

Meeting with [REDACTED]

Inspector: [REDACTED]

07.03.2017 10.30am

Judge informed regarding the scope of disclosure inspection. The Judge has received feedback from other Judges.

Judges view is that there have been significant disclosure issues in the last year or two. System is not working properly. Two cases are currently running in the court of appeal – 2 murders and a perverting the course of justice due to major failings in disclosure handling [REDACTED]

Disclosure issues can take up a vast amount of court time. One example given was of a conspiracy to murder which took a month of court time prior to the Jury being sworn.

The Judge highlighted another case which is due for trial on Monday. This case is one of Murder R v [REDACTED] Judge has received an email that CPS will serve phase 5 of disclosure this morning, and final disclosure at the end of the week which is one day before the commencement of the trial. The case is listed for trial for 4 weeks. Judge has not seen any of the unused material. On a previous occasion the Judge has asked the defence what the issues are in the case that they require the prosecution to address. The Defence stated that the requirement is detailed in the Defence statement. This simply requests "all unused material". The Judge confirmed that this was not a Complex casework case and one that fell into the normal CPS Crown Court section. I informed Judge that as we are doing observations next week, an Inspector may be sat in the court to view this case.

The Judge states that all major trials have issues and cost the system huge amount of time.

The Judge comments that often there is blanket disclosure. The effect of this is that the Defence then seek adjournments to examine the material. Often none of which was actually supposed to be disclosed.

The Judge has some sympathy for the prosecution due to the vast amount of unused material that has to be examined. In one case, 75 DVDs were handed over as unused but CPIA was not complied with. The Judge also commented that telephone evidence also causes big issues. Defence often request information regarding other phones that were seized by the police and the prosecution hand over vast amounts of data. This then represents a vast amount of time and expense that defence have to examine the material. Again material that did not actually fall to be disclosed. Defence do not do any favours to themselves.

Proper engagement between the Prosecution and Defence are rare. The Judge sees no engagement as to the level expected by the Lord Chief Justice.

The Judge speaks of a pilot ran some months ago where a form was produced where in complex cases the Defence and Prosecution had to complete. The Judge believes that this was a good method of addressing the parties to engage with the disclosure process to iron out issues and to focus the

minds. The Judge would suggest this as a way forward. The Judge is unaware of the result of the pilot.

With regards to sex cases – the Area has improved with respect to enforcing the protocol and seeing a better grip on unused material in these types of cases.

The Judge also commented that the handling of disclosure on the more volume type of Crown Court cases is better. This is probably due to less unused material and the disclosure schedules having little on them due to the size of the cases. The Judge comments that with the bigger cases, you have to just get on with it, especially due to the time set aside for the trial.

The Judge made little comments on sensitive material handling apart from PII applications are usually late. Although the Judge commented that the trial judge needs to also consider the application during the trial to ensure that the decision is kept under constant review.

The Judge engages with the CCP every quarter and can engage via email if necessary. The Judge finds this engagement helpful. Engagement with CPS also occurs during court user meetings. The judge commented that he feels that he CPS is well led.

Judge commented that there are occasions when defence supply the DS late but the judge view is that his experience has taught him that there is rarely something in the DS that will trigger a further line of enquiry and the disclosure should have been completed at the initial stage. Defences are obvious from the outset.

The Judge has no concerns with the present disclosure regime and feels that it is fit for purpose.

Interview with [REDACTED]

HMCPSI: [REDACTED]

He asked [REDACTED] and [REDACTED] if they were aware of any issues. [REDACTED] advised he had a case involving a large amount of social media and phone contact material. The phone material touched on the couple's relationship which was an issue in the case. The material went back a number of years which was all in polish. They disclosed some material covering a short period before the murder but the rest was not disclosed to the defence or translated. The jury had to be discharged and a re-trial ordered. The foreign language issue may have been the cause of the attempted short cut.

[REDACTED]

The court does not get many disclosure problems, probably due to the nature of the work. Cases are generally very well prepared so disclosure issues do not happen often.

There have been a few examples of defence making section 8 applications, but in those cases it transpired there was no material that should have been disclosed. In terrorist cases there are considerable sensitivities and prosecution are often reluctant to disclose material. The judge ordered further disclosure in one trial.

