

National Disclosure Improvement Plan

Progress update

National Disclosure Improvement Plan Phase Two – Embedding Culture Change and Continuous Improvement

Phase Two of the National Disclosure Improvement Plan (NDIP) was published in November 2018, with the purpose of embedding the improvement measures introduced under Phase 1 and ensuring that the changes are having the intended effect throughout the 43 police forces and 14 CPS Areas. Each quarter we will summarise our progress against the actions in NDIP and this is our first Phase 2 update; following quarterly reports in summer and autumn, a more detailed annual review will be published in December.

Throughout the past year there has been a significant programme of work to bring about the necessary improvements in handling disclosure. As we have set out in our previous [progress reports](#) this work is not just about changing how individual cases are handled, but is shifting the whole culture within investigations and prosecutions. Through revised training and through national and local leadership we are emphasising the significance of getting disclosure right across the spectrum of criminal cases, from summary only offences dealt with in the magistrates' court, to cases in which digital communications between the parties are relevant and need to be considered, and those very complex cases in which there is highly sensitive material.

We intend that NDIP is a strategy that will have a material impact on the internal workings and external manifestations of investigations and prosecutions. Crucial to embedding an investigative mindset and continuous improvement throughout police forces and CPS Areas is the development of a culture where these traits are fostered and rewarded. Changes in culture require strong, coherent leadership. There needs to be clear, collective leadership at all levels, focused on performance and competence, and every bit as committed to this change as the individuals within our organisations who must manage disclosure effectively every day.

This is not a “quick fix” and systemic change will take time. However, we are encouraged that the Attorney General’s “Review of the efficiency and effectiveness of disclosure in the criminal justice system” noted the progress that has been made with the first National Disclosure Improvement Plan and our commitment to improve remains strong. Under Phase 2 of NDIP we are critically monitoring our disclosure performance throughout the life of a prosecution to assist our understanding of whether problems have been addressed or if they continue to persist.

We want to transform what we do and for this to bring about significant, lasting improvements, and so our focus is on achieving the following seven commitments:

- forging strong local partnerships so that police forces and CPS Areas deliver the changes required at every level;

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

The NDIP Board meets monthly, chaired jointly by the Director of Public Prosecutions Max Hill QC and Assistant Commissioner Nick Ephgrave, and continues to oversee delivery of the actions. It is the culture and behaviours of people throughout our organisations, coupled with our unified leadership, which will make the difference between success and failure in the longer term.

Measuring progress on delivery

There are 28 actions in Phase Two of NDIP and each of the recommendations of the Attorney General's Disclosure Review, and those of the Justice Select Committee, is reflected within it. Joint CPS, police and College of Policing thematic working groups are responsible for specific aspects of the NDIP, with each group assigned actions and recommendations that they are progressing. We are also supporting and co-ordinating with the work of the Criminal Justice sub-group created under the Attorney General's Review.

Tackling cultural issues which prevent police and prosecutors from discharging their disclosure duties properly in every case is essential. We are embedding a framework to enable us to measure whether improvements have been made and have created a dashboard of data to inform our performance management systems. This dashboard brings together the following;

- Five new prosecutor codes for use where an issue with unused material was the primary reason for a case outcome other than a conviction. In addition, for every case which does not result in conviction, irrespective of the primary reason, the lawyer must record whether issues with disclosure were a contributory factor in the reason for the outcome of the case. This is broken down by CPS Area and by police force and the data is recorded for both charged and pre-charge cases.

- The police Key Performance Indicators – these are 5 indicators of disclosure performance that all 43 forces have been asked to agree to adopt namely:
 - i. Schedule descriptions lacking sufficient detail;
 - ii. Schedules lacking items (relevance test inappropriately applied);
 - iii. Schedules missing;
 - iv. Schedules contain evidence; and
 - v. PNC prints missing.
- Cracked and Ineffective Trials - this provides the percentage of cracked and ineffective trials (by magistrates' court and Crown Court) that were recorded as M3 (Prosecution failed to disclose unused evidence) as a proportion of all trials and is based on data provided by HMCTS.
- Reasons Rejected triage – this provides a breakdown of the total number of files provided by the police to the CPS, those that were rejected and reason for rejection, which may include reasons related to disclosure.
- Individual Quality Assurance (IQA) - this provides results of the quarterly disclosure themes IQA assessments carried out by all CPS Areas, showing the percentage of questions relating to the handling of disclosure throughout the case that were fully met, not met (or not met for another reason).

