



House of Commons
Justice Committee

Disclosure of evidence in criminal cases

Eleventh Report of Session 2017–19

*Report, together with formal minutes
relating to the report*

*Ordered by the House of Commons
to be printed 17 July 2018*

Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

Current membership

[Robert Neill MP](#) (*Conservative, Bromley and Chislehurst*) (Chair)

[Mrs Kemi Badenoch MP](#) (*Conservative, Saffron Walden*)

[Ruth Cadbury MP](#) (*Labour, Brentford and Isleworth*)

[Alex Chalk MP](#) (*Conservative, Cheltenham*)

[Bambos Charalambous MP](#) (*Labour, Enfield, Southgate*)

[Mr David Hanson MP](#) (*Labour, Delyn*)

[John Howell MP](#) (*Conservative, Henley*)

[Gavin Newlands MP](#) (*Scottish National Party, Paisley and Renfrewshire North*)

[Victoria Prentis MP](#) (*Conservative, Banbury*)

[Ellie Reeves MP](#) (*Labour, Lewisham West and Penge*)

[Ms Marie Rimmer](#) (*Labour, St Helens South and Whiston*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/justicecttee and in print by Order of the House.

Committee staff

The current staff of the Committee are Rhiannon Hollis (Clerk), Fiona Hoban (Second Clerk), Gemma Buckland (Senior Committee Specialist), Nony Ardill (Legal Specialist), Claire Hardy (Committee Specialist), Christine Randall (Senior Committee Assistant), Su Panchanathan (Committee Assistant), and Liz Parratt and Simon Horswell (Committee Media Officers).

Contacts

All correspondence should be addressed to the Clerk of the Justice Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 8196; the Committee's email address is justicecom@parliament.uk.

Contents

Summary	3
1 The failures in disclosure	4
Introduction	4
Disclosure and the scope of this report	5
Background	5
Disclosure	6
Our inquiry	7
2 The extent of failure	10
Disclosure as a fundamental question of fairness	10
The role of disclosure in the justice system	10
Disclosure as a symptom of a system under strain	12
Funding for disclosure	13
Wider changes	15
The cost of failures to disclose	17
The digital crater	18
The changing volume and nature of material collected by police	18
Transfer of material for the purpose of disclosure	21
3 Leadership, oversight and culture	23
Leadership and accountability	23
Responsibilities for disclosure	23
Performance culture of the CPS and data to hold people to account	25
Data on the number of disclosure errors	25
Understanding the performance of the CPS	27
Police culture	29
Reasonable lines of inquiry	29
Disclosure as an administrative add on	31
Strategic policing requirement	32
4 Knowledge and capability	34
Legislation and guidance	34
Personal and sensitive data	35
The guidelines governing disclosure	37
Knowledge and training	39
Disclosure in the Magistrates' Court	41

Conclusions and recommendations	46
Formal minutes	52
Witnesses	53
Published written evidence	54
List of Reports from the Committee during the current Parliament	56

Summary

In this report we consider the disclosure of unused material in criminal cases. The Crown Prosecution Service have the duty to disclose relevant material collected by the police in the course of an investigation to the defence. This process is part of ensuring a fair trial. Problems with disclosure came into sharp focus following the high-profile collapse of a number of cases between December 2017 and spring 2018. In early December 2017 the Government had announced that the then Attorney General would conduct a review of disclosure. The Attorney General has since changed, but we expect that this review will conclude. The Crown Prosecution Service, National Police Chiefs' Council and College of Policing also published a "National Disclosure Improvement Plan" in January this year.

The Attorney General's review will look at the detail of the disclosure regime, and so this report focusses on larger, systemic issues which we conclude have allowed disclosure failures to prevail for too long. We note that disclosure errors have been damaging for many people affected, including for complainants who might have waited years to have their case heard only for it to be delayed or for it to collapse. Fundamentally, however, disclosure errors have led to miscarriages of justice and—as the Director of Public Prosecutions told us—some people have gone to prison as a result.

We conclude that disclosure failures have been widely acknowledged for many years but have gone unresolved, in part, because of insufficient focus and leadership by Ministers and senior officials. This was not aided by data collected by the Crown Prosecution Service which might have underestimated the number of cases which were stopped with disclosure errors by around 90%.

We do not propose any fundamental changes to the legislation, or the principles of disclosure, but failings have arisen in the application of those principles by police officers and prosecutors on the ground. There needs to be:

- (1) a shift in culture towards viewing disclosure as a core justice duty, and not an administrative add on;
- (2) the right skills and technology to review large volumes of material that are now routinely collected by the police; and
- (3) clear guidelines on handling sensitive material.

Finally, the Government must consider whether funding across the system is sufficient to ensure a good disclosure regime. We note that delayed and collapsed trials that result from disclosure errors only serve to put further strain on already tight resources.

1 The failures in disclosure

Introduction

1. Disclosure is the process by which material collected by the police during an investigation is made available, first to prosecutors and subsequently, and subject to certain rules, to defence teams.¹ Prosecution and defence may make use of this material in preparation for and during a trial where it is potentially relevant to an issue, or issues, in a case. When it works properly, the disclosure process enables judges and magistrates to have all the relevant evidence before them when deciding on guilt of an accused person and in the event of conviction it may be used in deciding an appropriate sentence. Disclosure is, as the then Attorney General told us, a “fundamental question of fairness in criminal proceedings.”² When the disclosure process does not work as it should crucial evidence might not be heard and miscarriages of justice can prevail. On 5 June 2018 we asked the Director of Public Prosecutions if people had been wrongly imprisoned as a result of disclosure failings and she said “some people have been”.³

2. We launched this inquiry following reports in the press of cases which had collapsed, or guilty verdicts which had been overturned on appeal, due to errors in the disclosure process. The most high-profile case, one of those which Joanna Hardy of Red Lion Chambers referred to as “firework cases”.⁴ ended in December 2017 with the acquittal of Liam Allan. In this case, evidence held by the police had not been disclosed to prosecutors or the defence until the day of trial, and this evidence undermined the prosecution case to such an extent that - once it was disclosed - the Crown Prosecution Service (CPS) case collapsed. The CPS “decided that there was no longer a realistic prospect of conviction and the case was listed at Court on 14 December 2017 so that it could be stopped.”⁵

3. The case of R v Allan acted as a catalyst to raise the profile of a number of other cases, most of which were related to the very serious crimes of rape and sexual assault. These are charges that, if they lead to conviction, almost inevitably result in imprisonment. We heard, however, that disclosure errors happen in all types of cases, both complex cases in the Crown Court, and volume Magistrates’ Court cases covering, not just rape cases, but all crime types.⁶ And we heard from defence practitioners and victim representatives that it is not in the interest of anyone, including complainants, to have a case delayed, disrupted or collapse due to disclosure failings.^{7,8}

4. We are conscious that coverage of disclosure has focussed on rape and serious sexual offences when, in reality, disclosure is a feature of every case that goes through the courts, and errors have happened in all types of cases. This report focusses on disclosure and does not focus on any one type of crime specifically. This is in line with the terms of reference and reflects the evidence we received. It is of vital importance that coverage does

1 This disclosure duty is undertaken by the investigating authority, which is usually the police, but might be another body such as the Serious Fraud Office, HM Revenue and Customs, or a local authority. We refer to the police throughout this report for reasons of consistency.

2 [Q485](#)

3 [Q352](#)

4 [Q84](#)

5 Crown Prosecution Service, Metropolitan Police, [Joint review of disclosure in the case of R v Allan](#), January 2018

6 Including from Magistrates’ Court Observers Panel ([DIS0009](#)); and Magistrates’ Association ([DIS0023](#))

7 [Q140](#)

8 Rape Crisis England and Wales ([DIS0053](#)); End Violence Against Women Coalition ([DIS0055](#))

not detract from the importance of victims of violent or sexual crimes coming forward. Complainants should be treated fairly and sensitively while the right to a fair trial is upheld. We also note that when evidence is disclosed late a case might be discontinued. This usually happens because the totality of the evidence no longer supports a realistic prospect of conviction, so it should not be assumed that discontinuing a case implies any wrongdoing on behalf of complainants or defendants.

Disclosure and the scope of this report

Background

5. The scaffolding of the disclosure regime can be found in the Criminal Procedure and Investigations Act 1996 (CPIA 1996). This act is amplified by the CPIA Codes of Practice. The legislation does not prescribe the method of disclosure, or the process to be adopted by the prosecution; rather it is focussed on the end result.⁹ The police, or another prosecuting authority, have a duty to pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. The police must reveal relevant material they collect to prosecutors, and the CPS have the duty to disclose that material to the defence. The CPIA 1996 also places a reciprocal duty on the defence to give a statement which outlines the defence case so that the police and prosecutors can review the disclosure. The defence statement is mandatory in Crown Court cases but optional for cases taking place in Magistrates' Courts.

6. Issues with disclosure came to the public's attention following high profile cases in late 2017 and early 2018, but problems have been acknowledged and reported on for some time. A series of reports (outlined in paragraph 23) dating back to 2011 had called for improvements to the practice of disclosure. In July 2017, "Making it Fair: a Joint Inspection of Disclosure of Unused Material in Volume Crown Court Cases" had identified a "significant failure in the process of disclosure", and noted that this is "likely to reflect badly on the criminal justice system in the eyes of victims and witnesses."¹⁰

7. Following the spate of cases which collapsed, police and the CPS took a number of steps:

- a) In December 2017 the Prime Minister announced that the then Attorney General would review disclosure. She stated that "even before these cases arose, my Right Hon. and learned Friend the Attorney General had initiated a review of disclosure."¹¹
- b) In January 2018, following the collapse of R v Allan, the CPS and Metropolitan Police conducted an urgent review of disclosure in that case and concluded that "disclosure problems [...] were caused by a combination of error, lack of challenge, and lack of knowledge". They made a series of recommendations.¹²

9 That is stated in section three of the CPIA 1996

10 The Criminal Justice Joint Inspectorate, HM Inspectorate of Constabulary, Fire and Rescue Services, and HM Crown Prosecution Service Inspectorate, [Making it fair a Joint Inspection of Disclosure of Unused Material in Volume Crown Court Cases](#), July 2017

11 The Prime Minister, [engagements](#), 20 December 2017

12 CPS and Metropolitan Police, [Joint review of disclosure in the case of R v Allan](#), January 2018

- c) In January 2018 the CPS, National Police Chiefs' Council (NPCC) and College of Policing produced a National Disclosure Improvement Plan which made over 25 specific commitments responding to criticisms, and the findings of the joint inspectorate.¹³
- d) In January 2018 the Chair of the Justice Committee, Robert Neill MP, announced that we would also undertake a review which would feed into the Attorney General's review.¹⁴

Disclosure

8. Material is collected by the police throughout the course of an investigation and some (but not necessarily all) of this material will be relevant to the case that they are investigating. The Crown Prosecution Service disclosure manual explains that "material may be relevant to an investigation if it appears [...] that it has some bearing on any offence under investigation or any person being investigated, or on the surrounding circumstances of the case, unless it is incapable of having any impact on the case."¹⁵

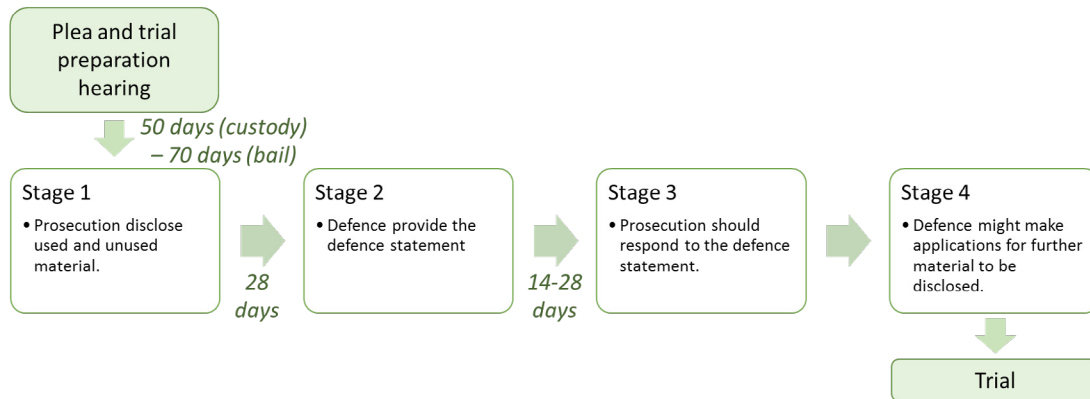
9. Relevant material falls into one of two major categories, at the point of disclosure: used material (that relied upon by the Crown to inform or uphold the prosecution case); and unused material (relevant material within the possession of the prosecution but which the prosecution do not intend to use). Relevant material which is reasonably capable of assisting the defence case or undermining the prosecution case should be disclosed to the defence.

10. For Crown Court cases the police list all the material on a series of schedules, known as MG6 forms, and the CPS must review and sign off these forms before disclosing them to the defence. The defence should be served with principal parts of the prosecution case (the used evidence), prior to a Plea and Trial Preparation Hearing (PTPH). The PTPH is a court hearing used to plan the case, and the defendant is expected to enter a guilty or not guilty plea at this stage. This starts a four-stage disclosure process:

13 CPS, National Police Chief's Council, College of Policing, [the National Disclosure Improvement Plan](#), January 2018

14 The Justice Committee, [Terms of Reference](#), accessed on 4 July 2018 /

15 CPS, [legal guidance, disclosure manual](#), accessed on 4 July 2018.

Table 1: four stage disclosure process for Crown Court Cases

Source: Judiciary of England and Wales, [Better Case Management Guide](#), January 2018

Note: days between stages are “ordinarily” expected, as provided in the Crime and Disorder Act (Service of Prosecution Evidence). The Court has the power to extend, but not abridge time frames.

11. In Magistrates’ Courts the prosecution must serve the Initial Details of the Prosecution Case on the court officer and the defence no later than the beginning of the day of the first hearing. The details must include a summary of the circumstances of the case. When a not guilty plea is entered the prosecutor should serve a streamlined disclosure certificate which lists the used and unused material or states that there is no unused material, and the defence might submit a defence statement (this is optional in Magistrates’ Courts).

12. These duties are stipulated in the CPIA 1996. How the CPIA 1996 should work in practice is outlined in several places including: The CPIA Codes of Practice; the Attorney General’s Guidelines on Disclosure; the Disclosure Manual produced by the Crown Prosecution Service; and case law.¹⁶

13. The Committee’s terms of reference did not specifically state that the inquiry would focus on unused material, but almost all of the evidence we have received concerns the disclosure of unused (rather than used) material so we have chosen to report primarily on that.¹⁷

Our inquiry

14. We launched a call for evidence seeking written submissions to our inquiry on Disclosure of Evidence in Criminal Cases on 22 February. We held five evidence sessions:

- a) On March 22 we heard from Her Majesty’s Inspectors of Constabulary and the Crown Prosecution Service about findings from their inspections, including their thematic inspection on Disclosure of evidence in the Crown Court,¹⁸

¹⁶ Including R v R 1 W.L.R. 1872

¹⁷ The Justice Committee, [Terms of Reference](#), accessed on 4 July 2018

¹⁸ The Criminal Justice Joint Inspectorate, HM Inspectorate of Constabulary, Fire and Rescue Services, and HM Crown Prosecution Service Inspectorate, [Making it fair a Joint Inspection of Disclosure of Unused Material in Volume Crown Court Cases](#), July 2017

- b) On May 1 we heard from defence practitioners (representatives of the Criminal Bar Association, the Law Society, and the Criminal Law Solicitors' Association) about their experience of disclosure;
- c) On May 15 we heard from experts in digital forensics (the Forensic Science regulator, Dr Jan Collie, and Professor Peter Sommer) and from the Information Commissioner's Office, Rape Crisis and the Police and Crime Commissioner for Northumbria, Dame Vera Baird;
- d) On June 5 we heard from the Crown Prosecution Service, the College of Policing, and the National Police Chiefs' Council; and
- e) On June 13 we heard from the then Attorney General, Jeremy Wright MP, and the Minister responsible for Policing, Nick Hurd MP.

We received written submissions from a range of people and organisations including: legal professionals; experts in the field; public organisations; and numerous individuals sharing their experiences. Every piece of evidence we accepted is published on the website and we would like to express our gratitude to everyone who wrote to the Committee sharing their experience and expertise.

15. This inquiry took place at the same time as efforts were being made by ministers and officials to respond to high profile disclosure failings. It thus coincides with the Attorney General's review of disclosure, and follows the publication of the National Police Chiefs Council, Director of Public Prosecutions, and College of Policing's National Disclosure Improvement Plan.¹⁹ As such, we have not sought to conduct a detailed review of the law or the guidance - as we understand that this is being done by others - but have instead focussed on some of the long-standing and systemic issues that have undermined the process of disclosure. Since the inquiry began the Attorney General has changed, but we expect the disclosure review to conclude and that this report will feed into it.