He was not aware of any change in the number of PII applications being made. He has been at [REDACTED] for 5 years and applications are fairly rare. He believes this is because lawyers understand it better. Instead of trying to PII all sensitive material they now only make applications on material that could undermine or assist. There are a very small number of anonymous applications done.

He gets the impression that there are disclosure issues at other courts. He spent 4 months as the acting Resident Judge at [REDACTED] there were constant applications for extensions to deadlines. The police and CPS generally blamed each other for disclosure problems but he could not say who the main cause was.

He has no specific experience of digital working or DCS. The MG6C would be a useful document for judges to be able to look at but due to the throughput of cases a judge would rarely look at it unless there was a specific reason to do so.

He was unable to say if Higher Crown Advocates (HCAs) were better equipped to deal with disclosure issues than Counsel. HCAs are generally better than they were in the past but they get very feel at [REDACTED]. He would expect an HCA to know the issues better than Counsel if it was their cases but not if they had been bussed in to deal with the case that day. There are a certain amount of fishing expeditions from Counsel but it depends on the individual. Advocates are generally of good quality.

[REDACTED] 24th January 2017

Meeting with Judiciary

Present:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Introductions by [REDACTED]

We are here to look at the quality of disclosure from the police and CPS perspective. We are speaking to managers and staff around the country with a view to identifying lessons to be learned. Explained that we do not have a view, but we are informing ourselves as we speak to CPS staff, police and the judiciary about the way that disclosure is handled.

In this thematic inspection, we are looking at the 'volume' Crown Court cases and not the larger/more serious matters that are dealt with by SC/CCU etc.

We would like to know if the judiciary has a view on the way that disclosure is handled so that we can consider any comments as part of the final report. We are observing courts and speaking to a wide range of people in order to get a snapshot of what is going on in the Areas on a day to day basis. If there are themes identified, this will be considered as part of the final report.

What is your view on the way that disclosure is handled in this court?

The larger / more complex cases are usually handled a lot better than the 'volume' offences. The police appear to be a lot less confident in routine cases and we get the impression that they are not really sure what they are doing.

[REDACTED] The CPS seem to be recognising that it is simply not good enough to be signing off inadequate schedules. I have seen counsel wrong footed due to inadequacies in the schedule . Also Counsel need to see the material itself. It is not appropriate for the CPS lawyer to tell

counsel that disclosure has been dealt with and that it is all in hand. Counsel need to see the material and only then can s/he discharge his/her duty properly.

[REDACTED]
I recently dealt with a rape trial (R v [REDACTED] where there had been a fundamental breakdown in communication between counsel and the CPS. Counsel was not made aware of a raft of unused statements and this caused significant problems.

[REDACTED] Things are really sliding back. There does not appear to be any real rigour in the way that unused material is dealt with.

How do you as Judges approach the management of disclosure issues?

We have compliance hearings where issues cannot be otherwise resolved. But we do not see the unused material schedules and therefore we only become aware of issues where there are problems. It would help to be able to see the non-sensitive schedule, as we would recognise that where there are very few items listed, there is likely to be an inexperienced officer dealing with the case. It isn't clear why we cannot view the non-sensitive schedule on DCS. It would be very useful to see the unused material on DCS. We would then not be in the dark.

All 3 judges felt that the CPS lawyer should involve counsel a lot more in disclosure issues. [REDACTED] [REDACTED] repeated that prosecution counsel should go through all the unused material. As there is no reviewing lawyer in court and often there isn't a paralegal either, it is often left to the prosecution advocate and they need to be fully informed of what is in the background.

Do you find that there is a difference in the service provided by Crown Advocates?

There doesn't appear to be any difference. There are few Crown Advocates. The one that is here a lot is a nice enough chap.

Have you experienced any issues arising out of the increase in electronic material? Are there any issues that you can recall dealing with regarding social media?

Phone evidence is always an issue and in particular the downloads. But the amendment to GFS will address that.

What about any issues from the defence?

The defence statements are often unhelpful but there is a sense that nobody is bothering to take issue with these things any more. Gone are the days when we used to have section 8 applications. It is surprising that so few applications are made. Especially in drugs cases where you often expect issues to arise.

