



Creating a safer Cambridgeshire

To: Business Coordination Board

From: Chief Constable

Date: 12 April 2018

A report on the disclosure of information and digital forensic information

1. Purpose

1.1 To update the Business Coordination Board (the “Board”) on the appropriate and timely disclosure of information by the Constabulary, and on how the Constabulary is progressing work towards the National Disclosure Improvement Plan.

2. Background

2.1 Disclosure of unused material is a key component of the criminal investigation and prosecution process. As part of an investigation, the police have a duty to retain every unused item that is considered relevant to an investigation. Each item must be reviewed to determine whether it is capable of undermining the prosecution or assisting the defence case. If either factor applies, it must be disclosed to the defence. There is a statutory basis for this requirement contained within the Criminal Procedure and Investigations Act 1996.

2.2 If the disclosure process is not carried out correctly and in a timely fashion, it may result in cases being discontinued or the trial process being delayed through unnecessary adjournments. This leads to extra cost for the justice system and causes additional emotional distress to victims, witnesses, and defendants. Ultimately, the failure to properly disclose material can lead to miscarriages of justice and can undermine public confidence in the Criminal Justice System.

- 2.3 The subject of disclosure in respect of prosecution cases has received prominent national media coverage in recent months due to the catastrophic collapse of a number of very high profile cases involving allegations of serious sexual assault. These cases have led to significant criticism of the police and Crown Prosecution Service (CPS) because there had been clear opportunities to identify material which undermined the prosecution case that had not been taken and which eventually resulted in cases being dismissed. These revelations were made all the more concerning by the fact that, in July 2017, a joint inspection by Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) and Her Majesty's Inspectorate of Constabulary (HMIC) found widespread failures across the Criminal Justice System in respect of disclosure of evidence. The inspection found extensive issues with the way unused disclosure material is recorded by the police, with 22% of schedules found to be wholly inadequate. They found that often officers were just compiling lists, rather than explaining their contents to assist the prosecutor. Prosecutors, in turn, were not requesting a description of the items, preventing them from making any meaningful review. The lack of proper case supervision by the police was a significant cause for concern and 78% of the files examined were marked either poor or fair.
- 2.4 More recently a survey for the BBC of defence legal representatives estimated that some 80% had encountered very poor performance in respect of police and CPS management of disclosure.
- 2.5 Disclosure has long been an area of work that police officers have struggled with and, in recognition of this, it has been the practice in serious and complex investigations to appoint dedicated disclosure officers to ensure that all relevant material is managed as it must be.
- 2.6 The rise of social media, coupled with the use of smartphones, has compounded the issues that have long existed in respect of disclosure and have added to the complexity of crime investigations for offences of lesser gravity. It is common now for victims, suspects and their circle of contacts to have vast amounts of data stored on electronic communications devices. In cases involving parties who have been involved in an ongoing relationship, such data may span years; judgments regarding the extent to which any such material may need to be subject to disclosure has become increasingly complicated. The well documented case of Liam Allen illustrates the issues well. In Liam's case there were extensive messages shared between him and his accuser, which indicated a consensual sexual relationship between them. Police failed to examine records and thus failed to disclose relevant material, with the result that Mr Allen remained under investigation for far longer than should have been the case. His is just one of a litany of similar cases that have now come to public attention. In his case alone there were 57,000 text messages that were potentially all subject to the need to be disclosed. This gives some indication of the scale of the issue facing investigators and that volume of material is in no way exceptional.

3. Constabulary Response

- 3.1 In response to the HMIC/HMCPSI inspection of July 2017, the Eastern Region CPS hub, which covers Cambridgeshire, had instigated a regional improvement plan. This has placed the Constabulary in a stronger position than might otherwise have been the

case in order to comply with the national improvement plan that has subsequently been published by the National Police Chiefs' Council (NPCC) in response to the public concerns arising from the cases of Mr Allen and others.