16. We have sought to collect information and report relatively quickly, reflecting the urgency of the situation. We intend that this report will:

- a) Identify some of the long-standing and systemic issues which have undermined the practice of disclosure;
- b) Make practical recommendations towards the resolution of issues identified; and
- c) Feed into the Attorney General's more detailed review of practice and guidance.

Because mistakes are occurring in real-time they are a present and continuing risk that require immediate action, but solving long standing problems also requires a long-term commitment. This includes changes to the culture of police and the CPS as well as changes to the practice of disclosure. It can't be done overnight but it must start immediately. We consider that these issues are central to the administration of a fair justice system and to resolve them will need long term commitment underpinned by clear accountability by the most senior people. This is not the time for short term fixes and our recommendations reflect that view.

¹⁹ CPS, National Police Chief's Council, College of Policing, [the National Disclosure Improvement Plan](#), January 2018

17. This report covers, in three subsequent parts, the following:
 - a) Long-standing failures in the practice and oversight of disclosure;
 - b) Senior accountability for disclosure, and the culture of police and the CPS; and
 - c) Knowledge and capability to do the job on the ground.

2 The extent of failure

Disclosure as a fundamental question of fairness

The role of disclosure in the justice system

18. Throughout this inquiry we have been told that disclosure is central to the justice system, and that failures can be life-changing for those affected. Many individuals wrote to us with personal stories of disclosure failures including people who had been accused and convicted as well as victims' representatives.²⁰

19. It is known, and has been for some time, that failures to disclose evidence have led to miscarriages of justice. In 2016 the Criminal Cases Review Commission (CCRC), the organisation set up to investigate suspected miscarriages of justice, stated that “[t]he single most frequent cause [of miscarriages of justice] continues to be failure to disclose to the defence information which could have assisted the accused.”²¹ But issues with disclosure are wider than these miscarriages of justice, as the Chief Inspector of the CPS told us:

... [t]he disclosure problem itself is broader than [miscarriages]. Late disclosure causes all sorts of difficulties within the criminal justice system. It wastes time and resources. It means that cases are delayed and that victims do not see justice. It is a waste of everyone's time, but, as I said, the really serious issues are the miscarriages that may result.²²

20. Joanna Hardy, Barrister at Red Lion Chambers, said:

... [n]o one wants to be wearing the prosecution wig when a disclosure failure happens. Similarly, no one wants to be down in the cells with the defendant if there has been a disclosure failure and it has gone wrong.²³

21. We heard that disclosure is an integral feature of the administration of justice, and is part of every case which goes through the courts. As Angela Rafferty QC, Chair of the Criminal Bar Association, told us, “[t]here have been cases across the criminal spectrum where these failings have come to light”.²⁴ While the cases that have featured in press coverage have, predominately, been sexual offences, the data provided to this inquiry by the Crown Prosecution Service shows that only about 1 in 50 of the cases the CPS identified as having been stopped due to disclosure errors in 2017–18 related to sex offences.²⁵

20 For example: An individual 4 ([DIS0019](#)); An Individual 10 ([DIS0021](#)); An individual 6 ([DIS0027](#)); Mr Samuel Armstrong ([DIS0034](#)); False Allegations Support Organisation ([DIS0040](#)); An individual 2 ([DIS0052](#)); End Violence Against Women Coalition ([DIS0055](#)); Rape Crisis England and Wales ([DIS0053](#)); GSG Law ([DIS0012](#)); An individual 3 ([DIS0010](#)); An individual 8 ([DIS0001](#)); An individual 7 ([DIS0006](#)); An individual 5 ([DIS0035](#)); An individual 14 ([DIS0015](#)); An individual 9 ([DIS0063](#)); An Individual 12 ([DIS0077](#)); An Individual 11 ([DIS0078](#)); An individual 15 ([DIS0086](#))

21 Criminal Cases Review Commission, [Annual Report and Accounts 2015/16](#), accessed on July 29 2018

22 [Q4](#)

23 [Q84](#)

24 The Criminal Bar Association ([DIS0022](#))

25 NPCC and CPS ([DIS0057](#))

A timeline of failings

22. It has been widely acknowledged for some time that there are persistent problems with the practice of disclosure. We have seen at least six reports in as many years that have highlighted issues and made recommendations.

Box 1: Reports that have highlighted problems with the disclosure regime

- a) In 2011 the then Senior Presiding Judge, the Rt. Hon. Lord Justice Gross, led a review of disclosure in the Crown Court, which was “prompted by concerns as to the operation of the disclosure regime”.²⁶
- b) In 2012, the Rt. Hon. Lord Justice Treacy and the Rt. Hon. Lord Justice Gross returned to the issue, publishing their “Further review of disclosure in criminal proceedings: sanctions for disclosure failure”.²⁷
- c) In 2014, Lord Justice Gross reviewed disclosure in Magistrates’ Courts, noting that “misapplication of the disclosure procedure was raised with us by several groups with whom we consulted”.²⁸
- d) In 2015 Lord Justice Leveson’s review of efficiency in the CJS commented that “[o]ne of the major issues was the present failure of the police and the CPS to meet deadlines for disclosure”.²⁹
- e) In July 2017 Richard Horwell QC reported on the reasons for the collapse of the case of ‘Mouncher and others’, stating that “[d]isclosure problems have blighted our criminal justice system for too long”.³⁰
- f) In July 2017 a report by HM Inspectorate of the Crown Prosecution Service (HMCPSP) and HM Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS) highlighted “extensive issues” with police and CPS handling of disclosure.³¹

23. Much of the evidence we received as part of this inquiry highlighted that people working in the criminal justice system knew that disclosure failures were happening.³² Angela Rafferty QC, Chair of the Criminal Bar Association told us that “the disclosure process is a complete mess and has been a mess for many years”.³³ Fair Trials International wrote that “[it] has long been known among the legal profession: disclosure failures are not rare or isolated; they are systemic, routinely affecting cases of all kinds at every stage”. Even the then Attorney General admitted to us, in oral evidence, that disclosure failure was “a serious problem” as far back as 1996.³⁴

26 The Rt Hon. Lord Justice Gross, [Review of Disclosure in Criminal Proceedings](#), September 2011

27 The Rt. Hon. Lord Justice Gross The Rt. Hon. Lord Justice Treacy, [Further review of disclosure in criminal proceedings: sanctions for disclosure failure](#), November 2012

28 Judiciary of England and Wales, [Magistrates’ Court Disclosure Review](#), May 2014

29 by The Rt Hon Sir Brian Leveson President of the Queen’s Bench Division, [Review of Efficiency in Criminal Proceedings](#), January 2015

30 Richard Horwell QC, [Mouncher Investigation Report](#), July 2017

31 The Criminal Justice Joint Inspectorate, HM Inspectorate of Constabulary, Fire and Rescue Services, and HM Crown Prosecution Service Inspectorate, [Making it fair a Joint Inspection of Disclosure of Unused Material in Volume Crown Court Cases](#), July 2017

32 For example: Dr Hannah Quirk ([DIS0054](#)); Fair Trials International ([DIS0058](#)); FDA ([DIS0038](#)); Criminal Cases Review Commission ([DIS0042](#)); Centre for Criminal Appeals and Cardiff Law School Innocence Project ([DIS0032](#))

33 [Q88](#)

34 [Q456](#)

24. Data provided to us by the CPS shows that between 2013–14 and 2017–18 the number of cases stopped due to disclosure failures increased by 40%.³⁵ This data does not present a total picture of the scale of disclosure errors, and we discuss this in more detail in chapter 3.

25. Nick Ephgrave, the Criminal Justice lead at the National Police Chief’s Council (NPCC), acknowledged that “[s]ometimes we solve a problem and we deal with it. We think it is dealt with and we move on to something else. Actually, behind us, it falls apart again. We need to learn that lesson, as well as dealing with all the other issues that are there.”³⁶

26. Problems with the practice of disclosure have persisted for far too long, in clear sight of people working within the system. Disclosure of unused material sits at the centre of every criminal justice case that goes through the courts and as such it is not an issue which can be isolated, ring fenced, or quickly resolved. These problems necessitate a concerted, system wide and ongoing effort by those involved, with clear leadership from the very top. It is disappointing that we have heard the same issues raised throughout this inquiry as have been noted by inquiries as far back as 2011, and it is further disappointing that the Attorney General in place at the time of inquiry stated to us that he was aware of problems going back as far as 1996 but yet the problem had persisted and apparently worsened under his watch. We are also surprised and disappointed that the DPP, who should be closer to these problems on a day-to-day basis, does not appear to have pressed for more urgent action to address the worsening situation during her time in post.

27. Resolving issues in the disclosure process and rebuilding public confidence in the justice system requires an ongoing commitment from the new Attorney General, the Director for Public Prosecution, the Minister for Policing, and the National Police Chief’s Council, and from partners across the justice system. The Attorney General should lead on seeking the support of HM Courts and Tribunals Service, the Judiciary, and the defence community.

Disclosure as a symptom of a system under strain

28. We received evidence highlighting that problems with disclosure might be driven in part by wider changes to the justice system, and notably a reduction in resources available across the system, including funding for the CPS and police (covered in paragraph 31) and public funding for criminal defence (or legal aid, covered in paragraph 38). When she gave evidence to us Angela Rafferty QC, Chair of the Criminal Bar Association, highlighted a Public Accounts Committee finding from 2016 that “the criminal justice system is close to breaking point”. She stated that “what is happening right now [with disclosure] is that the effects of those cuts are coming home to roost”.³⁷³⁸

29. The passage of a case from the point of a report to police through to a verdict and (if guilt is determined) a sentence involves three main Government Departments and their agencies. Central government funding for the police comes from the Home Office and the

35 NPCC and CPS ([DIS0057](#)) and Alison Saunders CB, Director of Public Prosecutions ([DIS0068](#))

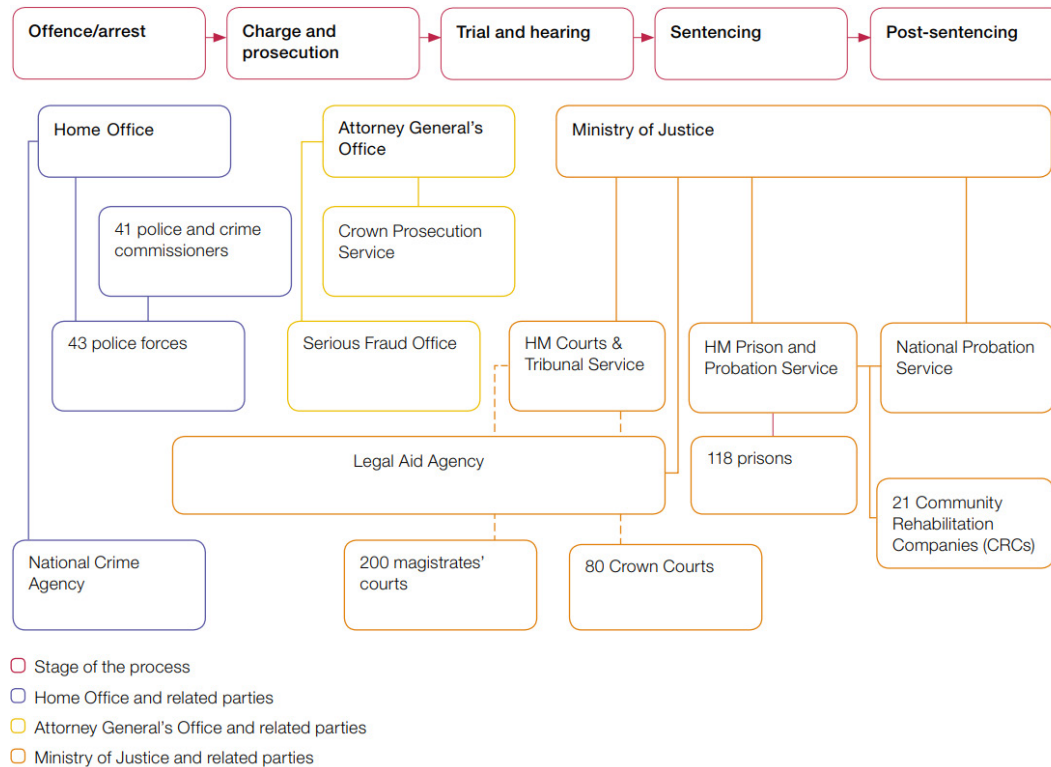
36 [Q330](#)

37 [Q126](#)

38 House of Commons, Committee of Public Accounts, [Efficiency in the criminal justice system](#), First Report of Session 2016–17

Crown Prosecution Service is superintended by the Attorney General and its budget is voted on by Parliament. The Ministry of Justice does not fund police or the CPS, but they do provide essential services such as payment for defence lawyers (through legal aid) and administration of the courts. This is shown in Box 2 below.

Box 2: responsibilities within the criminal justice system



Source: National Audit Office, [A Short Guide to the Home Office](#), September 2017

Funding for disclosure

30. The CPS and police have made efficiency savings over a number of years:

- a) CPS net expenditure fell by 27%, from £672 to £491m between 2009 and 2017.³⁹ The number of full time equivalent staff employed by the CPS fell from around 6,200 to around 5,500 between January 2014 and December 2017. This is a reduction of 11%.⁴⁰
- b) Real terms central government funding to Police and Crime Commissioners fell by 25% between 2010 and 2016. The police workforce reduced by more than 45,000 (19%) between March 2010 and March 2017.⁴¹

31. One of the most prevalent themes in submissions to this inquiry was that problems in disclosure were felt to be a symptom of reductions in resources available to police

39 Crown Prosecution Service, [Annual Report and Accounts 2016–2017](#), July 2017

40 Crown Prosecution Service, [monthly workforce management information](#), downloaded in May 2018

41 National Audit Office, [A Short Guide to the Home Office](#), 2017

and prosecutors.⁴² The Law Society noted in their submission that “[a]t the same time as this increase in the volume of material, on-going cuts to the funding of the police, the prosecuting authorities and the defence have seen a reduction in the number of people dealing with cases”.⁴³

32. The Association of Police and Crime Commissioners stated in their evidence that “the view of PCCs is that current funding arrangements no longer ensure the resilience of police forces to respond to further increases in demand”.⁴⁴ The Public and Commercial Services Union (PCS), a union which represents public servants, states that “PCS believes that deep cuts have led to a chronic lack of resources in the CPS and that significant additional work placed upon lawyers and the police [is] to blame for the current crisis in confidence in prosecution of the disclosure of unused material in criminal cases”.⁴⁵

33. However, the senior police officers and Minister we spoke to stressed that problems with disclosure had wider causes than the funding constraints. Nick Ephgrave, criminal justice lead for the NPCC, told us that:

... when you add [...] the very real challenges that we have had as a service around the austerity measures, it does create quite a toxic mix, but the answer is not just more resources. I think we need to fix the mindset issue, try to harness technology to solve some of the issues that technology is presenting [...] and, once we have done those things, maybe put our minds to resourcing.⁴⁶

Nick Hurd, MP, the Minister for Policing and Fire, told us in his oral evidence that he had “a primary role in relation to resources and making sure that the police have the resources they need.”⁴⁷ We asked him about police resourcing and he said:

... are there overstretched police officers? Yes. I have been very clear about that and have responded. [... but] the primary issue is a cultural and attitudinal one: insufficient importance has been attached over many years to disclosure and it has not been seen as it should be, which is fundamental to the process of good, ethical investigation, but too often as a bureaucratic bolt-on.⁴⁸

34. The National Disclosure Improvement Plan states that “across the criminal justice system resources have been stretched as the nature of the crimes we investigate and prosecute continues to evolve”. It goes on to say there is a significant resource implication to be considered concerning digital media, and a further significant resource implication in the capturing of third party material which it notes has increased dramatically. The

42 For example: Criminal Justice Alliance ([DIS0043](#)); Defence Practitioners’ Working Group ([DIS0047](#)); Information Commissioner’s Office ([DIS0031](#)); Magistrates’ Association ([DIS0023](#)); police, Fire and Crime Commissioner for Essex ([DIS0051](#)); Rape Crisis England and Wales ([DIS0053](#)); Science and Justice RIG, Northumbria University. ([DIS0039](#)); and the Criminal Bar Association ([DIS0022](#)); Dr Hannah Quirk ([DIS0054](#)); Arthur Michael Robinson ([DIS0011](#)); An individual 17 ([DIS0087](#))

43 The Law Society of England and Wales ([DIS0030](#));

44 APCC ([DIS0048](#))

45 PCS ([DIS0060](#))

46 [Q329](#)

47 [Q419](#)

48 [Q440](#)

plan states that the CPS, NPCC and College of Policing have “identified areas where technology could help the disclosure process” but it does not make any commitments to further funding.⁴⁹

Wider changes

35. The following paragraphs talk about wider changes which impact on disclosure, including the payment of defence practitioners and some services provided by the Ministry of Justice and its arms-length bodies.

