



Disclosure of Evidence in Criminal Proceedings

Summary

Disclosure of evidence refers to the process by which someone charged with a criminal offence is provided copies of, or access to, material from the investigation that is capable of undermining the prosecution case and/or assisting their defence.

Disclosure has been the subject of scrutiny for over a decade. Several high-profile cases have put disclosure practices into the spotlight and led to reviews across the criminal justice system. Two such cases are *R v Mouncher & Others* [2011] and *R v Allan* [2017]. Following the collapsed trial of *R v Mouncher & Others* [2011], the Government commissioned a QC-led investigation. It also requested a joint inspection of police and Crown Prosecution Service (CPS) compliance with the disclosure of unused material provisions. The resulting reports, the *Mouncher Investigation Report* and *Making it Fair*, both published in July 2017, gave a total of 26 recommendations.

In December 2017, the collapsed trial of *R v Allan* [2017] prompted the Metropolitan Police and Crown Prosecution Service London to conduct a joint review of the disclosure practices. The review recommendations were outlined in January 2018. Concurrent to this, the joint National Police Chiefs' Council, College of Policing and Crown Prosecution Service's national disclosure improvement plan sought to further implement the *Making it Fair Report* and *Mouncher Investigation Report*. It made a joint commitment to improving the way duties of disclosure were exercised. The national disclosure improvement plan, now in its second phase, has seen the implementation of key recommendations.

The House of Commons Justice Committee launched an inquiry into the disclosure of evidence in criminal cases in January 2018. The final report was published in July 2018. It provided recommendations for several partners across the criminal justice system. The Crown Prosecution Service and National Police Chiefs' Council submitted a joint response to the Justice Committee in October 2018. Whilst the Justice Committee awaited a government response to the inquiry findings, the Attorney General, Geoffrey Cox, published the *Review of the Efficiency and Effectiveness of Disclosure in the Criminal Justice System* in November 2018. The review provided a plan of practical actions alongside the improvements being delivered by the national disclosure improvement plan.

The Government responded to the Justice Committee inquiry on 18 December 2018. This was a cross-government response that addressed Justice Committee recommendations made to the Attorney General's Office, Ministry of Justice and the Home Office. The Government confirmed a joint commitment to delivering sustainable culture change and improvement.

Claire Brader | 10 January 2020

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Disclosure Procedures

Disclosure refers to the process by which someone charged with a criminal offence is provided copies of, or access to, material from the investigation that is capable of undermining the prosecution case and/or assisting their defence.¹ To help guarantee a fair trial, investigators have a duty to pursue all reasonable lines of enquiry, which includes investigating matters that may point towards innocence as well as guilt.² Disclosure officers will consider ‘the disclosure test’ provided for in the Criminal Procedure and Investigations Act 1996. The test states that they will provide relevant material to the defence if “the material might reasonably be considered capable of undermining the case for the prosecution against the accused, and/or of assisting the case for the accused, and which has not previously been disclosed”.³

Catalyst Cases

Disclosure of evidence has been the subject of scrutiny for over a decade. Several high-profile cases have put disclosure practices into the spotlight and prompted reviews across the criminal justice system. Two such cases are *R v Mouncher & Others* [2011] and *R v Allan* [2017].

R v Mouncher & Others [2011]

On 14 February 1988, Lynette White was murdered in Cardiff.⁴ Five men, who later became known as the ‘Cardiff Five’, were prosecuted. Two received acquittals and three were wrongly convicted of murder in 1990.⁵ The prosecution evidence comprised of accounts from eyewitnesses, confessions to civilians, and one recorded confession by defendant Stephen Miller to police officers. These convictions have since been cited as “one of the worst miscarriages of justice in our criminal justice system”.⁶

The Court of Appeal quashed the convictions in 1992. The main eyewitnesses and civilians had withdrawn their evidence, and it was alleged that Stephen Miller’s confession had been obtained as a result of “bullying, hostility and intimidation”.⁷

Following advances in DNA technology, a fresh suspect was identified in 2003 from blood found at the scene and pleaded guilty.⁸ Jeffrey Gafoor was convicted of Lynette White’s murder and received a sentence of life imprisonment.⁹

Following Gafoor’s conviction, doubts were cast over the original murder investigation. This led to

¹ Attorney General’s Office, [Review of the Efficiency and Effectiveness of Disclosure in the Criminal Justice System](#), November 2018, Cm 9735, p 5.