What about sensitive material?

It appears that the police are not providing the information. Prosecutors very rarely make PII applications any more and where they are made, they are not really cases where a PII ruling is appropriate. It feels as though things are not being properly considered and there is a danger in the current approach because there is a reduced opportunity for the judiciary and prosecution counsel to get involved. We don't have PII applications or s.8 applications and this is worrying. There is a need to bring the rigour back. There is also a sense that the 3rd party protocols are not working.

[REDACTED] 26th January 2017

Meeting with [REDACTED]

Present:

[REDACTED]
[REDACTED]
[REDACTED]

Introductions by [REDACTED]

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What is your view on the way that disclosure is handled in this court?

In my experience there is a failure to grip disclosure issues at an early stage.

I recently dealt with a trial [REDACTED] There were PII issues which should have been dealt with a lot sooner than they were.

I also recently had a 3 handed case where the defendants were separated. Def 1 was ready for PTPH but the other two were still coming through the system. There was a wealth of mobile phone evidence and there was an application to delay matters against Def 1 so that everyone could be dealt with together. It was frustrating that the case against the defendants was not better coordinated as there wasn't that much of a delay between the defendants being charged, yet it caused a significant delay in terms of case progression.

I find that material is regularly served very late and this then causes problems because the defence don't comply with their orders as they say that they are still awaiting outstanding evidence and information.

Generally, disclosure appears to be treated casually. [REDACTED] is working in the Magistrates Court. He says that they no longer have MG6 schedules in the MC and I fear that this is the way things will go in the Crown Court.

Judges see very little in relation to disclosure unless things go wrong. It would be helpful if the MG6C was uploaded onto DCS as Judges and counsel are often working in the dark. Why isn't it available for us to view on DCS?

Do you have any views on how the increase in electronic/digital material has impacted on disclosure?

We have an awful lot of CCTV and body worn footage. This has had a huge impact. It is never provided in time. We don't understand what the issue is. Surely the CCTV is seized at the time so why is it never available? It is routinely late and often it isn't provided at PTPH. We lose out on early guilty pleas because of this. It wastes time and resources.

How confident do you feel about the handling of disclosure by the prosecution and police?

Not confident. There appears to be a huge communication gap. We don't know who isn't doing what. Its difficult for us to manage things because often the officer will be able to provide answers but we don't want to ask the officer to come to court unless we have to.

What are your views on Counsel and Crown Advocates? Is there any difference in terms of their performance re: disclosure?

Not much of a difference. Counsel will have flagged issues up if instructed early enough. But generally there is no difference between counsel and CA's. I feel a lack of ease with both as its hard to get to the bottom of who hasn't done what.

Management by the Judges – how do you achieve this?

We will adjourn cases and insist that certain things are done. We will also escalate issues to more senior members of the CPS so that we can have an explanation. Finally, unless it can be avoided we ask the OIC to come to court. Things usually move by that stage. Really the parties should be managing the processes for themselves. It isn't for the Judges to nanny the parties.

Disclosure is a perennial issue. It is difficult to identify precisely what the issues are. We have non compliance hearings and these are almost always because of disclosure. Nine times out of ten there are items outstanding and the defence cannot comply with stage 2 because of this.

We must keep a judicial eye on disclosure but we must also ask ourselves if it is really relevant to an issues that the jury will need to determine. If not, we don't pursue it.

What about sensitive material?

I had an issue in relation to a text but nobody would tell me who the information related to.

Would you like to see anything specific happen in relation to disclosure?

I think that we need to regain confidence and the whole process needs to be approached with more rigour.

I think that senior lawyers should oversee matters in more detail. They should consider the unused material and approve decisions made by the reviewing lawyers.

Finally, how is your relationship with the CPS? Is there any liaison between the judiciary and the CPS?

Yes. [REDACTED] and I am going to reintroduce meetings with the CA liaison chap. I am also going to be meeting with [REDACTED] BCM says we should. WE will consider issues local to our court.