36. Under the CPIA 1996 the police and CPS are responsible for reviewing material and, when it is deemed relevant, disclosing it to the defence. There is provision in the CPIA 1996 for the defence to submit a statement (the defence statement) to the prosecutor and court that outlines their case. This statement might elicit further disclosure of unused material that is deemed relevant because it could assist the defence case or undermine the prosecution case.

37. In relation to Crown Court cases, work done by defence teams is paid for through two legal aid schemes: the Litigators’ Graduated Fee scheme (LGFS), and the Advocates’ Graduated Fees Scheme (AGFS). The former applies to solicitors, and the latter applies to advocates—mainly barristers, but also solicitors who have acquired rights as Higher Court Advocates.

38. This Committee took evidence on the changes to the schemes, which came into effect on 1 December 2017 and 1 April 2018, respectively. The two evidence sessions took place on 22 May 2018 and 12 June 2018. Only part of the evidence was relevant to this inquiry and the Committee intends to return to the issue of criminal legal aid separately. We deal here with those elements that relate to payments for reviewing evidence, and in particular unused material.

39. Defence practitioners raised concerns that recent changes to the LGFS have reduced the number of pages of used material (known as the “pages of prosecution evidence”) they are paid to review to 6,000. The Defence Practitioners Working Group noted that “after 6,000 [pages of prosecution evidence] solicitors will need to make a claim for ‘special preparation’. This increases pressure and will eventually result in a [financial] loss”.⁵⁰ When we took evidence from the Law Society and the Criminal Law Solicitors’ Association in relation to criminal legal aid [22 May 2018], we heard that payment for special preparation was discretionary, and that many claims are refused by the Legal Aid Agency; if payment is made, it is at a low hourly rate. As a result of the work involved in submitting claims, many solicitors’ firms do not consider it economic to do so and decide to write off the work.⁵¹ It is not possible to make a direct comparison between payment for special preparation and previous or other schemes because of the changed way in which fees are now paid but Daniel Bonich of the CLSA told us that payment was around £45 per hour.⁵²

40. Neither the LGFS or the AGFS pay for the defence to review unused material. The Law Society stated in their written evidence that “this poses a real challenge for defence practitioners to be able to undertake all the work necessary and fill the gaps in the

49 CPS, National Police Chief’s Council, College of Policing, [the National Disclosure Improvement Plan](#), January 2018

50 Defence Practitioners’ Working Group ([DIS0047](#))

51 [Q30](#)

52 [Q23](#)

disclosure process.”⁵³ Joe Egan, president of the Law Society, stated in his oral evidence that the current arrangement was “fixed at a time when there was nothing like the amount of unused material that there is today.”⁵⁴ Chris Saltrese Solicitors noted that “[a]s the defence is no longer funded through legal aid to analyse unused material, many responsible defence solicitors, including Chris Saltrese, can no longer accept legally aided defence work in these complex cases where the unused material may far outweigh the evidence relied on by the prosecution.”⁵⁵

41. Joanna Hardy, Barrister at Red Lion Chambers, reflected the sentiment of many of the practitioners we took evidence from when she told us:

... [legal aid lawyers] deploy, through sheer professional pride, as many hours and as much work unpaid as we need to, to ensure that the show is kept on the road and that we can stand up and prosecute or defend a case, confident that the playing field of disclosure is level and fair.⁵⁶

42. We were told that there are a range of other tasks that are central to disclosure for which lawyers are not specifically remunerated through legal aid. A group of firms and counsel, the Defence Practitioners Working Group, noted in their evidence to us that AGFS does not contain a “separate fee for drafting the defence statement, compiling disclosure requests, or drafting [an application to the judge for disclosure from the prosecution]. Advocates regularly go unpaid for reading enormous quantities of unused material in both paper and digital format”.⁵⁷

43. Overall, the Ministry of Justice had reduced its spending by 13% between 2010–11 and 2016–17, and was expected to make further reductions of 11% between 2016–17 and 2019–20. This includes cuts to the Legal Aid Agency and to HM Courts and Tribunals Service. There were 15,749 staff members in HM Courts and Tribunals Service in 2016–17, a reduction of 24% since 2010–11.

44. A number of people who submitted evidence noted the impact of these reductions, including Fair Trials International who noted “the Ministry of Justice has been particularly hard hit by recent cuts to public expenditure, and will have taken a ‘real-terms cumulative decrease’ of 40% (or £9.3bn) in the period 2010–2020”.⁵⁸ Some witnesses gave examples of the cumulative impact of cuts on areas that were not directly related to disclosure but impacted on the viability of the system. For example:

- a) Daniel Bonich of the Criminal Law Solicitors’ Association talked about difficulties meeting a client in prison because staff were not available to escort the prisoner, which impacts on the production of the defence statement.⁵⁹
- b) Dr Tully, the Forensic Science Regulator, gave evidence to this inquiry in relation to the growth in digital material (e.g. evidence from mobile phones). She told

53 The Law Society of England and Wales ([DIS0030](#))

54 [Q79](#)

55 Chris Saltrese Solicitors ([DIS0044](#))

56 [Q84](#)

57 Defence Practitioners’ Working Group ([DIS0047](#))

58 Fair Trials International ([DIS0058](#))

59 [Q129](#)

us that “more funding is needed for frontline digital forensics. There is little or no room for personal development. There is little or no room for technology development and quality improvements”.⁶⁰

- c) Dr Tully’s point was reaffirmed by evidence from academics at Northumbria University who noted “cuts across the system” and stated “concerns exist about the availability of forensic evidence to the defence, with forensic service providers charging large sums of money for access to data and the results of forensic tests. If unable to receive public funding, or have private means for meeting such costs, it threatens ‘equality of arms’ if the defence are unable to access the scientific evidence”.⁶¹

The cost of failures to disclose

45. We heard that failures to properly disclose unused material have cost implications for the criminal justice system. Where unused material is disclosed correctly but very late in the day, there might have been large expenditure on an investigation, case preparation, and court time which is wasted if the case is discontinued. The Chief Inspector of the CPS told us that “cases were being dropped late in the day, sometimes at the door of the Court, sometimes during the course of a trial, and, as has been indicated, that leads to waste, and not only to financial cost but to the personal cost that occurs when victims, witnesses and defendants ready themselves for the trial process only to find either that the case has been postponed or that the case is dropped altogether”.⁶² Written evidence from the Criminal Justice Alliance noted that “[c]ollapsed cases because of disclosure failings are not only a costly waste of resources but a considerable source of distress and anxiety for all parties involved—defendants, victims and witnesses”.^{63,64}

46. Trials which do not go ahead as planned are referred to in the statistics as either cracked (the case is stopped and trial does not need to be rescheduled) or ineffective (the trial is delayed and will need to be rescheduled). In 2017 there were around 52,000 cracked trials, and around 20,000 ineffective out of a total of around 137,000. In the Crown Court there were around 12,000 cracked trials and around 18,000 ineffective out of a total of around 35,000. In 2016, the National Audit Office (NAO) reported that “collapsed cases waste resources”. Some, but not all, of these collapsed cases will be due to disclosure errors.

47. The NAO report estimated that “in 2014–15 the CPS spent £21.5 million preparing cases that were not heard in Court. The cost of preparing a case varies depending on the case, but the average direct cost to the CPS associated with progressing a single case to the point of trial is £975 in the Crown Court. The Legal Aid Agency (LAA) spent £93.3 million during 2014–15 on defence counsels to represent defendants whose cases never went to trial, excluding guilty pleas”.⁶⁵ Even more seriously, where disclosure is not done correctly but the case proceeds and a miscarriage of justice results, this has life changing consequences for individuals involved, alongside the financial cost of sentences and appeals.

60 [Q180](#)

61 Science and Justice RIG, Northumbria University. ([DIS0039](#))

62 [Q4](#)

63 Criminal Justice Alliance ([DIS0043](#))

64 Also see Transform Justice ([DIS0064](#)); Chief Constable Anthony Bangham, NPCC Lead for Roads Policing ([DIS0062](#))

65 National Audit Office, [Efficiency in the Criminal Justice System](#), March 2016

48. When police and prosecutors do not undertake their disclosure duties correctly cases may be delayed, may collapse or a miscarriage of justice may occur. As well as the human cost, this wastes valuable resources, and has potentially life-changing implications for individuals involved which of course cannot be quantified in merely financial terms. At times when resources are already tight police, the CPS and the Ministry can ill afford to waste resources on fixing the costly mistakes that occur if there is not appropriate investment in getting decisions right in the first place. The National Disclosure Improvement Plan notes, under its section on capacity, that the system is facing significant strain but it does not commit any additional resources. We agree with the view, expressed by Ministers and officials, that disclosure is not just a matter of resources but we also feel that the need for additional resourcing must be considered.

49. *The Government should consider what level of investment it deems necessary to ensure that the police and CPS are getting disclosure right, to prevent the costs associated with disclosure failures, and to prevent miscarriages of justice. We expect the Attorney General and Ministers from the Home Office to write to this Committee before the end of the financial year to explain what investment is needed, where, and over what time period.*

50. We feel that the issues raised in this inquiry are symptomatic of a criminal justice system under significant strain. We are particularly concerned by evidence we have heard from defence practitioners about the lack of remuneration for reviewing unused material and the impact of changes to the Litigators' Graduated Fee Scheme in reducing payment for reviewing pages of prosecution evidence.

51. *We expect the Ministry of Justice to write to this Committee in response to this report, outlining what it has done to assess the impact of operational and funding changes it has made over the last five years, on the administration of justice and specifically on disclosure. We are concerned about criminal legal aid arrangements and have taken evidence on this matter. We are undertaking further work on legal aid which we intend to conclude shortly.*

The digital crater

The changing volume and nature of material collected by police

52. Many of the submissions to this inquiry stated that the growth in digital technology had led to an increase in the volume and complexity of material collected by the police, and a strain on the capacity of police and prosecutors to review and disclose material.⁶⁶ Professor Peter Sommer explained in his written submission to us that “police say that the average UK home contains 7.4 digital devices” and “there are also the devices we interact with—bank cash machine ATMs, shop sale systems, restaurants, transport payment systems, when we use public wifi [...] when we get caught on CCTV.”⁶⁷ Barrister Joanna Hardy told us that “it is not a digital footprint; it is a digital crater”⁶⁸ explaining in detail that a single phone can tell you “what time [the user] woke up because they have an alarm app [...] what they had for breakfast because they have a health app [...] what

66 For example: APCC ([DIS0048](#)); JUSTICE ([DIS0076](#)); Mr Stephen Falkner ([DIS0029](#))

67 Professor Peter Sommer ([DIS0017](#))

68 [Q99](#)

they put in their satnav, where they went, what time they got there, potentially how fast they drove, where they parked and what they had for lunch. If they go to a bar [...] a taxi app might show what time they left”.⁶⁹ The material contained on a digital device will also include information about friends and family, or “third parties”.

53. The NPCC and CPS submission to this inquiry noted that in large fraud cases, and complex Crown Court cases, the amount of digital material collected is likely to be large, but other submissions noted that digital material is now common in all types of cases. As the Magistrates’ Association stated in their written submission to us “it is likely that disclosure issues in Magistrates’ Court are becoming more complex due to the proliferation of social media, other online forms of communication and the use of smart phones and tablets.”⁷⁰ Much of the evidence we heard related to the examination by police of mobile phones belonging to defendants and complainants.

54. Police must review the material they collect to decide if it is relevant for the purpose of disclosure. The Association of Police and Crime Commissioners stated in its written evidence to us that the “amount of third party material to be reviewed by the police and the CPS causes significant delays to the justice process and impacts on all parties involved”,⁷¹ and the Police and Crime Commissioner for Essex noted that “[t]his has had a significant impact on the resources required to gather all relevant information as part of an investigation.”⁷²

55. We heard that some police forces have “kiosks” available which they can use to make a forensic image (an exact copy of the content) of a mobile phone, but as Mike Cunningham, head of the College of Policing, explained in oral evidence “[p]olice forces are in different places in relation to this [...] Some forces are pushing ahead [...] other forces have more catching up to do.” Following the session, the National Police Chiefs’ Council and the College of Policing wrote to explain that “[o]f the 43 forces in England and Wales, 79% (34) are using kiosks and 21% (9) are not using kiosks.”⁷³

56. When we took oral evidence from digital forensics experts they told us that skills for analysis were as important as the technology. Dr Jan Collie explained, in her oral evidence, that the kiosk produced “a machine report; it is not an analysis.”^{74,75} The download which the kiosk produces can be very lengthy which means that resources are required to review it in order for it to be disclosed if relevant. By way of an example, the Police and Crime Commissioner for Northumbria stated in her written submission that the kiosk in use in Northumbria “produces on average 35,000 pages of data per mobile device.”⁷⁶

57. We also heard that analysing digital evidence is more complicated than processing large volumes of printed material. Professor Sommer noted to us that “people confuse the print-out or the copy of a piece of evidence with the actual evidence. One of the things one always has to do is go back and say, “Where did this come from? How did this particular item arrive on a device or on the cloud, and can you attribute it to somebody who is being accused?” That is an investigatory skill”. Dr Jan Collie explained “[t]here is evidence

69 [Q99](#)

70 Magistrates Association ([DIS0023](#))

71 APCC ([DIS0048](#))

72 Police, Fire and Crime Commissioner for Essex ([DIS0051](#))

73 Crown Prosecution Service ([DIS0083](#))

74 [Q180](#)

75 See also: Keith Borer Consultants ([DIS0049](#)); Professor Peter Sommer ([DIS0017](#))

76 Office of the Police and Crime Commissioner for Northumbria ([DIS0025](#))

everywhere now” including in cloud storage, and in user activity copied between devices linked by the same online accounts. This creates a multitude of difficulty including accessing material, for example if evidence is backed up to the cloud or on social media.⁷⁷ It might also be important to ensure the investigator knows who engaged in online activity, a task which is often described as “putting fingers on the keyboard”, and which might be more complex when online activity is copied between devices.⁷⁸

58. In their written submission, the College and the NPCC told us that “[o]ne of the priorities being pursued by the Technology Working group under the National Disclosure Improvement Plan is the identification of tools that will assist officers in analysing the material that they obtain via the kiosk examination, making this process more efficient and effective”. They also stated that new training (covered in more detail in chapter 4) had been re-designed and will cover amongst other things “emphasise the importance of digital material as potential sources of evidence”.⁷⁹

59. Some witnesses also noted that problems with disclosure are more systemic and pre-date the increase in digital material. HM Inspector of Constabulary and the Fire and Rescue Service, Wendy Williams, told us in her oral evidence: “problems that we identified in relation to disclosure well predate both austerity and the influx of digital material”. This sentiment was reflected in some of the written submissions, including that from the Centre for Criminal Appeals and Cardiff Law School Innocence project, who stated that “disclosure failings are not new. Nor are they limited to particular groups of cases such as sex cases or those involving large amounts of digital material.”⁸⁰

60. Angela Rafferty QC, Chair of the Criminal Bar Association, stressed that while the growth in digital material presented a challenge it was not the driving factor undermining disclosure, stating that “[i]f the digital crater [... had] come to us at a time when disclosure was working very well, and the police and CPS were properly resourced and everybody was well trained, we would probably find it a challenge but we might be able to meet it.”⁸¹

61. The National Disclosure Improvement Plan contains some commitments on technology, including to establish a joint technology working group. The DPP supplied us with the terms of reference of the technology group, which included assigning actions and overseeing progress against the recommendations made by the Joint Inspectorate in 2017, and in the Mouncher report.⁸²⁸³⁸⁴

62. It is clear, from the evidence that we have heard, that the growth in digital material presents a challenge to police and prosecutors. We believe that police forces are not always adequately equipped or properly trained to handle the type and volume of evidence that they now routinely collect and that this can lead to errors when reviewing

77 Parliamentary Office of Science and Technology, [research briefing, Digital Forensics and Crime](#), March 2016

78 Professor Peter Sommer ([DIS0017](#)), see also Mr Nick Webber ([DIS0026](#))

79 College of Policing and National police Chiefs’ Council ([DIS0079](#))

80 Centre for Criminal Appeals and Cardiff Law School Innocence Project ([DIS0032](#))

81 [Q101](#)

82 Crown Prosecution Service ([DIS0083](#))

83 The Criminal Justice Joint Inspectorate, HM Inspectorate of Constabulary, Fire and Rescue Services, and HM Crown Prosecution Service Inspectorate, [Making it fair a Joint Inspection of Disclosure of Unused Material in Volume Crown Court Cases](#), July 2017

84 Richard Horwell QC, [Mouncher Investigation Report](#), July 2017

and disclosing material and therefore has the potential to lead to miscarriages of justice. We welcome the formation of a technology group, as outlined in the National Disclosure Improvement Plan, but action must lead to improvement.