² Ministry of Justice, [Criminal Procedure and Investigations Act 1996 \(section 23\(1\)\) Code of Practice](#), March 2015, p 6.

³ Crown Prosecution Service, [Disclosure Manual](#), revised 26 February 2018, p 5.

⁴ *Guardian*, [‘Witness Hacked to Death’](#), 16 February 1988.

⁵ Richard Horwell QC, [Mouncher Investigation Report](#), July 2017, HC 292.

⁶ *ibid.*

⁷ *ibid.*

⁸ *Independent*, [‘Convicted: The Killer Who Saw Others Jailed for His Crime’](#), 5 July 2003.

⁹ Jason Bennetto, [‘Convicted After 15 Years: The Prostitute’s Killer Who Watched Three Men Go to Jail for His Crime’](#), *Independent*, 5 July 2003.

the *R v Mouncher & Others* [2011] trial of eight former police officers charged with perverting the course of justice. However, following a “prosecution failure to disclose certain evidence”, the trial collapsed.¹⁰ This prompted the then Home Secretary, Theresa May, to call for an independent, QC-led investigation in 2015.¹¹ The *Mouncher Investigation Report* was published by Richard Horwell in July 2017 with 17 recommendations.¹²

Concurrently, Her Majesty’s Crown Prosecution Service Inspectorate (HMCPIS) and Her Majesty’s Inspectorate of Constabulary (HMIC)¹³ conducted a joint inspection of police and Crown Prosecution Service compliance with the disclosure of unused material. The inspection, which examined 146 crown court case files across seven police force areas, identified several issues that were contributing to widespread disclosure failures by both police and prosecutors.¹⁴ The *Making it Fair* report, published in July 2017, gave recommendations for police and CPS to address alongside the *Mouncher* recommendations.¹⁵ The recommendations included:

- the National Police Chiefs’ Council (NPCC) and College of Policing introducing a national training programme for disclosure;¹⁶
- within 12 months the College of Policing should provide guidance on training. This is to enable police forces to provide effective disclosure training to all staff involved in the investigation process;¹⁷
- within six months police forces should improve their supervision of case files. This process should be supported by the requirement for supervisors to sign the disclosure officer’s report each time this is completed.¹⁸

***R v Allan* [2017]**

The trial of *R v Allan* [2017] is a recent example of a collapsed case following disclosure failings. Liam Allan, a defendant charged with rape and sexual assault, was acquitted in December 2017 following the discovery of text message evidence that had not been disclosed.¹⁹ The evidence, which undermined the prosecution case, had not been disclosed by police to prosecutors or the defence until the day of trial.²⁰ Once it was disclosed, the CPS decided there was no longer a realistic prospect

¹⁰ Steven Morris, [‘Largest Ever Trial of Police Officers Collapses’](#), *Guardian*, 2 December 2011.

¹¹ House of Commons, [‘Written Statement: Announcement of a QC-led Investigation into the Collapse of the 2011 R v Mouncher and Others’ Trial](#)’, 26 February 2015, HCWS312.

¹² Richard Horwell QC, [Mouncher Investigation Report](#), July 2017, HC 292, p 282.

¹³ Now Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS).

¹⁴ Her Majesty’s Crown Prosecution Service Inspectorate and Her Majesty’s Inspectorate of Constabulary, [Making it Fair: A Joint Inspection of the Disclosure of Unused Material in Volume Crown Court Cases](#), July 2017.

¹⁵ *ibid*, p 4.

¹⁶ Richard Horwell QC, [Mouncher Investigation Report](#), July 2017, HC 292, p 282.