The theme of withholding information is very worrying. There seems to be an idea that the defence is not entitled to see things but where the defence press matters, this yields results. The policy of withholding matters is very dangerous. Its this idea of 'why do you need to see more' is prevalent. The CPS lawyers are under a lot of pressure and are very hard pressed. They have too many cases and this may be why things are as they are.

Interview Notes

- Op [REDACTED] unused material access to material was exemplary
- Stack them high sell them cheap cases – there are serious issues with this, it makes trials become unattractive.

Court tries to make sure certificates are completed and make sure there are no disclosure issues, so there is a case progression role for the court to play. But the court shouldn't have to play this role. The court shouldn't have to ask where evidence is and where items on the unused material schedule are. – He said this happens often.

Failings within defence community.

More common problem,

- Lack of defence engagement.
- Unused material issues
- No DS

Magistrates meant to pin down DS issues

- Not lack of issue – forcing defence to engage – hardest problem
- PTPH MG6C could be discussed – not a bad idea
- Issue at PTPH – Common platform (should improve) already on DCS on CCTV, ABE. Body Cam. (IT problems)

Real issue in case progression isn't lack of disclosure, The issue is forcing the defence to engage.

- Priority – proper defence engagement, proper disclosure that defence want to rely upon as early as possible. Earlier stage establishes issue in the trial.

Effectiveness of unused material schedules – to some extent that issue is irrelevant to CPS getting the first part right. They can't get it right in volume cases often due to compatibility issues.

Effectiveness of disclosure – the first part is more relevant – volume cases and IT compatibility issues

Mutual trust breaks down between defence and Police in the pre-interview stages. Changes on bigger cases. This case then runs its course with the same atmosphere. I won't show certain things until the last moment. (DISCLOSURE DOCUMENT)

*Tension within disclosure relationship:

[REDACTED] Would go frequently to police station. Present to police officers role of defence lawyers for 10 or 1 years.

Police do not trust defence solicitors at police station – lack of trust in terms of what's disclosed before interview creates an atmosphere in the case where there is not mutual disclosure of what crown can prove at early stage.

- Reluctance to schedule items – no understanding but ask yourself why. Unethical solicitors – legal privilege

What we should concentrate in disclosure is good strong independent reliable evidence. In most volume cases perfect evidence doesn't exist but we need to concentrate resource far more on capturing good evidence showing defence has committed offence.

Culture issue with way police approach whole evidence gathering process. But there are defence practitioners who have cleared the pitch for the defence community by behaving outrageously at the police station. E.g. defence comes to police station

TALK TO [REDACTED]
 Talk to [REDACTED] position: she works in CPS in [REDACTED] sits on committee 'Trial review'; they meet every month or two. Identifying ineffective trials and for previous period the reason for the ineffective trials. The reasons are numbers – sometimes non appropriate disclosure is the issue [REDACTED] prepares report when it is a disclosure issue.

[REDACTED] doesn't think there is a theme, he thinks its failings on an individual basis and the officer concentrated probably required more training in that area.

Officer requires a bit more training R v [REDACTED]

[REDACTED]

[REDACTED] OIC won't make error again – what effective procedure?

- [REDACTED] This allows for the party at fault to learn and never make mistake again, not with the intention of shaming them.

Compliance court?

Judge has case progression system . One of court Clerks checks whether they have received on DCS these certificates of readiness. Set up chambers as a court room and bringing in non-compliant hearings.

Judge personally reviews floating trials every week, looking for defence statement and certificate of readiness. Then it's off to non-compliance hearings.

- Judge would be surprised if there were not disclosure issues in every case.
- Looked at this and came up with BCM. Results in a culture shift.

Digital unused material:

Its more problematic simply by virtue of volume.

Security of sensitive material?

There are issues.

If a defendant receives a text as an informant, we need to think through where that goes.

Area of sensitive material. A place on digital file where sensitive material can be kept for viewing would make sense. Digital file does have security to ensure some material can only be read by specific people.

Schedule going on DCS is a good idea (redacted) plea – judge said was good)

Defence say they haven't served defence statement because they don't have schedule. This is not a good reason. Defence say we should have credit for guilty plea because this was served late.

Lack of defence engagement is a clear difficulty that delays cases.

