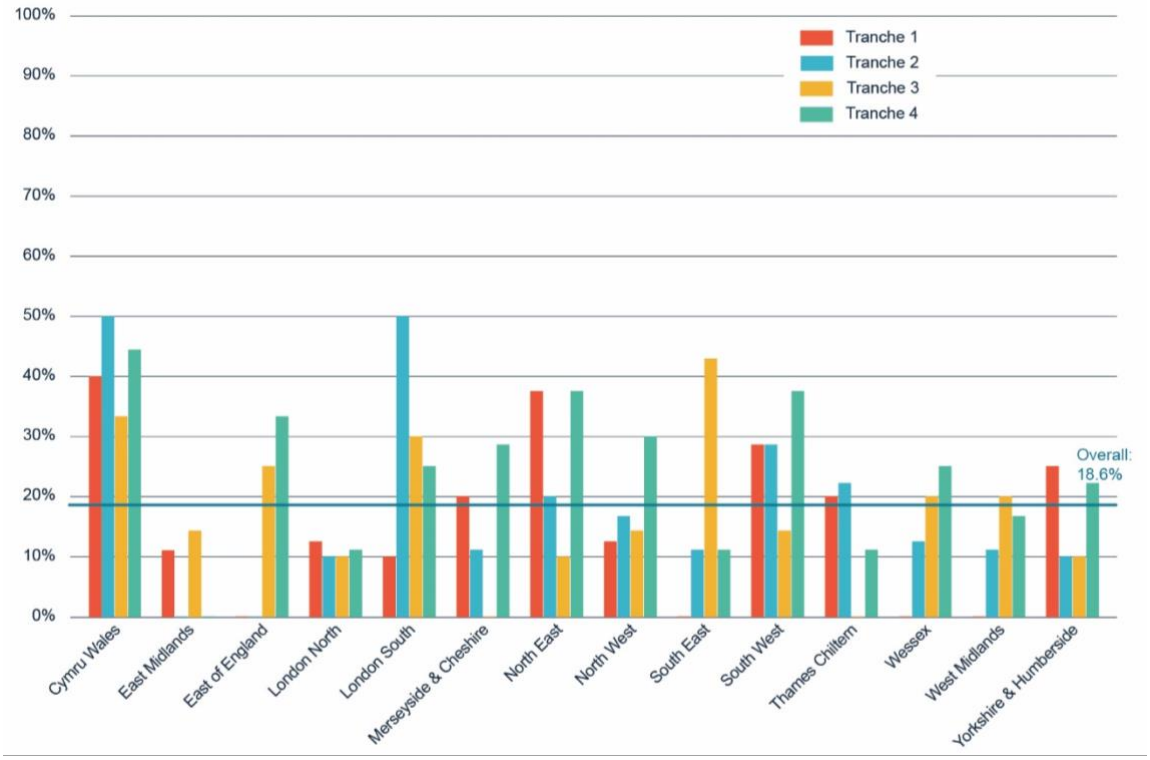


Figure 6: Cases where the CPS's charging advice dealt properly with disclosable and non-disclosable unused material (higher is better)