We have acknowledged that our previous data collection fell short of allowing us to capture a full picture of our performance on disclosure, including in cases which continued despite poor handling during the life of a case. These new measures, and others that are being developed in the CPS case management system to monitor disclosure-related performance during the life of a case, provide metrics which for the first time give quantitative expression to the qualitative feedback we have previously received. The data now is much richer, deeper and far more comprehensive and cannot be compared with any previous performance indicators.

Reporting on the National Disclosure Improvement Plan must be open and honest, with a culture of continuous improvement to help us become more effective and responsive. While it may be tempting to put a rosy gloss on progress, we must take a forensic approach to the data, and work to understand what it will show. Being transparent and self-critical can be uncomfortable, for each of our organisations. But it is important to build trust in what we say on these issues.

In many respects, this will always be a work in progress. As systems and processes are operated by humans, there will sometimes be mistakes. And when that happens lessons will need to be learnt and failures addressed openly and honestly across all stakeholders, for it is

only in that way that the instances of error will be reduced. On each occasion mistakes do occur lessons must be learnt to prevent replication in future. It is of fundamental importance that all parts of the prosecution team operate together and with a spirit of openness and collaboration which allows the systems and processes to work seamlessly and effectively in arriving at the right result as often as is possible. We will take an open and transparent approach to making this data available and it will be published quarterly. We are committed to ensuring that errors in the disclosure process are driven down to their absolute minimum.

Key activity in this quarter

A full list of all of the actions under the NDIP Phase 2 is set out below but progress against key measures and initiatives in this quarter is as follows:

Action: Learning from the on-going pilots led by our cross-agency technology working group will be coupled with evidence from a more detailed wider landscape review undertaken by the NPCC Digital Policing Portfolio. As per the Justice Select Committee recommendation, this work will inform the Home Office, in consultation with the CPS, the National Police Chiefs' Council and the College of Policing, in their production of a comprehensive strategy to ensure that all 43 police forces are equipped to handle the increasing volume and complexity of digital evidence

On-going

We have expanded the range of pilots and are now establishing four separate streams to evaluate the potential of differing technical solutions, including both advanced analytics tools and Artificial Intelligence capabilities. These pilots are running with West Midlands Police, Metropolitan Police, Surrey Police, and the CPS.

The NPCC Landscape Review, which gives a high-level overview of some of the challenges and solutions in the market, has been issued in draft – it will be published once feedback from a wide range of stakeholders has been incorporated. In parallel the NPCC is working on an outline business case that lays out the strategic requirements across policing. The Policing Minister has proposed to the Justice Select Committee that this work forms the basis of the approach going forward, rather than the Home Office producing a standalone piece of strategy work.

The Attorney General's Office and Home Office are considering plans for a "Tech Summit" to take place later in 2019, bringing together experts from government, industry and academia to showcase some of the technologies in this space and engender collaborative working on these challenges.

Monthly calls take place across Policing, Home Office, CPS, HMCTS and AGO to support co-ordination of activities in the technology space.

The Digital Evidence Transfer Service (DETS), providing a mechanism for multimedia sharing from all police forces to CPS, is progressing towards the pilot phase, which will take place in four forces starting this Spring. For pilot, DETS will integrate with the CJS Common Platform in Merseyside to enable access to digital evidence (and unused material) for CJS users. In the other pilot areas as the CJS Common Platform is not yet available outside of Merseyside, and for non-Common Platform material in Merseyside, DETS will be developed as a standalone website to enable access for CJS users.

In parallel to the pilot phase, a review has been commissioned by the National Police Chiefs' Council (NPCC) for Digital First and the National Police Technology Council to work with CJS partners to assess the overall cost to the public purse of a single integration from policing into the CJS to share digital evidence (i.e. DETS) versus multiple, consistent integrations from policing. There remains a commitment from policing to deliver the capability to share digital evidence (and unused material) with the CJS, however there is a need to reassess whether this is best delivered as a national service, can be delivered by forces / groups of forces without DETS, or is delivered as a 'hybrid' of both.

The findings of the DETS pilot phase will be considered alongside the findings of the NPCC review by the Home Office and National Police Chiefs' Council, before a decision is made as to whether to roll out DETS nationally. Subject to this decision, national roll out of DETS is scheduled to commence in late July 2019. This will deliver an indirect benefit to disclosure by improving the flow of evidence through the criminal justice system.

Action: Focussing on disclosure in the magistrates' and youth courts.

On-going

Focussing on disclosure in the magistrates' and youth courts is a key commitment of NDIP Phase 2. In January 2019, we hosted a roundtable to discuss where stakeholders felt improvements to summary disclosure could be made. The Chief Magistrate attended, along with representatives from defence solicitors groups and the external bar. There was constructive discussion on the following themes:

- whether the requirements of streamlined disclosure introduced by Transforming Summary Justice (TSJ) are being met and what are the barriers if they are not;
- the court's role in the management of disclosure and whether the CPS engages effectively with the defence prior to the first hearing; and
- what is expected with regard to defence engagement.