¹⁷ Her Majesty’s Crown Prosecution Service Inspectorate and Her Majesty’s Inspectorate of Constabulary, [Making it Fair: A Joint Inspection of the Disclosure of Unused Material in Volume Crown Court Cases](#), July 2017, p 4.

¹⁸ *ibid*.

¹⁹ Lizzie Dearden, [‘Rape Trial Collapse Over Undisclosed Sex Messages Blamed on Police Funding Cuts’](#), *Independent*, 15 December 2017.

²⁰ House of Commons Justice Committee, [Disclosure of Evidence in Criminal Cases](#), 20 July 2018, HC 859 of session 2017–19, p 4.

of conviction and the case collapsed.²¹

The Metropolitan Police and CPS London conducted a joint review of the disclosure process in *R v Allan* and outlined their findings in January 2018. *R v Allan* has since been referred to as one of the “firework cases” that prompted additional scrutiny of disclosure practices.²²

National Disclosure Improvement Plan

The *Making it Fair* report and the *Mouncher Investigation Report*, both published in July 2017, provided 26 recommendations in total for the CPS and police to address. Initial work was undertaken by the CPS and police to address the recommendations. However, the national disclosure improvement plan (NDIP) was published in January 2018 to help set out the further work needed and to prepare for future challenges.²³

NDIP was a joint plan created by the NPCC, College of Policing and the CPS and sought to make a joint commitment to improving the way duties of disclosure were exercised.

To date, NDIP has seen two phases. Phase one ran from January–October 2018 and phase two from November 2018 to date. Both phases have seen the NDIP divided into five key focus areas: capacity, capability, leadership, governance and partnership. Each section lists accomplishments and future targets that the police service, NPCC and CPS work towards.

NDIP Phase One: Progress Update (October 2018)

The NPCC, CPS and College of Policing released an NDIP progress report in October 2018.²⁴ It stated that “significant” progress had been made on implementing the 42 actions in the NDIP, with “40 actions having been delivered and 2 remaining on target to meet their timescales”.²⁵ Key actions implemented during phase one include:

- implementation of disclosure management documents (‘DMD’)²⁶ in all rape and serious sexual assaults and other complex cases to ensure early and meaningful engagement between the prosecution and the defence;²⁷

²¹ Metropolitan Police Service and Crown Prosecution Service, [A Joint Review of the Disclosure Process in the Case of R v Allan](#), January 2018, p 6.

²² House of Commons Justice Committee, [Oral Evidence: Disclosure of Evidence in Criminal Cases, HC 859](#), 1 May 2018, Q77–172.

²³ National Police Chiefs’ Council, College of Policing and Crown Prosecution Service, [National Disclosure Improvement Plan](#), January 2018

²⁴ National Police Chiefs’ Council, College of Policing and Crown Prosecution Service, [National Disclosure Improvement Plan: Progress Update](#), October 2018

²⁵ *ibid*, p 1.

²⁶ A disclosure management document is a form completed by prosecutors and submitted to the defence that clarifies the prosecution’s approach to disclosure (for example, which search terms have been used and why). It also helps to identify narrow issues in dispute. This prompts early engagement between the prosecution and defence.

²⁷ National Police Chiefs’ Council, College of Policing and Crown Prosecution Service, [National Disclosure Improvement Plan: Progress Update](#), October 2018, p 2.

- the appointment of disclosure champions in the CPS and police service to help improve disclosure standards and lead a culture change;²⁸
- establishment of a police and prosecution-led national disclosure forum with representation from all agencies including the judiciary and defence community;²⁹
- review of College of Policing disclosure training.³⁰

NDIP Phase Two: Progress Update (Spring 2019)

NDIP phase two aims to build upon activities from phase one.³¹ Phase two has 28 actions set under the five key headings. Key actions in phase two include plans to:

- improve police and prosecutor capability when handling large volumes of digital material;³²
- transform culture so disclosure is seen as an integral part of the investigation and prosecution;³³
- increase engagement with criminal justice partnerships to improve communication between the prosecution and defence;³⁴
- ensure robust governance to help embed the actions from both national and local improvement plans.³⁵