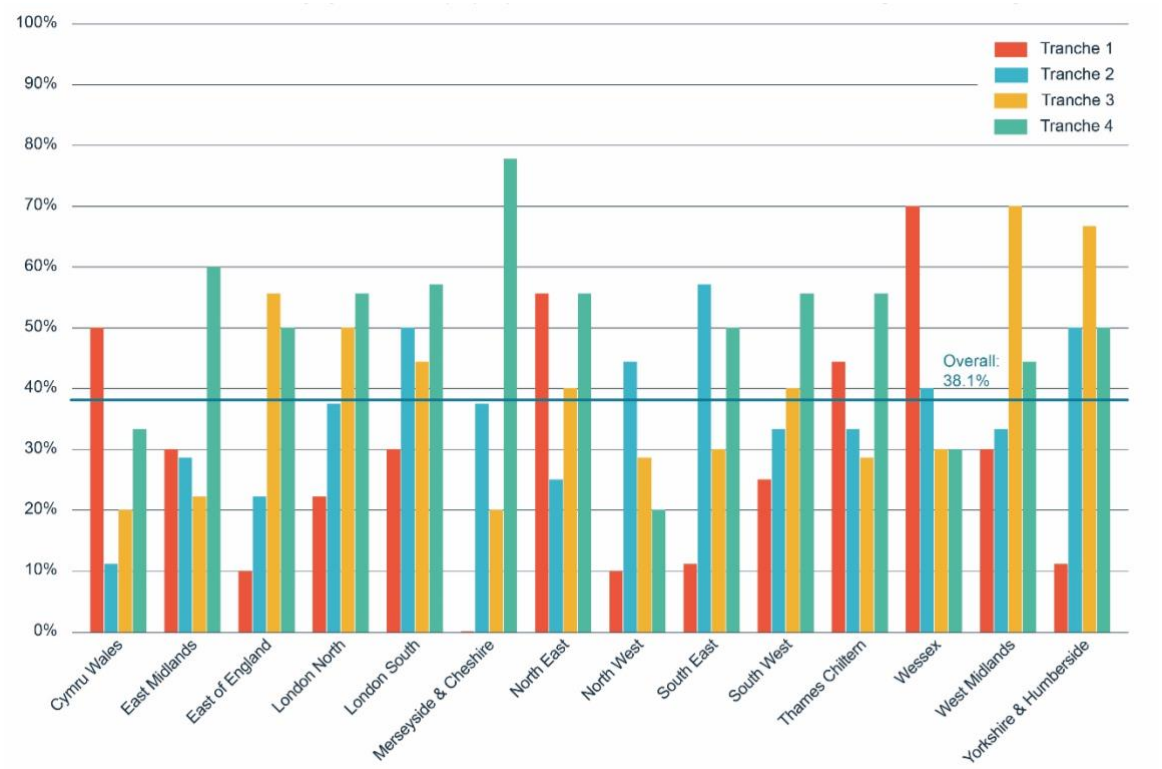


Figure 7: Cases where the prosecutor reviewed the defence statement and provided comments and advice to the police (higher is better)

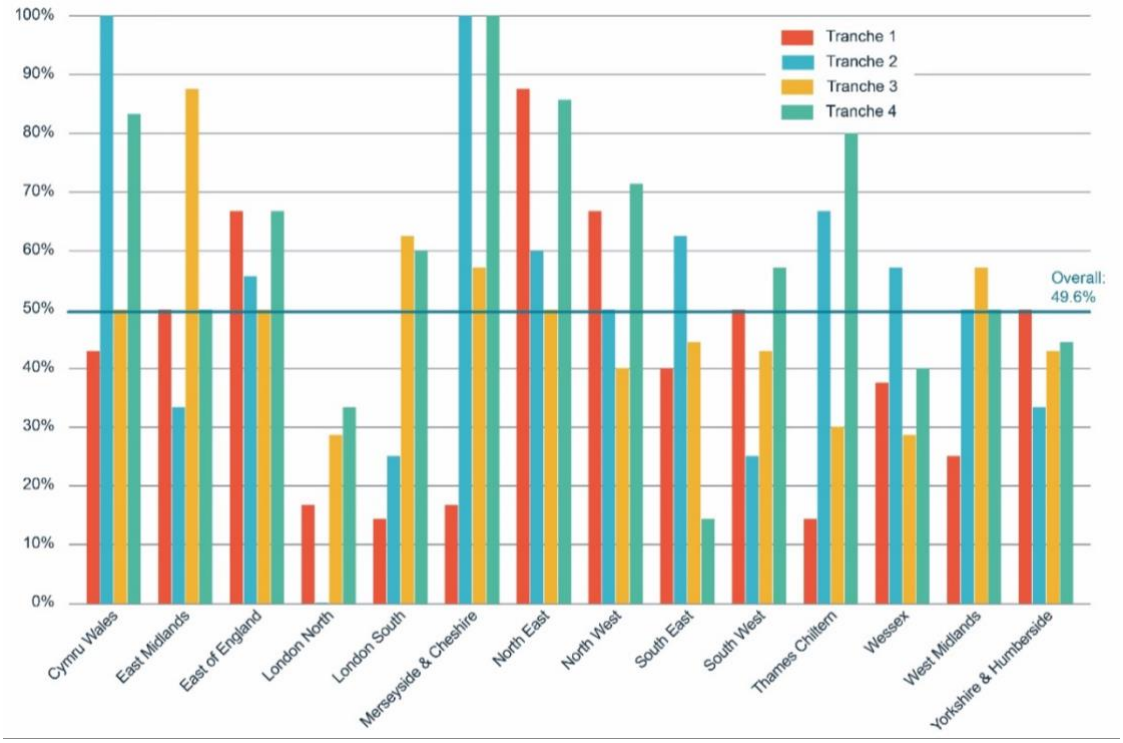


Figure 8: Cases where the charging lawyer identified any material that needed to be disclosed at the first hearing, under DPP v Lee (higher is better)