63. *The Home Office, in consultation with the CPS, the National Police Chiefs' Council and the College of Policing, should lead on producing a comprehensive strategy to ensure that all 43 police forces are equipped to handle the increasing volume and complexity of digital evidence. This strategy must consider skills as well as technology and should be underpinned by appropriate investment. This strategy need not infringe on the operational independence of the police. We expect the Minister for Policing to report to this Committee on the status of the strategy by the end of 2018. When the Minister reports to us we expect that he will have identified key actions and dates the strategy will include, and the date by which we can review a final draft.*

Transfer of material for the purpose of disclosure

64. Once material has been reviewed and scheduled it must be transferred between police, CPS and the defence. We heard that efficient and effective transfer of material between the police, CPS and defence was sometimes undermined by poor communication, inadequate digital systems and variations in local systems and practices within the police. In their 2017 report, HMCPSI and HMICFRS found that standalone local policing systems struggled to interact with the CPS national electronic case management system (CMS). Inspectors found that the majority of police systems operated with “a lack of available memory [...] which prevents larger documents from being sent as part of an electronic file package” and that this resulted in evidence being mislaid or even lost.⁸⁵ Concerns about this were repeated by witnesses in this inquiry, including defence practitioners, who told us that evidence is sometimes sent on a CD-ROM, or even a cassette tape rather than digitally, which is inefficient and carries the potential risk of information being lost or compromised.⁸⁶

65. We were told by NPCC that “one thing we are very committed to doing is to try to transfer digital evidence and material electronically to the CPS rather than send it on disk [...]. That is quite complicated to achieve across 43 forces, so we now have a business case agreed.” Nick Hurd MP, the Minister, told us that the Home Office had funded pilots to transfer evidence digitally which were ongoing.

66. We have also heard that the digital case system is not set up to transfer unused material to the defence team. The Crown Prosecution Service told us that they had been in contact with HM Courts and Tribunal Service about enabling the Digital Case System to accommodate disclosed material.⁸⁷

67. Communication between the CPS, police and defence teams was also raised as a concern by defence practitioners, who noted that they sometimes do not know who the prosecutor in charge of the case is, or how to contact them to resolve issues with disclosure. Chris Saltrese Solicitors told us that “the digital case system [...] has paradoxically resulted in a diminution of effective communication between the CPS and the defence and a lack

85 The Criminal Justice Joint Inspectorate, HM Inspectorate of Constabulary, Fire and Rescue Services, and HM Crown Prosecution Service Inspectorate, [Making it fair a Joint Inspection of Disclosure of Unused Material in Volume Crown Court Cases](#), July 2017

86 [Q137](#)

87 NPCC and CPS ([DIS0057](#))

of ‘ownership’ of case material and coherence. When material is added to the system the defence may not be notified, while on other occasions material relied on in case summaries may not be on the system at all”.⁸⁸

68. We wrote to the CPS to ask them about case ownership and they told us that in cases where the CPS has provided the charging decision a prosecutor is either allocated before the first hearing (in bail cases) or after the first hearing (in custody cases), until the conclusion of the case. In cases charged by the police, where a not guilty plea was anticipated, or where a not guilty plea was entered (if not anticipated) a named prosecutor is allocated to that case until its conclusion. They went on to state that, following a review of 490 cases, they identified that this had happened in 66% of Crown Court cases and 71% of Magistrates’ Court cases.⁸⁹

69. We are concerned that digital systems are not equipped to transfer the type and volume of information that is now routinely handled by the police and CPS, but we welcome work the Minister said was ongoing to remedy this.

70. We welcome the new commitment on the Digital Evidence Transfer System made in the National Disclosure Improvement Plan, and commitments made by the Minister in oral evidence to us. We expect the National Police Chiefs’ Council and the Crown Prosecution Service to provide an update on progress with the business plan to this Committee by the end of 2018. We would welcome action by CPS and HMCTS to get disclosed material onto the Digital Case System and request that they keep us up to date on progress.

88 Chris Saltrese Solicitors ([DIS0044](#))

89 Crown Prosecution Service ([DIS0083](#))

3 Leadership, oversight and culture

Leadership and accountability

Responsibilities for disclosure

71. One of the persistent messages that comes through the evidence we have received, both orally and in writing, is that resolving problems with disclosure will take a shift in culture, driven by clear leadership. This echoes the findings of the Mouncher Investigations Report by Richard Horwell QC which concluded “[d]isclosure errors were not designed to pervert the course of justice; they were the consequence of inexperience, poor decision making and inadequate training, leadership and governance.”⁹⁰

72. Core responsibilities for disclosure (as outlined in the CPIA 1996) sit with the police, funded, in part, by the Home Office, and the CPS. There are 43 police forces in England and Wales, which are operationally independent of Government and run by Chief Constables. Every force has an elected Police and Crime Commissioner (PCC), except in London and Manchester where the PCC responsibility sits with the mayor, who is responsible for setting the budget and strategic policing priorities, and who holds the Chief Constable to account for performance. There are two national policing bodies who signed the National Disclosure Improvement Plan, and gave evidence (written and oral) to this Committee: the National Police Chiefs’ Council (NPCC) and the College of Policing.

73. Since disclosure became a national news story, the NPCC, the College of Policing and CPS have worked together to produce the National Disclosure Improvement Plan.⁹¹ The National Disclosure Improvement plan is signed by Alison Saunders (the current DPP); Mike Cunningham (CEO of the College of Policing); and Nick Ephgrave (Criminal Justice Lead for the NPCC). The NPCC and CPS told us in their written submission that the “Disclosure Summit convened by the Director for Public Prosecutions provides, for the first time, system-wide leadership for this critical issue.”⁹²

74. The Attorney General superintends the Crown Prosecution Service, which is led by the Director of Public Prosecutions. The Attorney General owns the guidelines on disclosure, which outline the high level principles which should be followed when the disclosure regime is applied. The last iteration of the Attorney General’s guidelines was signed in 2013 by the then Attorney General, Dominic Grieve MP, and had not been updated in the five years before this inquiry.⁹³ The Crown Prosecution Service has its own Disclosure Manual for use by its prosecuting and police staff, which was updated in 2018 and signed off by the DPP, Alison Saunders.⁹⁴

75. We asked the then Attorney General, Jeremy Wright MP, and the Director of Public Prosecutions (DPP), Alison Saunders, who was responsible for disclosure failings. Jeremy Wright MP told us, “I absolutely accept the responsibility” and went on to state “that is why we are doing what we are doing now”, referencing the disclosure review.⁹⁵ We asked

90 Richard Horwell QC, [Mouncher Investigation Report](#), July 2017

91 CPS, National Police Chief’s Council, College of Policing, [the National Disclosure Improvement Plan](#), January 2018

92 Crown Prosecution Service ([DIS0083](#))

93 Attorney General, [the Attorney General’s Guidelines on Disclosure](#), December 2013

94 CPS, [legal guidance, disclosure manual](#), accessed on 4 July 2018

95 [Q471](#)

Alison Saunders whether she considered herself responsible for disclosure failings and she said “it is difficult to say that it is just on my watch. Disclosure has been a systemic issue for quite some years”. She went on to explain “I am not at all seeking to shirk the fact that improvements need to take place and that this has been an issue for some time across the whole system” and noted “ I feel every single failure. It is not something that we want”.⁹⁶

76. The Minister of State for Policing and the Fire Service (a Home Office Minister) is responsible for Policing. Police forces are operationally independent of Government, but the Minister’s official responsibilities include (but are not limited to) police finance and resourcing; police reform and governance; police workforce; and police integrity and transparency. We asked the Minister, Nick Hurd MP, whether he was responsible and he told us that “[a]s a Home Office Minister, I have a very high sense of responsibility to support where we can, and to hold to account where we must”.⁹⁷ He also told us that “there is a very high degree of operational autonomy in the police system [... and] In my mind, the primary leadership role here comes from chiefs”.⁹⁸

77. We put the question of accountability for disclosure to the NPCC and the College of Policing. Nick Ephgrave, the Criminal Justice Lead for the NPCC, told us that “I can give you my commitment [...] we are committed to making a real difference”⁹⁹ and the CEO of the College of Policing, Mike Cunningham, explained that “I am accountable to my board in relation to what the college delivers”.¹⁰⁰

78. We welcome the National Disclosure Improvement Plan, and note that it names the people responsible for ensuring that it follows into real and lasting change. We expect these people to be personally accountable for delivery of the plan.

79. *So that signatories to the National Disclosure Improvement Plan can be held to account, they should publish an update on progress quarterly until each action can be closed. This Committee will keep a watching brief on progress.*

80. We did welcome the comment from the then Attorney General that, ultimately, it is the holder of his office who is responsible for disclosure, but we do not feel ministerial responsibility for disclosure has been clear enough to date. It is concerning to us that successive Attorney Generals have not acted more quickly and proactively on disclosure issues which have been widely acknowledged for many years, and it is of note that the Attorney General’s guidelines have not been reviewed since 2013 in spite of concerns being raised about disclosure a number of times. We expect that the Attorney General’s review will make it clear that he is responsible for disclosure failings and for ensuring improvement, and we will hold him to account for driving this improvement.

81. *The new Attorney General should take his appointment as an opportunity to clarify what is meant by “to superintend” the Crown Prosecution Service, and it should be very clear that he is accountable to Parliament for the performance of the CPS. As a demonstration of his ongoing responsibility for disclosure, he should personally sign off on his guidelines at regular, defined intervals, either stating that they remain sufficient, or noting amendments. We expect that ongoing review will incorporate restatement*

96 [Q408](#)

97 [Q421](#)

98 [Q420](#)

99 [Q289](#)

100 [Q298](#)

or amendment of the current guidelines, and we request that it include a commitment to sign off at stated intervals. We expect the next Director of Public Prosecutions to proactively address disclosure throughout their tenure. The culture of ‘it didn’t start on my watch’ is pervasive and undermining of public confidence. It must not continue.

Performance culture of the CPS and data to hold people to account

Data on the number of disclosure errors

82. When material is not disclosed, or is disclosed late, there are a number of possible outcomes, including: the case goes ahead without the undisclosed evidence being considered (this could result in an unsafe conviction or miscarriage of justice); the case is delayed; or the CPS decide that there is no longer a realistic prospect conviction and “drop” the case.

83. The CPS do not publish any routine data on whether they have met their disclosure obligations. The Ministry of Justice publish statistics on cracked and ineffective trails (as noted earlier), and the Crown Prosecution Service’s key performance measures relate predominately to the number of hearings in a case, the proportion of guilty pleas at first hearing, and successful convictions. CPS data is published quarterly.

84. The CPS collect some data on disclosure errors, but we heard evidence that this data underestimates the true scale of the disclosure problem. The Director of Public Prosecutions provided written and oral evidence that explained the CPS data on disclosure.^{101,102} We heard about the following problems with existing data:

- a) The CPS data on disclosure only includes cases that were stopped. It does not include cases which went ahead with unsatisfactory disclosure, or that were delayed while problems with unsatisfactory disclosure were resolved. The CPS data would not include any of the miscarriages of justice that the CCRC say have resulted from disclosure errors;
- b) The CPS data only includes stopped cases where the primary reason is the CPS not meeting their duty to disclose. It does not include stopped cases with disclosure errors, but where disclosure was not the primary reason for stopping the case.

85. Data provided to this inquiry by the CPS states that 841 of the cases that were stopped in 2017–18 were stopped due to disclosure errors, but (as explained below) we know this is smaller than the true figure.

Table 1: the number of cases which the CPS identified as having stopped due to disclosure errors between 2013 and 2018

2013–14	2014–15	2015–16	2016–17	2017–18
583	537	732	916	841

Source: NPCC and CPS ([DIS0057](#)); Alison Saunders CB, Director of Public Prosecutions ([DIS0068](#))

101 Alison Saunders CB, Director of Public Prosecutions ([DIS0068](#)) and NPCC and CPS ([DIS0057](#))

102 [Qq362–374](#)

86. A recent review of sex cases by the CPS highlights that the data they routinely collect significantly underestimates the number of cases stopped due to disclosure errors. The CPS reviewed all rape and serious sexual offence (RASSO) cases that had been stopped between 1 January and 13 February 2018.¹⁰³ Their report found that “47 cases stopped during the period that had issues with the disclosure of unused material”. Of the 47 cases stopped during the six-week review period, five had been recorded on the CPS system as stopped due to disclosure errors, and 42 had not been recorded in this category. Data provided to this inquiry by the CPS had stated that during the whole of 2017–18 (including the six-week review period) 23 RASSO cases had been stopped due to disclosure errors. As it transpired, this is half the number the CPS identified as having stopped in a six week period during that year, alone.^{104,105} Further to this, some of the very high profile cases which brought disclosure to the public’s attention would not be captured in this data. The Director of Public Prosecutions wrote to us while this report was being prepared to correct her earlier evidence and confirm that the case against Liam Allan had not been recorded as a disclosure error.¹⁰⁶ The Director stated, in her letter, that “[t]his illustrates the limitations of our current system.”¹⁰⁷

87. The Director of Public Prosecutions explained to us that “[w]here a case has been stopped—which does not necessarily mean “collapsed” in a negative way, but where they have stopped—we ask prosecutors to choose one of 28 different reasons. The disclosure one is where that is the sole reason”. She noted that “where we have looked at the cases [during the RASSO review]. Disclosure is not necessarily the only reason. It may be that we have some materials that have been given to us late, which undermines a witness’s credibility. That may well go down as a witness credibility issue.”¹⁰⁸ The then Attorney General told us that “if disclosure has contributed to the problems with a case but has not, in the view of the prosecutor, been the primary reason for its failure, disclosure does not make an appearance on the form”. He conceded that “the method of recording information needs to be better.”¹⁰⁹

88. The then Attorney General told us “we [clearly do not] have a proper method of data collection that enables us to display clearly what is and is not going on in every case”.¹¹⁰ The Director of Public Prosecutions wrote to us after she gave oral evidence and confirmed that the CPS:

103 Crown Prosecution Service, [Rape and Serious Sexual Offence Prosecutions, Assessment of disclosure of unused material ahead of trial](#), June 2018

104 Crown Prosecution Service, Rape and serious sexual offence prosecutions. Assessment of disclosure of unused material ahead of trial. June 2018

105 Alison Saunders CB, Director of Public Prosecutions ([DIS0068](#))

106 In June 2018 the Director of Public Prosecutions wrote to us stating that “The outcome of the Liam Allan case is recorded as code E44, a failure to comply with disclosure obligations being the primary reason for the case being stopped”. ([DIS0083](#))

In July 2018 the Director of Public Prosecutions wrote stating: “To be clear, the outcome of the Liam Allan case was initially recorded by the prosecutor as a conflict of prosecution evidence, rather than as a disclosure failing [...] I have since concluded it should more appropriately have been recorded as a failure to comply with disclosure obligations, as this was the primary reason for the stopping of the case. As such, I asked that the correct primary reason for the unsuccessful outcome for the Liam Allan case be recorded as code E44 on our Case Management System” ([DIS0089](#))

107 Alison Saunders CB, Director of Public Prosecutions ([DIS0089](#))

108 [Q362](#)

109 [Q474](#)

110 [Q474](#)

... have already begun work on a comprehensive range of performance measures that are both qualitative and quantitative, beginning at the pre-charge stage and continuing throughout the prosecution process up to and including the trial, as well as making changes to the recording of case outcomes. We are involving the Attorney General's Office and HMCPs Inspectorate in this work and although some of these measures require significant changes to our case management system, and are therefore longer term, we anticipate that case outcome measures which will include disclosure failures will be in place by the Autumn.¹¹¹

Understanding the performance of the CPS

89. The Director of Public Prosecutions told us in written evidence that “[t]he CPS’s role is not to obtain convictions at all costs; it is to make fair, independent and objective assessments about whether it is appropriate to present charges for the criminal Court to consider. We do look at “unsuccessful” cases to establish what if any lessons can be learnt. However, an acquittal or a successful appeal may not mean a prosecution was wrongly brought or that there was some “failure” by the prosecution.”¹¹² As the General Principles of the CPS state “It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence”.¹¹³

90. There was a perception amongst some people who submitted evidence to this inquiry that the CPS prioritised timeliness of cases and conviction rate over getting decisions right. For example, Dr Hannah Quirk stated in her written evidence to us that the “CPS and courts operate in an increasingly ‘target driven’ environment with pressure for hearings to go ahead, whether or not all the disclosure tasks have been performed”. Some defence practitioners stated a view that courts were reluctant to adjourn and reschedule a hearing for a later date, when an application is made - by the prosecution or defence - for time to rectify disclosure errors or delays.¹¹⁴ The Defence Practitioners Working Group stated that, when the prosecution serve the disclosure schedule on the day of trial, “the defence are frequently refused an adjournment and given only a short time at Court to serve their defence statement and obtain secondary disclosure.” They went on to state a view that “[i]t has become part of the culture for prosecutors to fail to comply with requirements under [the Criminal Procedure Rules] with no sanction for failure.”¹¹⁵

91. We asked Alison Saunders, Director of Public Prosecutions, what the consequences were for the individual prosecutors who failed in their disclosure duties, and she told us that “[t]he disciplinary process is there” and that “[i]f it is around performance, we will take steps, [first] an informal action plan, [then] if it becomes intractable, it becomes a formal performance measure and it could lead to dismissal.”¹¹⁶ The Director of Public Prosecutions wrote to us after the hearing and explained that during her period of office “there have been 10 cases where formal disciplinary proceedings were concluded against prosecutors for issues relating to disclosure failings. The majority of these related to the inappropriate disclosure of sensitive material, with 1 case relating to a direct failure

111 Crown Prosecution Service ([DIS0083](#))

112 Alison Saunders CB, Director of Public Prosecutions ([DIS0068](#))

113 Crown Prosecution Service, [General Principles](#), accessed on 4 July 2018

114 For example: Exchange Chambers Liverpool ([DIS0056](#)); Defence Practitioners’ Working Group ([DIS0047](#))

115 Defence Practitioners’ Working Group ([DIS0047](#))

116 [Q393](#)

to disclose relevant and appropriate material” and that “[t]he CPS operates a robust performance management system that is underpinned by Cabinet Office principles that focus on improving capability and performance.”¹¹⁷

92. Since 2010 all parts of the criminal justice system have had to make efficiency savings (outlined in paragraph 31). Two initiatives in the courts, Better Case Management in the Crown Court and Transforming Summary Justice in the Magistrates’ Courts, have aimed to reduce costs by eliciting earlier guilty pleas, and reducing the number of hearings.^{118,119} Transforming Summary Justice was rolled out in 2015 and one of the key initiatives was an attempt to “front-load” disclosure by asking CPS and police to do more of the work early, to enable disclosure at the first hearing and prevent delays later. Better Case Management was rolled out in 2016 to introduce a consistent approach to case management in the Crown Court.