A phase two progress report, published in spring 2019, stated that a framework was being implemented to help measure improvements in disclosure practices.³⁶ Key future activities in phase two include a commitment to focusing on disclosure in the magistrates' and youth courts. In addition, there is an intention to update police guidelines on data protection and the legal basis for data extraction from digital devices.³⁷ Finally, the progress report confirms that the NPCC, College of Policing and CPS will be agreeing criteria for extending the use of DMDs and examining the procedures on handling sensitive material.³⁸

House of Commons Justice Committee Inquiry (July 2018)

Scope of the Inquiry

The House of Commons Justice Committee launched an inquiry into the disclosure of evidence in

²⁸ National Police Chiefs' Council, College of Policing and Crown Prosecution Service, [National Disclosure Improvement Plan: Progress Update](#), October 2018, p 2.

²⁹ *ibid*, p 3.

³⁰ *ibid*, p 4.

³¹ National Police Chiefs' Council, College of Policing and Crown Prosecution Service, [National Disclosure Improvement Plan Phase Two—Embedding Culture Change and Continuous Improvement](#), November 2018, p 2.

³² *ibid*.

³³ *ibid*, p 7.

³⁴ *ibid*, p 9.

³⁵ *ibid*, p 11.

³⁶ National Police Chiefs' Council, College of Policing and Crown Prosecution Service, [National Disclosure Improvement Plan: Progress Update](#), Spring 2019, p2.

³⁷ *ibid* p 5.

³⁸ *ibid*, p 9.

criminal cases ('the inquiry') on 25 January 2018.³⁹ This followed several criminal trials that had failed due to the "untimely" disclosure of used and unused evidence. The inquiry ran concurrently to the Attorney General's more detailed review of disclosure and was published during NDIP phase one.⁴⁰ The inquiry reviewed the systematic issues that undermined the process of disclosure.⁴¹ A call for evidence and five oral evidence sessions were undertaken with key stakeholders. This included Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), Criminal Bar Association, NPCC, CPS and College of Policing.⁴² The inquiry reviewed overall disclosure practices and did not focus on one type of crime specifically.⁴³

Recommendations

The inquiry's final report provided recommendations to partners across the justice system. This included the Attorney General, Director for Public Prosecution, Minister for Policing, NPCC, College of Policing and CPS.⁴⁴ Key recommendations included:

- the Government to consider the level of investment needed to ensure that the police and CPS can meet their disclosure obligations and prevent miscarriages of justice;⁴⁵
- following a growth in digital evidence, the Home Office should produce, in consultation with the CPS, NPCC and College of Policing, a comprehensive strategy to ensure that all 43 police forces are equipped to handle the increasing volume and complexity of digital evidence;⁴⁶
- the inquiry welcomed the creation of the NDIP, calling for the publication of quarterly progress updates until all actions are closed and to allow signatories to be held accountable;⁴⁷
- the College of Policing was asked to consider revising the code of ethics. This was to ensure that the duty for police to follow all lines of inquiry, even when they point away from the suspect, is unequivocally clear.⁴⁸ In addition, the inquiry recommended that the Minister for Policing and the Home Office should consider whether the capability to execute core criminal justice duties, including disclosure, should be included within the Strategic Policing Requirement (SPR);⁴⁹
- the inquiry welcomed the College of Policing's efforts to roll out disclosure training to

³⁹ House of Commons Justice Committee, '[Disclosure Procedures to be Investigated](#)', 25 January 2018.

⁴⁰ Attorney General's Office, [Review of the Efficiency and Effectiveness of Disclosure in the Criminal Justice System](#), November 2018.

⁴¹ House of Commons Justice Committee, [Disclosure of Evidence in Criminal Cases](#), 20 July 2018, HC 859 of session 2017–19, p 8.

⁴² House of Commons Justice Committee, '[Disclosure of Evidence in Criminal Cases Inquiry—Publications](#)', accessed 5 December 2019.