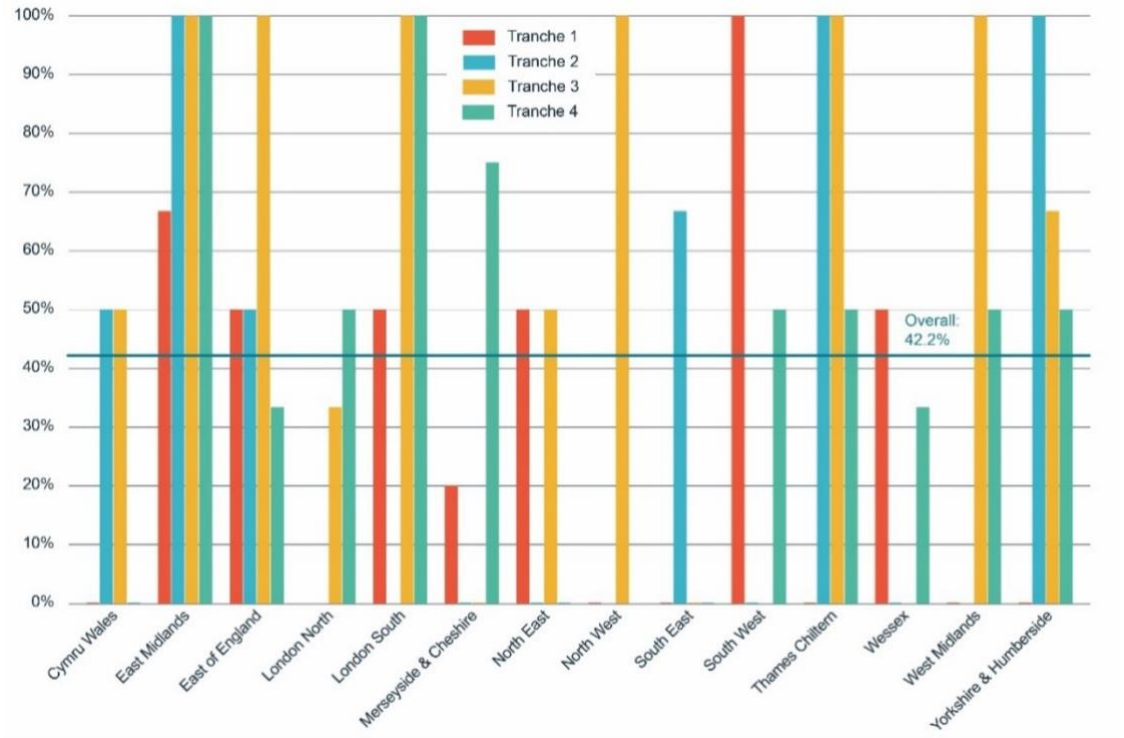
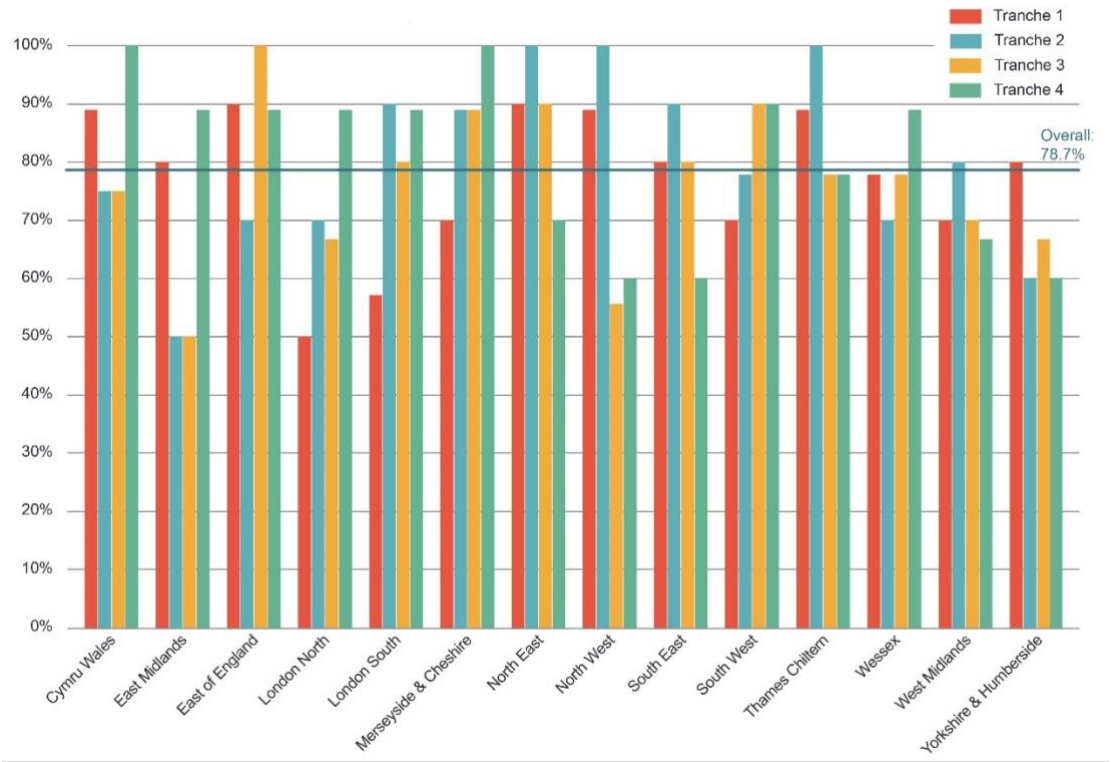


Figure 9: Cases where the prosecutor kept unused material under continuous review (higher is better)



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