93. We heard from Kevin McGinty, the Chief Inspector of the Crown Prosecution Service, that these initiatives place “pressures on both the prosecution and defence, and it discourages judges from giving adjournments when they think the matter can be dealt with sooner than was asked for by the defence” but he also went on to say that such pressure was “not necessarily a bad thing”.¹²⁰ The Magistrates’ Court Observers Panel stated in their written evidence that “Judges and Magistrates” are being less accommodating to CPS requests for adjournments when the problem has been due to poor case preparation. It is their Court and they must set high standards and shout very loudly when cases are not properly prepared.”¹²¹

94. We have already referred to the responsibilities of the Attorney General, who “superintends” the CPS, but the day-to-day management of the service and ownership of its performance, including in relation to disclosure, rests clearly with the Director of Public Prosecutions. We do not feel that the Director has sufficiently recognised the extent and seriousness of the failures of disclosure by police and the CPS that have been highlighted by evidence given to us and, as we have noted in paragraph 81, have been recognised over a number of years. It is surprising and concerning that the Director of Public Prosecutions did not know that the case against Liam Allan had not been recorded as a disclosure error at the point that it was stopped. The Director has not acted as quickly and proactively as required and this, it appears to us, has permeated throughout the organisation.

95. Data collected by the Crown Prosecution Service did not enable the DPP or the then Attorney General to know if their prosecutors were getting decisions right or wrong. We believe that this might have allowed disclosure errors to prevail and that miscarriages might have resulted. The DPP has said to us, in writing, that it is not the role of the CPS to pursue convictions at all costs, but it is of note that the CPS use conviction rate and number of hearings to measure their performance. The Code for Crown Prosecutors is clear “Prosecutors must be fair, independent and objective...

117 Crown Prosecution Service ([DIS0083](#))

118 The Criminal Justice Joint Inspectorate, HM Inspectorate of Constabulary, Fire and Rescue Services, and HM Crown Prosecution Service Inspectorate, [Making it fair a Joint Inspection of Disclosure of Unused Material in Volume Crown Court Cases](#), July 2017

119 HM Crown Prosecution Service Inspectorate, [Transforming Summary Justice: An early perspective of the CPS contribution](#), February 2016

120 [Q5](#)

121 Magistrates Court Observers Panel ([DIS0009](#))

Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction”.¹²² The fact that performance metrics do not fully reflect the purpose of the CPS is compounded by a significant underestimation of the number of cases that stopped due to disclosure errors in the CPS’ internal data. The RASSO review indicates that data the CPS did collect on cases that failed due to disclosure might have underestimated the number with disclosure errors by around 90%. Data the CPS did collect did not include cases which proceeded with disclosure errors. We welcomed the commitment by the Director of Public Prosecutions and the then Attorney General to improving their performance measures so that they can be held to account in future, and we expect that the incoming Attorney General will uphold this commitment. It remains disappointing, however, that this poor data collection regime was allowed to continue for so long in spite of reports suggesting that disclosure errors were widespread.

96. *The new Attorney General should make it clear, in the review, that the duty to ensure “the right person is prosecuted for the right offence” is paramount, even if this is at the expense of timeliness or conviction rate. The Director of Public Prosecutions should set measures that enable her (and her successor) to report against this objective. We expect this to include improving data on cases that fail to ensure that the CPS are capturing and reporting on a true number of cases where errors have played a part. Although we welcome the National Disclosure Improvement Plan, we also think a more thorough review of the data, that goes beyond just rape and sexual assault cases, is required. The CPS should also consider what data they can capture on cases which proceed with disclosure errors but are not stopped. We expect Crown Prosecution Service performance measures to be updated before the end of the 2018–19 financial year so they can be outlined in the 2018–19 Annual Report and Accounts and reported against in the Annual Report and Accounts from 2019–20 (the first year that full data will be available).*

Police culture

Reasonable lines of inquiry

97. When conducting an investigation the police have a statutory duty, defined in the CPIA 1996, to follow all reasonable lines of inquiry, whether they point towards or away from the suspect. A number of witnesses stated a perception (orally and in writing) that there is a culture within policing that encourages the pursuit of a conviction against a suspect, and does not give enough weight to the investigation of alternatives.

98. The Criminal Law Solicitors’ Association stated, in their written evidence, that “[o]ften police consider lines of enquiry that are likely to generate evidence that will assist the suspect as being for the suspect or their lawyers to obtain”.¹²³ This was a view echoed by the Law Society in their written submission, defence practitioners in oral evidence and by some of the individuals who wrote to us sharing their personal stories.¹²⁴¹²⁵¹²⁶

122 2.4 Code for Crown Prosecutors (January 2013)

123 CLSA ([DIS0050](#))

124 For example: An individual 4 ([DIS0019](#)); An individual 6 ([DIS0027](#)); An individual 2 ([DIS0052](#)); An individual 1 ([DIS0020](#)); An Individual 10 ([DIS0021](#)); Des Thomas ([DIS0081](#))

125 The Law Society of England and Wales ([DIS0030](#))

126 For example: [Q43](#); [Q107](#); [Q140](#); [Q154](#); [Q155](#)

99. This perception was acknowledged by police witnesses but they assured us that it was not the reality. When we put this question to Nick Ephgrave, criminal justice lead for the NPCC, he stated “[t]he culture you describe is not one I recognise now”.¹²⁷ Mike Cunningham, CEO of the College of Policing, stated that “we in the college can issue codes, and we have issued two. The most significant was the code of ethics. The code of ethics has been in place for a few years now in policing. It has completely set a context that sets clarity on expectation” and he went on to explain that “[t]here is the requirement [in the code] to behave with honesty and integrity. People are tested on that when they apply to be a police officer. It is reinforced during their training and it is tested during promotion processes”.¹²⁸

100. In 2014, HM Inspector of Constabulary had reported that the “unwillingness of some officers to believe victims [...] leads to the under-recording of crime. If forces do not take crime recording sufficiently seriously, victims are unlikely to have confidence that they will be taken seriously by the police and the criminal justice system. HMIC is clear that the presumption that the victim should always be believed should be institutionalised”.¹²⁹ However, in October 2016, the Henrique investigation into the Met’s handling of historic sex abuse recommended that the “instruction to believe a victim’s account” should cease. Instead, the report recommended that “in future, the public should be told that “if you make a complaint we will treat it very seriously and investigate it thoroughly without fear or favour”.¹³⁰ Richard Henrique was referring to reports that, in 2002, the Met had instructed its officers to “accept allegations made by the victim in the first instance as being truthful” following accusations that police forces had not responded well enough to allegations of sexual offences (including historic offences).¹³¹

101. The Criminal Law Solicitors’ Association stated, in evidence to this inquiry, that the police “have come to believe they are fighting for the complainant rather than investigating the facts. This affects what enquiries they make and hence what unused [material] is generated, and also how they consider what is disclosable.”¹³² Daniel Bonich of the Criminal Law Solicitors’ Association told the Committee that “[i]t is a cultural problem. We have the use of the term “victim” very early in proceedings, which arguably is the incorrect term. It feeds into how the police and the CPS often view complainants in cases, and it can lead to confirmation bias because they are looking for particular things.”

102. Nick Ephgrave, Criminal Justice Lead for the NPCC, assured us that, a performance culture of chasing convictions is one of the past, stating that it was not a culture he recognised now. He went on to say that “[p]erhaps if you go back 10 or 15 years, or perhaps a bit further, we had a very significant performance culture in the police service, and I was part of that. [As a Chief Constable, I used to drive ...] performance religiously; I was a zealot at getting detections, and I make no bones about it. But things have changed quite a lot in the way police approach performance.”¹³³ He also noted, however, that “victims

127 316

128 [Qq318–319](#)

129 HM Inspectorate of Constabulary, [State of Policing, the Annual Assessment of Policing in England and Wales, 2013/2014](#)

130 Sir Richard Henriques, [Independent Review of Metropolitan Police Service’s handling of non-recent sexual offence investigations](#), October 2016

131 <https://hansard.parliament.uk/Commons/2016–12-13/debates/D279D23F-67F4-415C-98A0-FC37CFC640D0/OperationMidlandHenriquesReport>

132 CLSA ([DIS0050](#))

133 [Q316](#)

have told us [...] that the offender will often say, “Do not bother going to the police. They will never believe you.” It is exactly that type of belief that we are trying to challenge [...] I absolutely take your point: our job is to be impartial and search for the truth wherever it takes us. But we need to get the balance right and we do not want to reverse the very significant advances we have made in terms of people’s confidence in coming forward.”¹³⁴

Disclosure as an administrative add on

103. Throughout the inquiry we encountered a perception that police see disclosure as an administrative task, rather than as central to the criminal justice process. In 2017, the report on disclosure in the Crown Court by the Criminal Justice Joint Inspectorate,¹³⁵ found that “[o]fficers did not tend to consider the importance of disclosure as part of the investigation. Instead, disclosure was seen as more of an administrative exercise rather than integral to the investigation process, and that issue continued throughout the life of a case”. This view was repeated in evidence to this inquiry, including by Daniel Bonich of the Criminal Law Solicitors’ Association, who told us that “police, in particular, view [disclosure] as an unnecessary administrative hurdle that they have to go through”;¹³⁶ and the Criminal Justice Alliance who noted the “need for a ‘cultural shift’ across all agencies in the way that disclosure is understood—not as an administrative function but as a fundamental aspect of the criminal justice process.”¹³⁷

104. This perception was acknowledged by the senior accountable people we spoke to, including by Mike Cunningham, the CEO of the College of Policing, who stated that “[t]he different cultural challenge is that disclosure is seen as a bureaucratic add-on to the investigation. That is not about, “We must get our man and convict them”; that is about, “[t]his is a blinking tortuous bit of work” and not seen as integral to the investigation. That is what we need to change”.¹³⁸ Nick Ephgrave, Criminal Justice Lead for the NPCC, also acknowledged that disclosure might be seen as an administrative task, stating that “[a]t the end of an investigation, if you are the officer in the case, it might be 3 o’clock in the morning and you might have been on duty for 14 hours and now have to fill in a very complicated schedule. The temptation is, not through misdeeds, just not to put enough detail in there because you have just about had enough. These are very human issues. We need to find solutions to some of those, and technology may help with some of that.”¹³⁹

105. Evidence from the Crown Prosecution Service and the NPCC states that “[t]here has been an absence of senior police leaders actively championing the disclosure cause and this has contributed to what might be described as a shift in mindset concerning disclosure, particularly in less complex and high volume crime, from it being considered an investigative cornerstone to simply one of a number of administrative requirements to be completed at the end of an investigation.”¹⁴⁰

134 [Q324](#)

135 The Criminal Justice Joint Inspectorate, HM Inspectorate of Constabulary, Fire and Rescue Services, and HM Crown Prosecution Service Inspectorate, [Making it fair a Joint Inspection of Disclosure of Unused Material in Volume Crown Court Cases](#), July 2017

136 [Q151](#)

137 Criminal Justice Alliance ([DIS0043](#))

138 [Q327](#)

139 [Q328](#)

140 NPCC and CPS ([DIS0057](#))

106. We consider that, on balance, most police forces and their officers recognise their duty as a search for the truth but that this has not been, and is still not, universal. We were encouraged by the commitment of the NPCC, outlined in their written evidence and in oral evidence from Chief Constable Nick Ephgrave, to work to ensure that officers understand their duties properly. It is fundamentally important that all police officers recognise both that they are searching for the truth; and that they have core disclosure duties which are central to the criminal justice process and are not merely an administrative add-on. Nevertheless, we believe that there is more work to do to ensure that this mindset is embedded across all police forces, and public confidence is improved. It is vital that disclosure is embedded at every stage in the process and not delegated to the most junior person as has all too often been the case in the past.

107. *We welcome the code of ethics from the College of Policing and recommend that the College consider a revision to ensure it is clear that police have a duty to follow all lines of inquiry, even when they point away from the suspect. We would like the head of the College to write to us to outline if and by when he considers this practicably possible.*

Strategic policing requirement

108. As outlined earlier in this report, police forces are operationally independent of Government and of Ministers. The Home Office and Ministers set out the strategic policing requirement, which “focuses on those areas where government has a responsibility for ensuring that sufficient capabilities are in place to respond”.¹⁴¹ The Strategic Policing Requirement states the capabilities that each force should have to tackle “threats to national security, public safety, public order, and public confidence that are of such gravity as to be of national importance”.¹⁴² Currently, the Strategic Policing Requirement does not set any expectations of the ability of police forces to play their role in criminal proceedings.