There needs to be cultural change – it needs to come first from police from initial disclosure exercise, pre charge. Police officers feel they can trust a Judge as an ethical person, and are more prepared to disclose.

Trying to enforce things on defence community is hard. Members are desperate and the law society cannot control all its members. Defence solicitors are desperate so imposing regulatory requirement is difficult.

Cps communication?

Hopes it's wholly effective.

Overall there are difficulties and training issues but not so much that there can be any overall drawn theme.

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S8 – mentions for non-disclosure they do happen – they are in the lists every week but I believe BCM DCS will deal with this. Access to files will be easier. Schedules on caselines – why not agree with they should be on there – it won't cure it and may isolate. Facility for it

PII are about the same frequency.

Benefit system – often the Defence say we haven't served a because no schedule. Defence will say we should have more credit because it was served late. Not an argument, if there is to be a dispute then it is answered definitively when it was served.

Transitional period of IT systems from paper to digital.

1/ Requirement for cultural change pre – interview disclosure – experience feel they can trust me and I am more prepared to disclose, received confessions and tic schedules

2/ Can't enforce things on Defence community – law society cannot control members, can't make them engage better or impose a regulation, defendant are even more difficult to control. Credit for plea for adequate disclosure – may improve marginal improve – early disclosure may help.

[REDACTED] liaison with CPS – effective. I hope its wholly effective – [REDACTED]
[REDACTED] gone to [REDACTED] should all say approachable, CPS are very good.

Embedded in the sense that people know about it – real issue is the effectiveness for the trial – principle concern is to reduce the ineffective trial list

Funding?

Defence found cuts harsh - background

[REDACTED] 28/02/2017

Introduction

Improvements can be made

Op [REDACTED] unused material access to material was exemplary

Serious issues in stack em high sell em cheap

Case progression court has a role to play

Should they play a role?

Failures in a defence community

Unused material – lack of defence engagement

No DS

Magistrates meant to pin down DS issues

Not lack of issue – forcing defence to engage – hardest problem

PTPH MG6C could be discussed – not a bad idea

Issue at PTPH – Common platform (should improve) already on DCS on CCTV, ABE. Body Cam. (IT problems)

Proper defence engagement – what recourse does the court have to promote this engagement?

Effectiveness of disclosure – the first part is more relevant – volume cases and IT compatibility issues

Mutual trust breaks down between defence and Police in the pre-interview stages. Changes on bigger cases. This case then runs its course with the same atmosphere. I wont show certain things until the last moment. (DISCLOSURE DOCUMENT)

Rely on good evidence not on disclosure tactics. Perfect case and often this doesn't exist – concentrate resources rather than

Informs how the officer then responds and includes how the disclosure process works – Don't want to disclose this to defence. Reluctance to schedule items – no understanding but ask yourself why. Unethical solicitors – legal privilege

You cant look at disclosure in isolation, how gather the whole evidence and investigation.

[REDACTED] works for the CPS – sits on the ineffective trial review committee sits every 3 months and identify the reason – sometimes numerous reasons – occasionally disclosure – [REDACTED] prepares a report [REDACTED] individual reasons no theme, tried to find a theme for a failure to disclose. Officer requires a bit more training R v [REDACTED]

Compliance court? Yes court utilisation – chambers et up as a court – non compliance hearings where defendants don't need to be there – come into my chambers. Get picked up by our case progression system court clerks checking to see if DS via DCS. 2-4 weeks in advance _ I personally review every floating review cert of ready DS – then goes into compliance court 15 cases per week then goes to compliance hearing.

On the day disclosure – yes it happens – virtually every case there is probably in most cases. Leveson looked at this and came up with BCM. Results in a culture shift.

1-5 3.5 reasonably ok.

S8 – mentions for non-disclosure they do happen – they are in the lists every week but I believe BCM DCS will deal with this. Access to files will be easier. Schedules on caselines – why not agree with they should be on there – it won't cure it and may isolate. Facility for it

PII are about the same frequency.

Social media being handled ok? We do have regular issues – seek to use it as cross examination – understand reluctance if not relevant.

If we let them have everything – I haven't ever prosecuted. NO DS on DCS what choice does the prosecutor have?