- 3.2 An immediate review of our practices in respect of serious sexual offence investigations has been conducted by the force and this review provided positive reassurances that there are robust review processes in place to mitigate the risk of such occurrences in this force. In particular, a very positive working relationship exists with the CPS Rape and Serious Sexual Offences (RASSO) Team, which ensures appropriate levels of discussion and scrutiny so that such issues are well managed. Officers receive bespoke disclosure training in respect of Serious Sexual Offence investigations and this is being further developed in light of recent guidance published by the NPCC and the Attorney General. A review of historic serious sexual offence prosecution case files was undertaken and no issues of concern were identified locally. This does not however mean that there is any complacency regarding the importance of this topic.
- 3.3 On 26 January 2018, the NPCC and CPS published a National Disclosure Improvement Plan. Some months prior to the publication of this document, senior officers across Bedfordshire, Cambridgeshire, and Hertfordshire (BCH) and CPS colleagues had already identified prosecution case file quality as a matter of critical concern and had established a Gold Group, led by the lead officer for BCH Administration of Justice, ACC Jane Swinburne from Hertfordshire. This group now manages a working sub-group dedicated to the improvement of disclosure management across BCH (Operation Qualis). This group meets monthly to monitor progress and receives excellent support from CPS colleagues.
- 3.4 The Attorney General published legal guidance on disclosure dealing with the specific issues of large data sets on 26 March 2018. This guidance has been subject to much debate and discussion locally and nationally and has informed revised guidance published to officers in Cambridgeshire concerning the need for all reasonable lines of investigation to be followed in a sensible manner that is proportionate to the facts in each case.
- 3.5 The Gold Group has developed a BCH improvement plan for the management of disclosure issues and the regional improvement plan has been incorporated into this activity. Cambridgeshire Constabulary has a strong record for the management of criminal investigations and had invested significantly in this specific topic several years ago, including identifying and training a number of officers to perform the role of Disclosure Champions. It is fair to say, however, that this area of work had not received a concerted investment in recent times and as a result it was recognised that our working practices have not entirely kept pace with the developing complexity of this area of work. To remedy this, the list has been refreshed in the last month and a number of new volunteers added, all of whom (some 20 officers in total) have received enhanced face-to-face training to give them confidence in guiding colleagues to perform the function of Disclosure Officer.
- 3.6 A regional training event has been held for managers of covert policing operations and managers of covert human intelligence to highlight the specific complexities that arise

in respect of disclosure coupled with the need to protect the integrity and security of sensitive covert tactics.

- 3.7 A further 6 officers have been identified due to their particular interest in the subject to receive enhanced training as subject matter experts in the topic of disclosure. These officers are drawn from the Public Protection Department, Investigation Standards Department and Local Policing and will each receive a 10 month long distance learning course, leading to a recognised accreditation as disclosure experts. This will greatly enhance the availability of expert advice for officers dealing with the increasingly complex issues of disclosure.
- 3.8 To ensure that there is a sound baseline understanding of disclosure amongst all investigators, an e-learning package entitled “Fairer Investigations for Fairer Trials” is being rolled out. This training has been evaluated by subject matter experts working for Operation Qualis and is held to be of a very useful standard for improving practical working knowledge of the subject of disclosure. To date, some 14% of the Constabulary have completed this training and the completion of it will be mandated from May 2018 to ensure that we achieve an optimal level of completion of the training early in 2018/19.
- 3.9 Recognising that there is an ever increasing wealth of digital material being held on the communications devices of individual citizens, as well as increasingly in the cloud, the Constabulary has invested in its digital forensics capability. This includes trained technical staff who have a high degree of expertise at obtaining and analysing data from devices, but also technical equipment in the form of automated kiosks, which allow officers to download information from lawfully seized mobile phones, which can then be used in evidence or for disclosure where relevant. At present, capacity to undertake the required level of work is adequate. Where the force does not have physical possession of a mobile communications device, it still has recourse to access communications data via an application under the Regulation of Investigatory Powers Act (RIPA) to seek data from Communications Service Providers if it is deemed necessary and proportionate to do so. This is an area of growing demand and the Covert Authorities Bureau which manages this work is due to be the subject of a review of its demand and capacity in the coming year to ensure that it remains capable of meeting requirements.

4. Conclusion

- 4.1 The issue of disclosure is well understood locally and there are plans in place to address areas needing improvement through training and investment in people and processes. Local reviews have been conducted to ensure that robust scrutiny is in place both in force and with CPS colleagues. Local reviews of recent serious cases have been undertaken to ensure that there are no issues of concern and there have been no local challenges on the lines that have been experienced in other parts of the country to date. The Constabulary and BCH are investing in the development and training of local experts and training for the wider workforce of investigators. There are very robust governance measures in place and there is a very positive working relationship with CPS and defence colleagues.

5. Recommendation

5.1 The Board is recommended to note the contents of the report.

BIBLIOGRAPHY

Source Documents	NPCC Disclosure Improvement Plan: http://www.npcc.police.uk/Publication/National%20Disclosure%20Improvement%20Plan%20January%202018.pdf
Contact Officer(s)	Detective Superintendent Ian Middleton, Head of Investigation Standards Department, Cambridgeshire Constabulary