This was a useful discussion and we are meeting again with the Chief Magistrate to discuss in more detail some of the suggestions, in particular as to the operation of TSJ in the Youth Court, which deals increasingly with very serious offences.

Disclosure in the magistrates' court is inextricably linked with case progression. The timely and effective handling of cases from charge to trial ensures that vital remedial action is taken, and wherever possible, an early resolution to issues is achieved. Proactive case progression acts to reduce the demand placed on the criminal justice system by limiting the incidence of cracked and ineffective trials, over-listing, and the late warning and de-warning of witnesses. We will therefore shortly be publishing a joint strategy on case progression building on work conducted by the police and CPS over the past six months to agree an effective approach to make improvements.

Action: Continue working with HMCTS to develop a section in the Crown Court Digital Case System accommodating the transfer of unused material and a record of disclosure decisions

On-going

The Senior Presiding Judge has approved in principle the creation of a new section within the Crown Court Digital Case System to hold disclosure information documents, such as disclosure notice letters, MG6C and Disclosure Management Documents. This will avoid disputes as to service of those materials and satisfy the prosecutor's obligation under CrimPR 15.2(2) to inform the court officer that the prosecutor has complied with the s.3 CPIA obligation to disclose prosecution material or serve on the defence a written statement that no such material exists.

The revised Plea and Trial Preparation form includes prompts on responding to the Disclosure Management Document and is anticipated to be available for use from Summer 2019.

The Senior Presiding Judge does not consider it would be appropriate for the disclosed materials themselves to be uploaded to a section to which the parties and judiciary would have access. However, her objections could be overcome by the provision of a further section to which the parties but not the judiciary would have access. This would be subject to a satisfactory data risk assessment to provide evidence-based reassurance that there will not be an increase in the risk of unintended disclosures of information. That data risk assessment has been proposed but not yet carried out by HMCTS.

To meet the requirements to place the DMD, letters and MG6c on the Crown Court Digital Case System (DCS) there will be a requirement for an interface between the CPS case management system and DCS. The relevant changes will be made in Autumn 2019.

Action: Rolling out the use of DMDs across Crown Court cases and in magistrates' and youth court cases in which there are significant volumes of digital material, communications evidence or third party material

On-going

Feedback from practitioners and the judiciary is that Disclosure Management Documents served ahead of the Plea and Trial Preparation Hearing are an effective tool for setting out the approach to disclosure and reasonable lines of enquiry in the case. Completing the document in partnership with the police focusses the attention of the prosecutor on what material may be outstanding and in understanding the approach taken to digital and third party material seized during the investigation.

The DMD has been used by the rape and serious sexual offences units and the Complex Casework Units since March 2018. We are evaluating this before developing criteria on the extension to further cases. This includes an assessment of the way the police are providing information on reasonable lines of enquiry to prosecutors and whether developing a Disclosure Strategy Document as a mechanism for this is an appropriate solution.

Action: Updating and nationalising police guidelines on data protection and the legal basis for data extraction from digital devices. We will work with victims groups and relevant Commissioners, including the Investigatory Powers Commissioner, to create clear explanations so that complainants and witnesses understand when, how and why their information will be accessed and processed

Complete

The CPIA Code of Practice requires an investigator to pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. As has been well documented, the way that people communicate with one another and use digital devices has changed significantly in a relatively short period of time and in ways that the authors of the legislation could never have imagined. There are competing interests and rights under the European Convention on Human Rights (ECHR) in this area: an accused has an absolute right to a fair trial under Article 6 ECHR which cannot be compromised but this must be balanced with the protections afforded to complainants under Article 8 ECHR from unnecessary and unjustified intrusion into their private lives.

We are explicitly clear in our guidance to police and prosecutors that seeking to examine the mobile telephones of complainants and witnesses is not something that should be pursued as a matter of course in every case. It is crucial that only the reasonable lines of inquiry are

pursued, to avoid unnecessary intrusion into a complainant's personal life. There must be something beyond a purely speculative enquiry.

We understand that how personal data is used can be a source of anxiety and we have developed new consent and information forms to provide clear and consistent information about how devices will be examined, how data will be used and the circumstances where it will be necessary to share it with the defence. It is important that those who report offences are not deterred by a perception about how their personal information is handled. They can and should expect nothing less than that it will be dealt with in a way that is consistent with both their right to privacy and with the interests of justice.