109. We put this point to the Minister, Nick Hurd MP, who stated that “we are reviewing the strategic policing requirement, and it will certainly be one of our considerations in that work”.¹⁴³ He referred to the principles Sir Robert Peel set to define an ethical police force, stating that “I am very conscious, going back to the Peelian principles, that we police by consent and that trust in the police is absolutely fundamental”¹⁴⁴ and that “[c]ontinued failure in this space takes great risk with public confidence in the criminal justice system. Therefore, for me, the Home Office and, I believe, for police leadership, it is seen as a priority”.¹⁴⁵

110. **We consider that problems with disclosure have impacted on confidence in the justice system to such an extent that it is now an issue of national importance for the police. The recorded failures of police to disclose evidence in their possession to the defence, and the miscarriages of justice that might have resulted, could undermine confidence in policing.**

141 Home Office, [The Strategic Policing Requirement](#), March 2015

142 Home Office, [The Strategic Policing Requirement](#), March 2015

143 [Q432](#)

144 [Q433](#)

145 [Q441](#)

111. *The Minister for Policing told us that the Home Office were reviewing the Strategic Policing requirement, and we recommend that the Minister and the Home Office should consider whether capability to execute core criminal justice duties, including disclosure, should be included.*

4 Knowledge and capability

Legislation and guidance

112. The CPIA 1996 states that the police are obliged to follow all reasonable lines of inquiry; states that the prosecutor has the duty to disclose material “which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused”; and gives provision for defence teams to submit a statement (the defence statement) outlining their case and to request material that has not been disclosed.¹⁴⁶

113. There is a multitude of directions, guidance, and training that accompanies this statute. This includes (but is not limited to):

- a) The Criminal Procedure and Investigations Act 1996 Code of Practice;¹⁴⁷
- b) The CPS Disclosure Manual (updated 2018);¹⁴⁸
- c) The Attorney General’s Guidelines on Disclosure (2013);¹⁴⁹
- d) Judicial Protocol on the Disclosure of Unused Material in Criminal Cases;¹⁵⁰ and
- e) Other ad hoc pieces of guidance on processes that are important for disclosure such as MISRAP, the “Major Incident Room Standardised Administrative Process,” which deals with storage and retention of material collected by police.¹⁵¹

114. Most people who gave evidence to this inquiry, orally or in writing, expressed the view that the CPIA 1996 was sufficient but flaws lay in its application. The Criminal Bar Association told us that “the current CPIA 1996 regime is sufficiently clear, well balanced and satisfactory in principle to ensure appropriate disclosure of evidence and support the right to a fair trial”.¹⁵² Angela Rafferty QC, Chair of the Criminal Bar Association, repeated this in her oral evidence, stating that “[t]he procedure is quite simple, if followed. If everyone does what they are supposed to do correctly, there is no reason why it should not work well”.¹⁵³ This sentiment was repeated in much of the written and oral evidence given.¹⁵⁴

115. While there was a broad consensus that the CPIA 1996 was not the root of the disclosure problems, we did receive some objections to the principles of the legislation.¹⁵⁵ Academics from Northumbria University stated in their written evidence that while the regime is “not in itself fundamentally flawed [...] the defence cannot apply for disclosure of

146 [Criminal Procedure and Investigations Act 1996](#)

147 Ministry of Justice, [Criminal Procedure and Investigations Act 1996](#) (section 23(1)) Code of Practice, march 2015

148 [Crown Prosecution Service, Disclosure Manual, revised](#) February 2018

149 Attorney General’s Office, [Attorney General’s Guidelines on Disclosure](#), December 2013

150 Judiciary of England and Wales, [Judicial Protocol on the Disclosure of Unused Material in Criminal Cases](#), December 2013

151 Association of Chief Police Officers, Association of Chief Police Officers in Scotland and CENTREX, [Guidance on Major Incident Room Standardised Administrative Procedures \(MIRSAP\)](#), 2005

152 The Criminal Bar Association ([DIS0022](#))

153 [Q133](#)

154 Please see: Science and Justice RIG, Northumbria University. ([DIS0039](#)); [Q291](#); Criminal Cases Review Commission ([DIS0042](#)); APCC ([DIS0048](#)); Qwarie Ltd ([DIS0013](#)); Mayor’s Office for Policing and Crime ([DIS0061](#))

155 For example: Centre for Criminal Appeals and Cardiff Law School Innocence Project ([DIS0032](#))

material they do not know exists”,¹⁵⁶ because it has not been recorded on the schedule by police officers. Dr Hannah Quirk stated that “problems with disclosure are inherent in the legislation which fails to consider the working practices and cultures of key protagonists”. She explained “[t]he state has investigative powers that are not open to the defence [...]” and that provisions within the legislation “require the police and CPS to consider material from the perspective of a defence lawyer” which means “police and CPS are being asked to perform a task for which they are culturally unsuited and ill-equipped”.¹⁵⁷

116. Victor F Jordan, a retired Crown Prosecutor, stated in his written submission that “I very much hope that the Committee will consider the merits of returning to the principles of the system that applied before the Act of 1996 came into force. Under that system the prosecution disclosed all unused material to the defence unless the prosecution thought that there were grounds for withholding an item.”¹⁵⁸

117. When we took evidence from digital forensics experts we heard that “instead of leaving [the ...] duty on the prosecution to disclose, [police should] just disclose [all the material] and it is then up to the defence, using tools very similar to those that would be used by the police, to search for the material they think is relevant”.¹⁵⁹ The idea that the system be restructured so that the defence have access to all of the material, rather than just the material deemed relevant to the case, is often referred to as the “keys to the warehouse” approach. This was suggested to us as one potential solution by the Criminal Law Solicitors’ Association.¹⁶⁰

118. Many witnesses were opposed to this idea. In June 2018, while this report was being prepared, Lord Justice Gross stated, “I am strongly opposed to the ‘keys to the warehouse’ approach. It would increase the pressures on limited resources and result in the duplication of effort. Any diligent prosecutor would want to look at the material before handing it over to assess its impact on their case. The ‘keys to the warehouse’ in an overstretched system is simply not viable. At most, it transfers the problem without solving it”.¹⁶¹

119. Chapter 2 of this report covers what the defence teams are currently paid to do under the legal aid regime, and notes that they are not currently paid to review unused material. The next section considers evidence we received from victims’ representatives and the Information Commissioner which identifies the potential risk of opening up all material collected by the police to defence teams, whether that material is relevant to the case or not.

Personal and sensitive data

120. Material collected by police has, undoubtedly, become more complex and voluminous since the introduction of the CPIA in 1996 and, as many people who submitted evidence - both orally or in writing - noted, digitisation has changed the nature and amount of information people record about themselves and other people (this is discussed in chapter

156 Science and Justice RIG, Northumbria University. ([DIS0039](#))

157 Dr Hannah Quirk ([DIS0054](#))

158 Victor F J Jordan ([DIS0065](#))

159 [Q176](#)

160 CLSA ([DIS0050](#))

161 [Speech by Lord Justice Gross: Disclosure – Again](#), June 2018

2). As Peter Sommer, digital forensics expert, stated in his evidence to us “[t]he smartphone in particular has its very intimate relationship with its owner [...] and is recording activities second by second.”¹⁶²

121. This increase in the volume of personal data has implications for data protection. The Information Commissioner, who is appointed by the Crown to uphold information rights, wrote to us stating that: “[t]he main concern for the Information Commissioner is the number of breach cases being reported to her office which emanate from the disclosure process”. The Information Commissioner was (at the time of writing, in March 2018) investigating five cases “which relate to inappropriate disclosures within the criminal justice process”, and that “[t]he majority of these cases involve case files that have not been appropriately redacted which are then sent to defence solicitors and then further disclosed to the defendant”. The submission states that “[t]he Information Commissioner recently fined Kent Constabulary £80,000 after sensitive personal details of a woman who accused her partner of domestic abuse were passed to the suspect. Kent police handed the [defence] solicitor the entire contents of the complainant’s mobile phone”.¹⁶³

122. Jonathan Bamford from the Information Commissioner’s Office noted in oral evidence to us that he did not think police and CPS were “living up to the requirement to disclose only information that is necessary [...] We have had situations where people have then been contacted by the defendants and intimidated as a result of the disclosure”.¹⁶⁴ The GDPR came into effect in May 2018 and the ICO told us that practitioners, CPS and the police will all need to make sure that their staff are up to date.¹⁶⁵

123. A number of witnesses to this inquiry noted that information contained on an individual’s phone might be private and that there were concerns about sharing such information with a defendant.¹⁶⁶ The Association of Police and Crime Commissioners noted in their evidence that disclosure practices [particularly in the case of rape and sexual assault] should consider “the risks to complainants’ Article 8 ECHR rights (right to respect for private and family life) from current disclosure practices and make sure that disclosure is reasonable and proportionate and does not deter victims from coming forward”.¹⁶⁷ Article 8 of the European Convention on Human Rights protects the “right to respect for private and family life”; this is a qualified right, unlike the “right to a fair trial (article 6)” which is absolute. This means that the right to respect for family and private life could be restricted if it was necessary and proportionate to guarantee a fair trial.

124. Concerns about violation of complainants’ privacy (particularly where they might have been victims of sexual assault, rape or domestic abuse) and that this might be a barrier to reporting these very serious offences was raised by victims’ representatives who gave evidence to this inquiry. The charity Rape Crisis said in their written evidence that the “fear of the perpetrator seeing such a wealth of personal information is significant. Particularly as the survivor may have concerns about how that data might be used. It could

162 Professor Peter Sommer ([DIS0017](#))

163 Information Commissioner’s Office ([DIS0031](#))

164 [Q224](#)

165 Jonathan Bamford told us that: “The law enforcement processing elements are covered by the Data Protection Bill. They are not covered by the GDPR [...] Of course, it is a challenge for any organisation [...] to deal with changes in the law. We have worked closely with the police and others to try to make sure that they have guidance on their new responsibilities.” [Q228](#)

166 For example: Big Brother Watch ([DIS0080](#)); End Violence Against Women Coalition ([DIS0055](#)); Rape Crisis England and Wales ([DIS0053](#)); Office of the Police and Crime Commissioner for Northumbria ([DIS0025](#))

167 APCC ([DIS0048](#))

impact on the survivor’s safety, her family’s safety and on Family Court proceedings”.¹⁶⁸ The End Violence Against Women Coalition, a group formed of support services, researchers, activists, survivors and NGOs, stated in their written evidence that “[s]pecial consideration is needed to ensure that disclosure rules and practices do not stray into, and do not encourage police or prosecutors to stray into gathering evidence which would be used to relate a complainant’s “sexual history”, [this is a] grave threat to rape justice at a systemic level”.¹⁶⁹

125. The Police and Crime Commissioner for Northumbria wrote to us stating that “[r]equests for disclosure of sensitive material also increase with the strength of the prosecution’s core evidence. This practice is linked to rape myths and stereotypes [...] and the defence team attempting to discredit the complainant as a witness by using her past records to paint a picture of her/him as in some way not credible. This serves to deflect the jury’s attention away from the central strength of a case”.¹⁷⁰

126. We put this point of view to defence practitioners and the Chair of the Criminal Bar Association told us that “the credibility of a complainant in some cases is a matter in issue, as brutal and difficult as that might be to accept. If a person is saying that something happened and another person is saying that it did not, and the jury will have to decide between the two, those issues might be relevant. In many cases, the credibility of a witness, not just a complainant, may be relevant, if their account is to be challenged.”¹⁷¹

127. There are clearly different perspectives held by defence practitioners and victim support groups on what might constitute sensitive information in the context of disclosure and how this should be handled. It is important that those who come forward to report serious offences, particularly those of a sexual or otherwise sensitive nature, are treated by investigators with respect and sensitivity. Their personal information should be handled in the same way and in accordance with their rights to privacy, where that is consistent with the interest of justice. The law is clear in that the right to a fair trial is an absolute right which cannot be violated to protect the right to privacy. We heard differing views on whether disclosing certain private information was always necessary to uphold the right to a fair trial, and this emphasises the need for clear guidance on this point. Guidance should also include directions on where relevant material can be appropriately redacted of personal information, and should make police and prosecutors aware of the separate but important role of the Information Commissioner.

The guidelines governing disclosure

128. The basic disclosure role that police and the CPS have to perform is to review material and disclose that which is relevant. In 2017 the Mouncher inquiry stated that “there are far too many guidelines and policy documents and the plethora of such material creates the (I would suggest) false impression that the exercise is more difficult than it should be.” Evidence submitted to this inquiry supported that view, including from the College

168 Rape Crisis England and Wales ([DIS0053](#))

169 Rape Crisis England and Wales ([DIS0053](#))

170 Office of the Police and Crime Commissioner for Northumbria ([DIS0025](#))

171 [Q147](#)

of Policing which wrote “The College agrees with the assessment of Richard Horwell QC, set out in the Mouncher report, that the amount of current guidance overcomplicates disclosure and presents it as a specialism, when it is actually a core skill for all officers”.¹⁷²

129. However, while the core principles are simple, it is clear from responses that there are areas of complexity where guidance lacks clarity. For example, while police must be able to assess whether material is relevant for disclosure, they are not required to read all of the digital evidence collected. The Attorney General’s Guidelines on Disclosure contain an annex of Supplementary Guidelines on Digitally Stored Material which states that “[i]t is not the duty of the prosecution to comb through all the material in its possession” and advises that “[w]here there is an enormous volume of material [...] search it by sample, key words, or other appropriate search tools or analytical techniques.”¹⁷³

130. It was not clear from the evidence received, however, how “enormous volume” should be interpreted. The Police and Crime Commissioner for Northumbria noted in her written evidence to us that “[a] phone is not an “enormous volume of material” envisaged by the AG’s Guidelines”,¹⁷⁴ but as the Criminal Bar Association noted in their written evidence “[t]he technological capability of devices to send and receive large files including images and video and URL links has led to hand held devices being capable of storing enormous amounts of data”.¹⁷⁵ It is also of note that the annex to the Attorney General’s guidelines was produced seven years ago, in 2011.¹⁷⁶ To put this in the context of the pace of digital change, when the supplementary guidelines were produced, Uber (the taxi booking app) was not available in the UK, and Instagram (the social network site) had only just been launched (in October 2010).

131. As outlined in paragraphs 120–127, developments in technology mean individuals generate and record an enormous amount of personal information about themselves. It follows that it may now be the norm, rather than an exception, for “enormous” volumes of material to feature in a case; and this in turn suggests developments might have overtaken the 2013 guidance.

132. With regard to personal data, the Information Commissioner’s evidence noted that “there does not appear to be an over-arching set of rules and procedures in place which provides clarity on the respective responsibilities of different parties. A lack of clarity may result in material being disclosed to offenders and their solicitors which in some cases is highly sensitive such as disclosing the addresses of victims”. The Information Commissioner stated a view that “[t]his lack of clarity is unacceptable and where we are likely to see further breaches occurring”.¹⁷⁷

133. Another issue raised by witnesses was that some of the guidance was too narrow and did not take account of the way people communicate. The Defence Practitioners’ Working Group told us that “The CPS guidelines’ focus on telephone evidence is too narrow. They stipulate examination of “the content of text messages passing between the complainant

172 College of Policing ([DIS0072](#))

173 Attorney General, [the Attorney General’s Guidelines on Disclosure](#), December 2013

174 Office of the Police and Crime Commissioner for Northumbria ([DIS0025](#))

175 The Criminal Bar Association ([DIS0022](#))

176 Attorney General, [the Attorney General’s Guidelines on Disclosure](#), December 2013

177 Information Commissioner’s Office ([DIS0031](#))

and the suspect/defendant at the relevant time” rather than looking at communications with others about the allegation or into recent other complaints.”¹⁷⁸ This approach would, for example, exclude a conversation about an alleged event with third parties.

134. **We do not consider that there needs to be fundamental change to the legislation governing disclosure but that the new Attorney General and Director of Public Prosecutions should consider clarifications to guidance to better support police and prosecutors in fulfilling their duties. The principles of the CPIA 1996 are quite simple: that material is reviewed by police and, if relevant to the case, is disclosed by the CPS to the defence. Changes since 1996, including the extraordinary advancements in technology, do not move us away from those basic building blocks. However, the volume and complexity of material now means that it is harder for police and prosecutors to undertake their duties as envisaged. This highlights the need for clear guidance on how best to apply the principles to the modern world, and appropriate resources. We echo points made by Richard Horwell QC that guidance should not be over-complicated, but that it should be simplified and clarified.**

135. *The Attorney General’s review should consider whether guidelines on large volumes of material remain appropriate in light of changes to the nature and volume of digital evidence collected by police in the course of routine and complex investigations. The Attorney General should also consider providing greater clarity on the handling of sensitive material and personal data, in light of evidence about the impact on complainants, and breaches of data protection rules raised by the Information Commissioner.*

Knowledge and training

136. In 2017 HM Inspector of the Crown Prosecution Service and HM Inspector of Police and the Fire Service highlighted “widespread failures across the board by both police and prosecutors” in relation to disclosure.¹⁷⁹ Evidence received as part of this inquiry, including from HM Inspectors, cites a lack of basic knowledge. HM Inspector of Constabulary told us that “in 22% of cases [they examined], the quality of the schedules themselves was poor. In fact, in only 18.9% of cases was the MG6C schedule of the correct quality, which indicates that the level of knowledge about which you have been speaking is not there as far as policing is concerned”.¹⁸⁰

137. Once the police have compiled the schedule, the duty to disclose sits with the prosecution who should sign off the schedule, but as Wendy Williams told us “prosecutors will not know what the nature of the material is [if it not properly recorded on the schedule] and, given that the prosecutors have to make the decision as to what falls to be disclosed and what does not, the whole process is undermined from the outset.”¹⁸¹ Daniel Bonich of the Criminal Law Solicitors’ Association told us that “[t]here is sometimes a sense that [... schedules] have not been signed by a reviewing lawyer, so whether someone has actually reviewed them or not we just do not know”.¹⁸²

178 Defence Practitioners’ Working Group (DIS0047)

179 The Criminal Justice Joint Inspectorate, HM Inspectorate of Constabulary, Fire and Rescue Services, and HM Crown Prosecution Service Inspectorate, [Making it fair a Joint Inspection of Disclosure of Unused Material in Volume Crown Court Cases](#), July 2017

180 [Q16](#)

181 [Q17](#)

182 [Q105](#)

138. This concern about basic scheduling practice was raised in many of the submissions, including from the Criminal Cases Review Commission who told us in written evidence that “[t]he non-sensitive disclosure schedule is often not compliant and inadequate such as poor descriptions of items, missing items or not completed at all”.¹⁸³¹⁸⁴ Jane Collins MEP wrote to us stating that from her casework “it is clear there is very little consistency in the practices of the police and CPS in reviewing and disclosing evidence”.¹⁸⁵

139. A perceived lack of knowledge and understanding, particularly within the police, led many who responded to this inquiry to call for more, or better, training.¹⁸⁶ The Criminal Bar Association wrote to us stating “[p]roblems arise in the initial police investigative stage where there has been insufficient appropriate training as to what are the investigators’ statutory obligations within the context of what their overarching role is perceived to be”¹⁸⁷ and academics from Northumbria University stated that “[t]raining ought to directly address problems of bias (conscious or unconscious) that may be operative”.¹⁸⁸

140. Witnesses to this inquiry have indicated to us that training to cover the duties of police outlined in the CPIA 1996 should clearly indicate that disclosure is central to justice not an administrative add-on, as well as the basics of scheduling items. Training should also cover sensitive and personal material.