Positive about digital working will improve disclosure, where's cert of Readiness

Success of compliance court – OIC attends?

Informant receives a text – where does it goes – not on DCS. Sensitive material kept for viewing.

Benefit system – often the Defence say we haven't served a because no schedule. Defence will say we should have more credit because it was served late. Not an argument, if there is to a be dispute then it is answered definitively when it was served.

Transitional period of IT systems from paper to digital.

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[REDACTED] should all say approachable, CPS are very good.

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Funding?

Defence found cuts harsh - background

7/3/17.

Interview with [REDACTED]
 telephone interview
 10-30 am

Inspector [REDACTED]

Intro re Disclosure Inspector:

- Joint inspection with HMCPSE + HMIC police inspected
- Visited 4 Areas Lads, Yorkshire, Humberside, Brumby + Manchester
- Read files / and conducted interviews / and court observations
- More court observations next weeks.
- Discussion with CPS disclosure Champions across all Areas.
- Discussions with Police + CPS HQ reps.

Own view of experience in [REDACTED] last year
 or two → abt of problem with disclosure
 - system not working problem

2 case in court of Appeal - 2 months +
 personally dealt of justice.
 [REDACTED] in murder trial.

Major failure in disclosure

Company of murder - worth of time used
 and before Jury

Murder on Monday → before is with me
 email - CP will serve phase 5
 of disclosure this morning - Part
 disclosure - end of week one day
 before trial →

All major trials - this is what we
 have - have amount of time

[Handwritten mark]

D.S. - ~~statistic~~ ~~document~~ paper - scattered in
 a weed case - 75 DVDs ->

Not copyrighted with.

Some symmetry - vast amount of

* Blanket disclosure -> takes debate.
 the time to review everything 30 weeks
 time.

R.V. ~~██████████~~ -> looked for trial by weeks
 on Monday

Defense counsel - take notes.
 leading counsel or

-> Judge ^{not} seen just interested.

Major good reason - typical public
 prosecution not disloyal - like disloyal
 - large opportunity ->

Debate on other hand - R.V. ~~██████████~~
 what issues -> they want press to
 address - they said D.S. - all used
 statements.

1 bed down little experiment.

- 1 see us case with the bird & engaged just Lord Justice.

- Pilot with dictation book - Complex eye pilot book - Defam + 8th hand & Pilot in - rest.

→ all heard request of that pilot

→ requires engagement between ...

→ Case already going very much to put case back.

When case in Crown court - another case from which as much → judges, better *McGee. Sex cases - payment in [redacted] had got better.

→ BCM - Stage 1 → in 28 days → not all

Scrutiny national:

- o Almost late
- o P.I.I. - really to be done by trial judge even if before
- o Possibly late.
- o Single too late - previous case not amount of section.

Meetings

not raised with CCP - lots of things we @ through - Yes work closely with CPS. → not raised with CCP You must do →.

Best works with CPS
 Cover and 1 - quality.
 + email coverage. - telephone

Judge [redacted] - [redacted] → all [redacted].

- Court use [redacted] - [redacted]

Large case - have to get on with
it - end a time with the

at Bar - usually correct - good at
it -

fault lies - ?? don't know.
debtor says → not primary debtor

→ Yes take D.S. → number of
reasons

Our view is that very few
cases - where D.S. raises that
might obvious from the fact
sheet. obvious what debtor is going
to be.

An example - Probe rely on telephone
evidence - briefly - cell etc - part of
telephone calls

- One stage be served
- debtor may or may not engage.
- All relevant data phone that phone
→ husband of judge → at the
phone → usually served.
bullet of interest -
- increased cost - disbursement.

Debtor do not do any business
themselves

Form

- Judge has standing to sue →
promote law etc.
- Peter shows best with vast records
in Somalia. - felt sorry for her.
- I have no problem with
CRS - well led. + efficient
Matters it → just gets it done
from police.
- Resources → focusing on ~~the~~ CR.
- ↓
 Peter's partner
- Present system - better than original
system →
 think, technical it is right.
- NA just a continuation of process -
do not tell her process what they should be
doing etc.
- Peter's defence.
- Tony may do better → in public.