Action: Considering, in accordance with the timescales contained in the NDIP Phase One, whether a licence to practise could drive up police standards in disclosure

Complete

The College of Policing has considered the adoption of a licence to practise for disclosure and has decided not to do so now. The College is testing a new model for licensing during 2019/20 and it is not yet mature enough to accommodate a new policing discipline. There have been many changes to disclosure practice driven by NDIP and it is necessary to allow these changes to become embedded prior to assessing whether a licence could bring further benefits to policing. The ambition of NDIP is that disclosure is practised as a core part of an investigation, integral from start to finish. A licence could inadvertently create the impression that disclosure is for specialists, contrary to the central tenet of NDIP. The decision not to adopt a licence now will be reconsidered once all current changes have embedded.

Progress against all of the actions is in Annex A.

Next steps

The criminal justice system is a system of many parts and players and relies on the collaboration of all those that work within it, as well as the co-operation of victims, witnesses, police, defence lawyers, the judiciary and other experts to operate effectively. We are not complacent about the challenges we face in making improvements to our joint performance on disclosure. In some areas – documenting reasonable lines of enquiry and considering disclosure issues as part of every charging decision – we can already see change: in others, such achieving broader culture change, we know we have only just started.

In the course of the next quarter we will be evaluating the third party material protocol and National Disclosure Standards, agreeing the criteria for the extension of the DMD and the

associated information that the police provide on reasonable lines of enquiry and examining the processes and procedures on the handling of sensitive material. We are supporting the Attorney General's Disclosure Review team as they begin to test the types of material that might fall within the "rebuttable presumptions" ahead of a consultation and assisting the Home Office in their work to evidence the changing amounts of unused material that is now entering the criminal justice system.

There is much that we can be proud of, and hundreds of thousands of cases a year in which we get it right. We as police and prosecutors must continue to work together as a prosecution team with a clear and common purpose, building confidence in a system delivering a level of service that all involved expect, want and deserve.



Nick Ephgrave
National Police Chiefs'
Council



Mike Cunningham
College of Policing



Max Hill QC
Crown Prosecution Service

Annex A: Progress against the actions

Item	NDIP actions	Timescale	Status
	CAPACITY		
1	Learning from the on-going pilots led by our cross-agency technology working group will be coupled with evidence from a more detailed wider landscape review undertaken by the NPCC Digital Policing Portfolio. As per the Justice Select Committee recommendation, this work will inform the Home Office, in consultation with the CPS, the National Police Chiefs' Council and the College of Policing, in their production of a comprehensive strategy to ensure that all 43 police forces are equipped to handle the increasing volume and complexity of digital evidence.	On- going	Four pilots are being established to evaluate the potential of differing technical solutions. Monthly calls take place across policing, Home Office and CPS to support co-ordination.
2	Developing processes to ensure that when the investigator seeks a charging decision, whether from a supervising officer or from a prosecutor, information on the lines of inquiry that have been pursued will be supplied as part of the pre-charge file. Ensuring that investigators document what has been considered a reasonable line of inquiry in the circumstances of the case in all requests to prosecutors for charging decisions.	Summer 2019	An evaluation on the effective provision of reasonable lines of inquiry is taking place before these processes are implemented.
3	Continue working with HMCTS on developing a section in the Crown Court Digital Case System accommodating the transfer of unused material and a record of disclosure decisions.	On- going	The creation of new sections on the Digital Case System have in principle been agreed.
4	Evaluating the third party material protocol in 12 months' time and assess whether it is improving the quality of third party disclosure handling.	June 2019	A survey has been launched to will evaluate this.
5	Rolling out the use of DMDs across Crown Court cases and in magistrates' and Youth court cases in which there are significant volumes of digital material, communications evidence or third party material.	Summer 2019	Consultation has continued on the extension of the DMD. A proposed criterion of cases will be agreed.
6	Exploring standardisation of terminology in the preparation of disclosure schedules and exploring the recommendation of the Attorney General's Review that a	June 2019	To be taken forward via the Disclosure Manual.