141. The College of Policing is responsible for devising police training, but most training will be delivered at force level overseen by the Chief Constables who are accountable to Police and Crime Commissioners. The College explained in its written evidence to us that it “provides the learning standards for nationally required training. It also provides training materials for some courses” and only “delivers training in a small number of [thematic] areas, including covert policing and senior leadership. We also deliver complete, computer based training courses for forces to use”.¹⁸⁹ The College also sets a requirement that all officers joining policing are to be trained in areas set out in the National Police Curriculum, including specific elements on disclosure.¹⁹⁰

142. When the College came to give evidence they told us that they launched a revamped training package in April 2018, and so far it has been accessed by 41,000 officers, with 6,000 completions. Mike Cunningham, CEO, told us that “We are pleased that all forces have it, all forces are using it and the level of access is higher than we would normally expect from our training resources”.¹⁹¹ To put these figures in context, there are around 123,000 police officers in England and Wales.¹⁹²

143. We asked Mr Cunningham whether there was a system to track whether forces were doing training and he said “[w]e have a mechanism to track the amount of take-up. We do not have authority over forces in the sense of being a regulator. It is for chief constables. They recognise their responsibility to have people trained. They are obviously held to

183 Criminal Cases Review Commission ([DIS0042](#))

184 See also: Dr Tom Smith ([DIS0041](#))

185 Mrs Jane Collins ([DIS0037](#))

186 Including: Defence Practitioners’ Working Group ([DIS0047](#)); NPCC and CPS ([DIS0057](#)); Science and Justice RIG, Northumbria University. ([DIS0039](#)); The Criminal Bar Association ([DIS0022](#))

187 The Criminal Bar Association ([DIS0022](#))

188 Science and Justice RIG, Northumbria University. ([DIS0039](#))

189 College of Policing ([DIS0072](#))

190 College of Policing ([DIS0072](#))

191 [Q284](#)

192 National Audit Office, [A Short Guide to the Home Office](#), September 2017

account by their Police and Crime Commissioners in relation to how they run their forces, and we will provide that information to them [in future] so that they are aware of the level of take-up.”¹⁹³

144. We welcome the efforts by the College of Policing to roll out training to police officers on disclosure and on fair trials but in order for their investment in training to be effective the College need to know that officers are completing it. We recognise that police forces are operationally independent, but we expect that all police officers will do the training required to fulfil their duties and this must include their duty to follow all lines of inquiry and disclose all relevant material.

145. *The College should start to collect data on the number of police officers who have undertaken their training on disclosure, and should report it to Ministers and publish it so it can be reviewed by this Committee. This data should include information on the rank or role of officer undertaking training, and which force they work in. This should start immediately.*

Disclosure in the Magistrates’ Court

146. We have heard, at various points during this inquiry, that disclosure errors happen in both complex Crown Court cases (such as frauds and sexual offences) and in Magistrates’ Court cases (which are less serious and carry lesser sentences). In their written submission to this inquiry, the Law Society note that in “the Magistrates’ Court, life-changing decisions can be made affecting defendants, for example, cases involving dishonesty, minor sexual offences, and assault cases, all of which may impact on a defendant’s future employability”.¹⁹⁴

147. Disclosure operates differently in the Magistrates’ Courts to the Crown Court, although it abides by the same principles as outlined in the CPIA 1996. In the Magistrates’ Court the prosecution must serve initial details of its case on the Court Officer and the accused no later than the beginning of the day of the first hearing. The details must include a summary of the circumstances of the case, but this does not include the full disclosure of all unused material. In summary cases, which are cases decided without a jury and less complex than Crown Court cases, the prosecutor can make a judgement whether a defendant is likely to plead guilty or not guilty and take a proportionate approach based on this judgement. In cases where a not guilty plea is anticipated there should be a Streamlined Disclosure Certificate served on the defence immediately after a not guilty plea is entered. The Streamlined Disclosure Certificate either states that there is no unused material, or contains a list of that material, and is used instead of the MG6 forms used in Crown Court cases. In cases where a guilty plea is anticipated, there should be a certification by the police which confirms that the prosecution understand their common law disclosure duties.

148. Alison Saunders told us “I do not think disclosure in the Magistrates’ Court is such an issue”. She went on to say “We have a streamlined process in the Magistrates’ Court where the police present a streamlined disclosure certificate. We give that to the defence, and only if there are issues do we then go on and deal with the application.”¹⁹⁵ However, some

193 [Q287](#)

194 The Law Society of England and Wales ([DIS0030](#))

195 Justice Committee, [work of the crown prosecution service](#), HC574, Q115–116

witnesses to this inquiry did not agree with that sentiment. The Magistrates' Association stated in its written evidence to us that it "is aware of issues involving poor time and file management which result in delays and non-compliance with the duty to disclose—both initially and throughout the criminal justice process. While the volume of disclosure in the Magistrates' Courts is generally significantly smaller than at the crown Court, it is no less important" and they note that "problems relating to disclosure occur across the broad range of criminal offences that appear before Magistrates."¹⁹⁶ The Defence Practitioners' Working Group also raised a number of issues specific to the Magistrates' Courts, including: prosecutors only serving a summary of the case; blank or incomplete schedules of unused material; unused schedules which were "routinely" unsigned by the prosecutor; and defence requests for disclosure not being responded to.¹⁹⁷ The Criminal Bar Association stated in their evidence that "Transforming Summary Justice has not delivered the results that may have been anticipated [in the Magistrates' Courts]. The approach to disclosure is cursory at best."¹⁹⁸

149. The National Disclosure Improvement Plan makes some commitments which specifically cite complex cases, including disclosure "champions" for complex casework.¹⁹⁹ This was, in part, as a response to the cases which were reported in the press which were all complex case work, and to the Joint Inspectorate report which looked at Crown Court cases.²⁰⁰ Alison Saunders, DPP, told us in oral evidence that the disclosure training for prosecutors "goes through the whole gamut. We have a staged training process, which starts from the basics, going all the way through to more complex matters, dealing with sensitive material, which you might not need to use in the more basic cases".²⁰¹

150. It is understandable that the CPS and police have focussed their efforts on Complex Crown Court cases, given the nature of the cases which have caught the public attention, but we know that there are also problems in Magistrates' Courts which need urgent attention. We do not agree with the DPP's assertion that disclosure in the Magistrates' Courts is not an issue and we are concerned that disclosure errors in the Magistrates' Courts will be left to continue if effort is not also focussed there.

151. *The new Attorney General, Crown Prosecution Service, National Police Chiefs' Council and College of Policing should ensure that their efforts to resolve issues with disclosure, including their recommendations, are also applicable in the Magistrates' Courts. The joint inspectorate should consider a review of disclosure in the Magistrates' Courts, much as it did in the Crown Court.*

196 Magistrates Association ([DIS0023](#))

197 Defence Practitioners' Working Group ([DIS0047](#))

198 The Criminal Bar Association ([DIS0022](#))

199 CPS, National Police Chief's Council, College of Policing, [the National Disclosure Improvement Plan](#), January 2018

200 The Criminal Justice Joint Inspectorate, HM Inspectorate of Constabulary, Fire and Rescue Services, and HM Crown Prosecution Service Inspectorate, [Making it fair a Joint Inspection of Disclosure of Unused Material in Volume Crown Court Cases](#), July 2017

201 [Q399](#)

Table 3: list of recommendations with owner and time frame

Lead owner	Timeframe	Recommendation
Attorney General	Immediate and ongoing	Resolving issues in the disclosure process and rebuilding public confidence in the justice system requires an ongoing commitment from the new Attorney General, the Director for Public Prosecution, the Minister for Policing, and the National Police Chief's Council, and from partners across the justice system. The Attorney General should lead on seeking the support of HM Courts and Tribunals Service, the Judiciary, and the defence community. (Paragraph 27)
Attorney General	1 April 2019	The Government should consider what level of investment it deems necessary to ensure that the police and CPS are getting disclosure right, to prevent the costs associated with disclosure failures, and to prevent miscarriages of justice. We expect the Attorney General and Ministers from the Home Office to write to this Committee before the end of the financial year to explain what investment is needed, where, and over what time period. (Paragraph 49)
Ministry of Justice	Immediately following the report	We expect the Ministry of Justice to write to this Committee in response to this report, outlining what it has done to assess the impact of operational and funding changes it has made over the last five years, on the administration of justice and specifically on disclosure. We are concerned about criminal legal aid arrangements and have taken evidence on this matter. We are undertaking further work on legal aid which we intend to conclude shortly. (Paragraph 51)
Home Office	December 2018	The Home Office, in consultation with the CPS, the National Police Chiefs' Council and the College of Policing, should lead on producing a comprehensive strategy to ensure that all 43 police forces are equipped to handle the increasing volume and complexity of digital evidence. This strategy must consider skills as well as technology and should be underpinned by appropriate investment. This strategy need not infringe on the operational independence of the police. We expect the Minister for Policing to report to this Committee on the status of the strategy by the end of 2018. When the Minister reports to us we expect that he will have identified key actions and dates the strategy will include, and the date by which we can review a final draft. (Paragraph 63)
Crown Prosecution Service	December 2018	We welcome the new commitment on the Digital Evidence Transfer System made in the National Disclosure Improvement Plan, and commitments made by the Minister in oral evidence to us. We expect the National Police Chiefs' Council and the Crown Prosecution Service to provide an update on progress with the business plan to this Committee by the end of 2018. We would welcome action by CPS and HMCTS to get disclosed material onto the Digital Case System and request that they keep us up to date on progress. (Paragraph 70)

Lead owner	Timeframe	Recommendation
Crown Prosecution Service	Immediate and ongoing	So that signatories to the National Disclosure Improvement Plan can be held to account, they should publish an update on progress quarterly until each action can be closed. This Committee will keep a watching brief on progress. (Paragraph 79)
Attorney General	Immediate and ongoing	The new Attorney General should take his appointment as an opportunity to clarify what is meant by “to superintend” the Crown Prosecution Service, and it should be very clear that he is accountable to Parliament for the performance of the CPS. As a demonstration of his ongoing responsibility for disclosure, he should personally sign off on his guidelines at regular, defined intervals, either stating that they remain sufficient, or noting amendments. We expect that ongoing review will incorporate restatement or amendment of the current guidelines, and we request that it include a commitment to sign off at stated intervals. We expect the next Director of Public Prosecutions to proactively address disclosure throughout their tenure. The culture of ‘it didn’t start on my watch’ is pervasive and undermining of public confidence. It must not continue. (Paragraph 81)
Attorney General	April 2019	The new Attorney General should make it clear, in the review, that the duty to ensure “the right person is prosecuted for the right offence” is paramount, even if this is at the expense of timeliness or conviction rate. The Director of Public Prosecutions should set measures that enable her (and her successor) to report against this objective. We expect this to include improving data on cases that fail to ensure that the CPS are capturing and reporting on a true number of cases where errors have played a part. Although we welcome the National Disclosure Improvement Plan, we also think a more thorough review of the data, that goes beyond just rape and sexual assault cases, is required. The CPS should also consider what data they can capture on cases which proceed with disclosure errors but are not stopped. We expect Crown Prosecution Service performance measures to be updated before the end of the 2018–19 financial year so they can be outlined in the 2018–19 Annual Report and Accounts and reported against in the Annual Report and Accounts from 2019–20 (the first year that full data will be available). (Paragraph 96)
College of Policing	Following this report	We welcome the code of ethics from the College of Policing and recommend that the College consider a revision to ensure it is clear that police have a duty to follow all lines of inquiry, even when they point away from the suspect. We would like the head of the College to write to us to outline if and by when he considers this practicably possible. (Paragraph 107)

Lead owner	Timeframe	Recommendation
Minister for Policing	Following publication of this report	The Minister for Policing told us that the Home Office were reviewing the Strategic Policing requirement, and we recommend that the Minister and the Home Office should consider whether capability to execute core criminal justice duties, including disclosure, should be included. (Paragraph 111)
Attorney General	Following this report	The Attorney General's review should consider whether guidelines on large volumes of material remain appropriate in light of changes to the nature and volume of digital evidence collected by police in the course of routine and complex investigations. The Attorney General should also consider providing greater clarity on the handling of sensitive material and personal data, in light of evidence about the impact on complainants, and breaches of data protection rules raised by the Information Commissioner. (Paragraph 135)
College of Policing	Immediate	The College should start to collect data on the number of police officers who have undertaken their training on disclosure, and should report it to Ministers and publish it so it can be reviewed by this Committee. This data should include information on the rank or role of officer undertaking training, and which force they work in. This should start immediately. (Paragraph 145)
Attorney General	Immediate and ongoing	The new Attorney General, Crown Prosecution Service, National Police Chiefs' Council and College of Policing should ensure that their efforts to resolve issues with disclosure, including their recommendations, are also applicable in the Magistrates' Courts. The joint inspectorate should consider a review of disclosure in the Magistrates' Courts, much as it did in the Crown Court. (Paragraph 151)

Conclusions and recommendations

The extent of failure

1. Problems with the practice of disclosure have persisted for far too long, in clear sight of people working within the system. Disclosure of unused material sits at the centre of every criminal justice case that goes through the courts and as such it is not an issue which can be isolated, ring fenced, or quickly resolved. These problems necessitate a concerted, system wide and ongoing effort by those involved, with clear leadership from the very top. It is disappointing that we have heard the same issues raised throughout this inquiry as have been noted by inquiries as far back as 2011, and it is further disappointing that the Attorney General in place at the time of inquiry stated to us that he was aware of problems going back as far as 1996 but yet the problem had persisted and apparently worsened under his watch. We are also surprised and disappointed that the DPP, who should be closer to these problems on a day-to-day basis, does not appear to have pressed for more urgent action to address the worsening situation during her time in post. (Paragraph 26)
2. *Resolving issues in the disclosure process and rebuilding public confidence in the justice system requires an ongoing commitment from the new Attorney General, the Director for Public Prosecution, the Minister for Policing, and the National Police Chief's Council, and from partners across the justice system. The Attorney General should lead on seeking the support of HM Courts and Tribunals Service, the Judiciary, and the defence community.* (Paragraph 27)
3. When police and prosecutors do not undertake their disclosure duties correctly cases may be delayed, may collapse or a miscarriage of justice may occur. As well as the human cost, this wastes valuable resources, and has potentially life-changing implications for individuals involved which of course cannot be quantified in merely financial terms. At times when resources are already tight police, the CPS and the Ministry can ill afford to waste resources on fixing the costly mistakes that occur if there is not appropriate investment in getting decisions right in the first place. The National Disclosure Improvement Plan notes, under its section on capacity, that the system is facing significant strain but it does not commit any additional resources. We agree with the view, expressed by Ministers and officials, that disclosure is not just a matter of resources but we also feel that the need for additional resourcing must be considered. (Paragraph 48)
4. *The Government should consider what level of investment it deems necessary to ensure that the police and CPS are getting disclosure right, to prevent the costs associated with disclosure failures, and to prevent miscarriages of justice. We expect the Attorney General and Ministers from the Home Office to write to this Committee before the end of the financial year to explain what investment is needed, where, and over what time period.* (Paragraph 49)
5. We feel that the issues raised in this inquiry are symptomatic of a criminal justice system under significant strain. We are particularly concerned by evidence we have

heard from defence practitioners about the lack of remuneration for reviewing unused material and the impact of changes to the Litigators' Graduated Fee Scheme in reducing payment for reviewing pages of prosecution evidence. (Paragraph 50)

6. *We expect the Ministry of Justice to write to this Committee in response to this report, outlining what it has done to assess the impact of operational and funding changes it has made over the last five years, on the administration of justice and specifically on disclosure. We are concerned about criminal legal aid arrangements and have taken evidence on this matter. We are undertaking further work on legal aid which we intend to conclude shortly.* (Paragraph 51)
7. It is clear, from the evidence that we have heard, that the growth in digital material presents a challenge to police and prosecutors. We believe that police forces are not always adequately equipped or properly trained to handle the type and volume of evidence that they now routinely collect and that this can lead to errors when reviewing and disclosing material and therefore has the potential to lead to miscarriages of justice. We welcome the formation of a technology group, as outlined in the National Disclosure Improvement Plan, but action must lead to improvement. (Paragraph 62)
8. *The Home Office, in consultation with the CPS, the National Police Chiefs' Council and the College of Policing, should lead on producing a comprehensive strategy to ensure that all 43 police forces are equipped to handle the increasing volume and complexity of digital evidence. This strategy must consider skills as well as technology and should be underpinned by appropriate investment. This strategy need not infringe on the operational independence of the police. We expect the Minister for Policing to report to this Committee on the status of the strategy by the end of 2018. When the Minister reports to us we expect that he will have identified key actions and dates the strategy will include, and the date by which we can review a final draft.* (Paragraph 63)
9. We are concerned that digital systems are not equipped to transfer the type and volume of information that is now routinely handled by the police and CPS, but we welcome work the Minister said was ongoing to remedy this. (Paragraph 69)
10. *We welcome the new commitment on the Digital Evidence Transfer System made in the National Disclosure Improvement Plan, and commitments made by the Minister in oral evidence to us. We expect the National Police Chiefs' Council and the Crown Prosecution Service to provide an update on progress with the business plan to this Committee by the end of 2018. We would welcome action by CPS and HMCTS to get disclosed material onto the Digital Case System and request that they keep us up to date on progress.* (Paragraph 70)

Leadership, oversight and culture

11. We welcome the National Disclosure Improvement Plan, and note that it names the people responsible for ensuring that it follows into real and lasting change. We expect these people to be personally accountable for delivery of the plan. (Paragraph 78)

12. *So that signatories to the National Disclosure Improvement Plan can be held to account, they should publish an update on progress quarterly until each action can be closed. This Committee will keep a watching brief on progress. (Paragraph 79)*
13. We did welcome the comment from the then Attorney General that, ultimately, it is the holder of his office who is responsible for disclosure, but we do not feel ministerial responsibility for disclosure has been clear enough to date. It is concerning to us that successive Attorney Generals have not acted more quickly and proactively on disclosure issues which have been widely acknowledged for many years, and it is of note that the Attorney General's guidelines have not been reviewed since 2013 in spite of concerns being raised about disclosure a number of times. We expect that the Attorney General's review will make it clear that he is responsible for disclosure failings and for ensuring improvement, and we will hold him to account for driving this improvement. (Paragraph 80)
14. *The new Attorney General should take his appointment as an opportunity to clarify what is meant by "to superintend" the Crown Prosecution Service, and it should be very clear that he is accountable to Parliament for the performance of the CPS. As a demonstration of his ongoing responsibility for disclosure, he should personally sign off on his guidelines at regular, defined intervals, either stating that they remain sufficient, or noting amendments. We expect that ongoing review will incorporate restatement or amendment of the current guidelines, and we request that it include a commitment to sign off at stated intervals. We expect the next Director of Public Prosecutions to proactively address disclosure throughout their tenure. The culture of 'it didn't start on my watch' is pervasive and undermining of public confidence. It must not continue. (Paragraph 81)*
15. We have already referred to the responsibilities of the Attorney General, who "superintends" the CPS, but the day-to-day management of the service and ownership of its performance, including in relation to disclosure, rests clearly with the Director of Public Prosecutions. We do not feel that the Director has sufficiently recognised the extent and seriousness of the failures of disclosure by police and the CPS that have been highlighted by evidence given to us and, as we have noted in paragraph 81, have been recognised over a number of years. It is surprising and concerning that the Director of Public Prosecutions did not know that the case against Liam Allan had not been recorded as a disclosure error at the point that it was stopped. The Director has not acted as quickly and proactively as required and this, it appears to us, has permeated throughout the organisation. (Paragraph 94)
16. Data collected by the Crown Prosecution Service did not enable the DPP or the then Attorney General to know if their prosecutors were getting decisions right or wrong. We believe that this might have allowed disclosure errors to prevail and that miscarriages might have resulted. The DPP has said to us, in writing, that it is not the role of the CPS to pursue convictions at all costs, but it is of note that the CPS use conviction rate and number of hearings to measure their performance. The Code for Crown Prosecutors is clear "Prosecutors must be fair, independent and objective... Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction". The fact that performance metrics do not fully reflect the purpose of the CPS is compounded by a significant underestimation of the number of cases that stopped due to disclosure errors in the CPS' internal data. The RASSO

review indicates that data the CPS did collect on cases that failed due to disclosure might have underestimated the number with disclosure errors by around 90%. Data the CPS did collect did not include cases which proceeded with disclosure errors. We welcomed the commitment by the Director of Public Prosecutions and the then Attorney General to improving their performance measures so that they can be held to account in future, and we expect that the incoming Attorney General will uphold this commitment. It remains disappointing, however, that this poor data collection regime was allowed to continue for so long in spite of reports suggesting that disclosure errors were widespread. (Paragraph 95)

17. *The new Attorney General should make it clear, in the review, that the duty to ensure “the right person is prosecuted for the right offence” is paramount, even if this is at the expense of timeliness or conviction rate. The Director of Public Prosecutions should set measures that enable her (and her successor) to report against this objective. We expect this to include improving data on cases that fail to ensure that the CPS are capturing and reporting on a true number of cases where errors have played a part. Although we welcome the National Disclosure Improvement Plan, we also think a more thorough review of the data, that goes beyond just rape and sexual assault cases, is required. The CPS should also consider what data they can capture on cases which proceed with disclosure errors but are not stopped. We expect Crown Prosecution Service performance measures to be updated before the end of the 2018–19 financial year so they can be outlined in the 2018–19 Annual Report and Accounts and reported against in the Annual Report and Accounts from 2019–20 (the first year that full data will be available).* (Paragraph 96)
18. We consider that, on balance, most police forces and their officers recognise their duty as a search for the truth but that this has not been, and is still not, universal. We were encouraged by the commitment of the NPCC, outlined in their written evidence and in oral evidence from Chief Constable Nick Ephgrave, to work to ensure that officers understand their duties properly. It is fundamentally important that all police officers recognise both that they are searching for the truth; and that they have core disclosure duties which are central to the criminal justice process and are not merely an administrative add-on. Nevertheless, we believe that there is more work to do to ensure that this mindset is embedded across all police forces, and public confidence is improved. It is vital that disclosure is embedded at every stage in the process and not delegated to the most junior person as has all too often been the case in the past. (Paragraph 106)
19. *We welcome the code of ethics from the College of Policing and recommend that the College consider a revision to ensure it is clear that police have a duty to follow all lines of inquiry, even when they point away from the suspect. We would like the head of the College to write to us to outline if and by when he considers this practicably possible.* (Paragraph 107)
20. We consider that problems with disclosure have impacted on confidence in the justice system to such an extent that it is now an issue of national importance for the police. The recorded failures of police to disclose evidence in their possession to the defence, and the miscarriages of justice that might have resulted, could undermine confidence in policing. (Paragraph 110)

21. *The Minister for Policing told us that the Home Office were reviewing the Strategic Policing requirement, and we recommend that the Minister and the Home Office should consider whether capability to execute core criminal justice duties, including disclosure, should be included. (Paragraph 111)*

Knowledge and capability

22. There are clearly different perspectives held by defence practitioners and victim support groups on what might constitute sensitive information in the context of disclosure and how this should be handled. It is important that those who come forward to report serious offences, particularly those of a sexual or otherwise sensitive nature, are treated by investigators with respect and sensitivity. Their personal information should be handled in the same way and in accordance with their rights to privacy, where that is consistent with the interest of justice. The law is clear in that the right to a fair trial is an absolute right which cannot be violated to protect the right to privacy. We heard differing views on whether disclosing certain private information was always necessary to uphold the right to a fair trial, and this emphasises the need for clear guidance on this point. Guidance should also include directions on where relevant material can be appropriately redacted of personal information, and should make police and prosecutors aware of the separate but important role of the Information Commissioner. (Paragraph 127)
23. We do not consider that there needs to be fundamental change to the legislation governing disclosure but that the new Attorney General and Director of Public Prosecutions should consider clarifications to guidance to better support police and prosecutors in fulfilling their duties. The principles of the CPIA 1996 are quite simple: that material is reviewed by police and, if relevant to the case, is disclosed by the CPS to the defence. Changes since 1996, including the extraordinary advancements in technology, do not move us away from those basic building blocks. However, the volume and complexity of material now means that it is harder for police and prosecutors to undertake their duties as envisaged. This highlights the need for clear guidance on how best to apply the principles to the modern world, and appropriate resources. We echo points made by Richard Horwell QC that guidance should not be over-complicated, but that it should be simplified and clarified. (Paragraph 134)
24. *The Attorney General's review should consider whether guidelines on large volumes of material remain appropriate in light of changes to the nature and volume of digital evidence collected by police in the course of routine and complex investigations. The Attorney General should also consider providing greater clarity on the handling of sensitive material and personal data, in light of evidence about the impact on complainants, and breaches of data protection rules raised by the Information Commissioner. (Paragraph 135)*
25. We welcome the efforts by the College of Policing to roll out training to police officers on disclosure and on fair trials but in order for their investment in training to be effective the College need to know that officers are completing it. We recognise that police forces are operationally independent, but we expect that all police officers will do the training required to fulfil their duties and this must include their duty to follow all lines of inquiry and disclose all relevant material. (Paragraph 144)

26. *The College should start to collect data on the number of police officers who have undertaken their training on disclosure, and should report it to Ministers and publish it so it can be reviewed by this Committee. This data should include information on the rank or role of officer undertaking training, and which force they work in. This should start immediately. (Paragraph 145)*
27. It is understandable that the CPS and police have focussed their efforts on Complex Crown Court cases, given the nature of the cases which have caught the public attention, but we know that there are also problems in Magistrates' Courts which need urgent attention. We do not agree with the DPP's assertion that disclosure in the Magistrates' Courts is not an issue and we are concerned that disclosure errors in the Magistrates' Courts will be left to continue if effort is not also focussed there. (Paragraph 150)
28. *The new Attorney General, Crown Prosecution Service, National Police Chiefs' Council and College of Policing should ensure that their efforts to resolve issues with disclosure, including their recommendations, are also applicable in the Magistrates' Courts. The joint inspectorate should consider a review of disclosure in the Magistrates' Courts, much as it did in the Crown Court. (Paragraph 151)*

Formal minutes

Tuesday 17 July 2018

Members present:

Robert Neill, in the Chair

Kemi Badenoch

John Howell

Ruth Cadbury

Gavin Newlands

Bambos Charalambous

Victoria Prentis

David Hanson

Draft Report (*Disclosure of evidence in criminal cases*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 151 read and agreed to.

Annex agreed to.

Resolved, that the Report be the Eleventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 18 July at 10.30am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 27 March 2018

Kevin McGinty, Chief Inspector, HM Crown Prosecution Inspectorate; and **Wendy Williams**, Inspector, HM Inspectorate of Constabulary and Fire & Rescue Services [Q1–76](#)

Tuesday 1 May 2018

Daniel Bonich, Vice Chair, Criminal Law Solicitors' Association; **Joe Egan**, President, Law Society; **Angela Rafferty QC**, Chair, Criminal Bar Association; and **Joanna Hardy**, Barrister, Red Lion Chambers [Q77–172](#)

Tuesday 15 May 2018

Professor Peter Sommer, Digital Forensics Expert; **Dr Jan Collie**, Digital Forensics and Cyber Security Specialist; and **Dr Gillian Tully**, Forensics Regulator [Q172–217](#)

Jonathan Bamford, Head of Parliament and Government Affairs; The Information Commissioner's Office; **Rebecca Hitchen**, Rape Crisis; and **Dame Vera Baird QC**, Police and Crime Commissioner for Northumbria [Q218–278](#)

Tuesday 5 June 2018

Nick Ephgrave, Chief Constable, National Police Chiefs' Council; and **Mike Cunningham**, Chief Executive, College of Policing [Q279–338](#)

Alison Saunders, Director of Public Prosecutions, Crown Prosecution Service [Q339–409](#)

Wednesday 13 June 2018

Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office [Q410–455](#)

Rt Hon Jeremy Wright QC MP, Attorney General [Q456–511](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

DIS numbers are generated by the evidence processing system and so may not be complete.

- 1 Alison Saunders CB, Director of Public Prosecutions ([DIS0068](#))
- 2 An individual 9 ([DIS0063](#))
- 3 An individual 1 ([DIS0020](#))
- 4 An individual 10 ([DIS0021](#))
- 5 An individual 13 ([DIS0082](#))
- 6 An individual 14 ([DIS0015](#))
- 7 An individual 17 ([DIS0087](#))
- 8 An individual 2 ([DIS0052](#))
- 9 An individual 3 ([DIS0010](#))
- 10 An individual 4 ([DIS0019](#))
- 11 An individual 5 ([DIS0035](#))
- 12 An individual 6 ([DIS0027](#))
- 13 An individual 7 ([DIS0006](#))
- 14 An individual 8 ([DIS0001](#))
- 15 APCC ([DIS0048](#))
- 16 Arthur Michael Robinson ([DIS0011](#))
- 17 Big Brother Watch ([DIS0080](#))
- 18 Centre for Criminal Appeals and Cardiff Law School Innocence Project ([DIS0032](#))
- 19 Chief Constable Anthony Bangham, NPCC Lead for Roads Policing ([DIS0062](#))
- 20 Chris Saltrese Solicitors ([DIS0044](#))
- 21 CLSA ([DIS0050](#))
- 22 College of Policing ([DIS0072](#))
- 23 College of Policing and National Police Chiefs' Council ([DIS0079](#))
- 24 Criminal Cases Review Commission ([DIS0042](#))
- 25 Criminal Justice Alliance ([DIS0043](#))
- 26 Crown Prosecution Service ([DIS0083](#))
- 27 Defence Practitioners' Working Group ([DIS0047](#))
- 28 Des Thomas ([DIS0081](#))
- 29 Dr Hannah Quirk ([DIS0054](#))
- 30 Dr Tom Smith ([DIS0041](#))
- 31 End Violence Against Women Coalition ([DIS0055](#))
- 32 Exchange Chambers Liverpool ([DIS0056](#))
- 33 Fair Trials International ([DIS0058](#))

- 34 False Allegations Support Organisation ([DIS0040](#))
- 35 FDA ([DIS0038](#))
- 36 Forensic Science Regulator ([DIS0073](#))
- 37 GSG Law ([DIS0012](#))
- 38 An individual 11 ([DIS0078](#))
- 39 An individual 12 ([DIS0077](#))
- 40 Information Commissioner's Office ([DIS0031](#))
- 41 JUSTICE ([DIS0076](#))
- 42 Keith Borer Consultants ([DIS0049](#))
- 43 Magistrates Association ([DIS0023](#))
- 44 Magistrates Court Observers Panel ([DIS0009](#))
- 45 Mayor's Office for Policing and Crime ([DIS0061](#))
- 46 Mr Nicholas Moss ([DIS0036](#))
- 47 Mr Nick Webber ([DIS0026](#))
- 48 Mr Samuel Armstrong ([DIS0034](#))
- 49 Mr Stephen Falkner ([DIS0029](#))
- 50 Mrs Jane Collins ([DIS0037](#))
- 51 NPCC and CPS ([DIS0057](#))
- 52 Office of the Police and Crime Commissioner for Northumbria ([DIS0025](#))
- 53 PCS ([DIS0060](#))
- 54 Police, Fire and Crime Commissioner for Essex ([DIS0051](#))
- 55 Professor Peter Sommer ([DIS0017](#))
- 56 Qwarie Ltd ([DIS0013](#))
- 57 Rape Crisis England and Wales ([DIS0053](#))
- 58 Science and Justice RIG, Northumbria University. ([DIS0039](#))
- 59 The Criminal Bar Association ([DIS0022](#))
- 60 The Law Society of England and Wales ([DIS0030](#))
- 61 Transform Justice ([DIS0064](#))
- 62 Victor F J Jordan ([DIS0065](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Disclosure of youth criminal records	HC 416 (Cm 9559)
Second Report	Draft Sentencing Council guidelines on intimidatory offences and domestic abuse	HC 417
Third Report	Pre-legislative scrutiny: draft personal injury discount rate clause	HC 374
Fourth Report	Draft Sentencing Council guidelines on manslaughter	HC 658
Fifth Report	HM Inspectorate of Prisons report on HMP Liverpool	HC 751 (HC 967)
Sixth Report	Draft Sentencing guideline on terrorism	HC 746
Seventh Report	Small claims limit for personal injury	HC 659
Eighth Report	Young adults in the criminal justice system	HC 419
Ninth Report	Transforming Rehabilitation	HC 482
Tenth Report	Draft Sentencing Council guideline on child cruelty offenses	HC 892
First Special Report	The implications of Brexit for the Crown Dependencies: Government Response to the Committee's Tenth Report of Session 2016–17	HC 423
Second Special Report	Government Responses to the Committee's Reports of Session 2016–17 on (a) Prison reform: governor empowerment and prison performance (b) Prison reform: Part 1 of the Prisons and Courts Bill	HC 491
Third Special Report	The implications of Brexit for the justice system: Government Response to the Committee's Ninth Report of Session 2016–17	HC 651
Fourth Special Report	HM Inspectorate of Prisons report on HMP Liverpool: Government Response to the Committee's Fifth Report	HC 967