	standard system be developed to provide more information about the nature of material and its potential relevance to the case.		
	CAPABILITY:		
7	Assessing the training needs of prosecutors – ensuring new starters have the opportunity to undertake disclosure training as part of their induction and that recruits receive training appropriate to their level of experience. Evaluate the training provided to prosecutors and plan accordingly for future training based on organisational assessment of user needs.	Spring/Summer 2019	Four new prosecutor training programmes are being developed, ranging from induction to advanced level. Training on the Revised Code for Crown Prosecutors is also on-going.
8	Continuing the development of the champions' network across policing and CPS, making sure that there is sufficient capacity and capability to drive change. Bringing together police and prosecutor champions with both local events and national conferences to further embed the force champions network and link that into the CPS champions.	June 2019	Local events are to be scheduled by May 2019.
9	Updating and nationalising police guidelines on data protection and the legal basis for data extraction from digital devices. We will work with victims groups and relevant Commissioners, including the Investigatory Powers Commissioner, on informing complainants and witnesses about how their information will be accessed and processed.	Autumn/Winter 2019	Complete.
10	Refreshing the Disclosure Manual to reflect new guidance and process under the NDIP.	Spring 2019	Completed. Refreshed disclosure manual was published in December 2018.
11	Developing training and toolkits on digital extraction and tools for analysis for investigators and prosecutors and raising awareness of developments with stakeholders across the criminal justice system.	Spring/Summer 2019	Think Digital" toolkit, to be released to investigators and prosecutors in March 2019.
12	Reviewing processes for handling sensitive disclosure outside specialist police units and the CPS central casework divisions. This will involve ensuring investigators and prosecutors have the	June 2019	A Handling Sensitive Material Working Group will examine current issues and recommend best

	knowledge and skills to deal with cases involving sensitive lines of inquiry and sensitive unused material.		practice.
13	Evaluating the impact of the National Disclosure Standards in the next 12 months to assess whether they have achieved improvements in the service of properly completed and endorsed disclosure schedules.	June 2019	A survey has been launched to evaluate this.
14	Considering, in accordance with the timescales contained in NDIP1, whether a licence to practise could assist to drive up police standards in disclosure practice.	January 2019	Complete.
LEADERSHIP:			
15	Utilising the CPS Disclosure Champions to perform a key role in compliance and assurance at a local level by undertaking local observation to assess change.	Spring 2019	Champions will analyse IQA data to focus on enhancing performance.
16	Encouraging the inclusion of disclosure as part of Continuing Professional Development for police practitioners and driving learning through all levels within forces.	On-going	The College disclosure product allows forces to adopt classroom based or individual training, supporting initial learning and CPD.
17	Raising awareness of disclosure improvement initiatives such as the Disclosure Management Document throughout the criminal justice system.	On-going	
18	Maintaining the leadership momentum in the CPS by repeating the Disclosure Seminar, chaired by the Director of Public Prosecutions on a bi-annual basis.	On-going	This will be held in the summer 2019
19	Focussing on disclosure in the magistrates' and youth courts.	Autumn/Winter 2019	On-going consultation.
20	Making disclosure improvement in the Area a specific objective for Chief Crown Prosecutors against which their performance will be measured.	Spring 2019	Complete. This is now a specific performance objective for the most senior leaders in the CPS.
PARTNERSHIP:			
21	Bringing compliance with disclosure obligations forward, for example in the provision of schedules at the pre-charge stage, has brought significant benefits in some case types. Senior police leaders and prosecutors will work together to identify where this could be achieved in each force.	Autumn/Winter 2019	On-going consultation.
22	Exploring the possibility of bringing a formalised structure to pre-charge	October 2019	On track. Consultation to take place with

	engagement between investigators and prosecutors and those representing the suspect, particularly in cases where there is a large volume of digital material that is potentially relevant. The potential to formalise this process is being considered with input from defence stakeholder groups.		representatives from defence, police and CPS.
23	Replicating the National Disclosure Forum at a local level to facilitate discussions between stakeholders on issues that arise locally.	May 2019	Local forums are to be scheduled by May 2019.
24	Working with the judiciary to embed the use of the Disclosure Management Document into the Better Case Management processes, including a section on the Plea and Trial Preparation Form.	On-going	PTPH form has been revised with anticipated roll-out from Summer 2019.
25	Building on the experiences of what works well in our most complex casework, a streamlined version of the Early Case Planning Conference will be adopted in all Threshold Test charged cases to facilitate communication between the investigative team and the prosecutor.	Spring 2019	On-going and a draft product is currently out for CPS consultation.
GOVERNANCE:			
26	Delivery against the commitments in this plan will continue to be overseen by the National Police Chiefs' Council, the Director of Public Prosecutions and the College of Policing. An update on progress will be published quarterly.	On-going	The Delivery Board meets monthly.
27	Improving the granularity of data captured in cases which did not result in a conviction but where disclosure was the primary or contributory reason for the decision to stop the case.	Autumn/Winter 2019	Complete.
28	Developing automated data collection in relation to key stages of the disclosure process which will show levels of compliance by both police and CPS such as the identification of reasonable lines of inquiry (pre-charge), creation/management of the Disclosure Management Document/Disclosure Record Sheet and completion of schedules.	Autumn/Winter 2019	Updates to CMS due for release in Summer 2019.