⁴³ House of Commons Justice Committee, [Disclosure of Evidence in Criminal Cases](#), 20 July 2018, HC 859 of session 2017–19, p 4.

⁴⁴ *ibid*, p 46.

⁴⁵ *ibid*, p 18.

⁴⁶ *ibid*, p 21.

⁴⁷ *ibid*, p 24.

⁴⁸ *ibid*, p 32.

⁴⁹ *ibid*, p 33. The Strategic Police Requirement sets out risks of criminal or terrorist threats and outlines the required policing response. This supports chief constables and police and crime commissioners to ensure that they fulfil forces' national responsibilities, including planning policing challenges beyond force boundaries.

- police officers and recommended they start publishing data on the number of police officers who have undertaken the training;⁵⁰
- the Attorney General, CPS, NPCC and College of Policing should ensure that any efforts to resolve disclosure issues are applicable to the magistrates' court also.⁵¹

In response to the Justice Committee report, the NPCC Lead for Criminal Justice, Chief Constable Nick Ephgrave, stated “there is now an unprecedented commitment and focus on finding long-term solutions to the issues that exist throughout the entire justice system”.⁵²

Joint CPS and NPCC Response to Justice Committee Inquiry (October 2018)

The CPS and NPCC provided a joint response to the Justice Committee inquiry.⁵³ The response “welcomed” the recommendations on transforming the mind-set so that disclosure is viewed as an integral part of the investigation.⁵⁴ Through revised training, disclosure champion events and the introduction of new form templates, they hope to have embedded prompts for officers to “think disclosure”.

In response to the Justice Committee request for quarterly progress updates, they highlighted the publication of the June 2018 progress update and confirmed that the Justice Committee would receive direct updates throughout NDIP phase two.⁵⁵

Following the request to ensure that recommendations remain applicable to magistrates' courts, both parties confirmed that their efforts to resolve disclosure issues would be applicable across both crown and magistrates' courts.⁵⁶ They confirmed that NDIP phase two would focus on ensuring that the “improvements” are felt at a local level, including magistrates' court work.

Attorney General Disclosure Review (December 2018)

On 11 December 2017, Attorney General Geoffrey Cox announced a review into the efficiency and effectiveness of disclosure in the criminal justice system (‘the review’).⁵⁷ The review was undertaken concurrently to NDIP phase one and its report was published in November 2018.

Taking place against the “background of operational improvements” by those delivering NDIP, the review intended to provide a “plan of practical actions”.⁵⁸ Its ambit was wide and covered magistrates'

⁵⁰ House of Commons Justice Committee, [Disclosure of Evidence in Criminal Cases](#), 20 July 2018, HC 859 of session 2017–19, p 41.

⁵¹ *ibid*, p 42.

⁵² Crown Prosecution Service, [Statement Following the Publication of the Justice Select Committee Report on Disclosure](#), 20 July 2018.

⁵³ Crown Prosecution Service and National Police Chiefs' Council, [Joint Response to the Justice Select Committee's Inquiry into Disclosure of Evidence in Criminal Cases](#), October 2018.

⁵⁴ *ibid*, p 2.

⁵⁵ *ibid*.

⁵⁶ *ibid*, p 4.

⁵⁷ Attorney General's Office, [Review of the Efficiency and Effectiveness of Disclosure in the Criminal Justice System](#), November 2018.

⁵⁸ *ibid*, p 3.

court cases, crown court cases and specialist types of cases such as economic crime and sexual offences. It examined legislation, protocols and codes of practice, as well as digital technology capabilities and case management initiatives.⁵⁹

Key problems that were diagnosed included:

- reasonable lines of inquiry were not always being followed in line with the Criminal Procedure and Investigations Act 1996 code duty to do so;⁶⁰
- investigators were not always identifying material as relevant for disclosure and prosecutors were not always asking the right questions to uncover the error;⁶¹
- the disclosure test was not always being applied correctly by investigators and prosecutors.⁶²

Review proposals included reinforcement of the duty to make reasonable lines of inquiry and apply the disclosure test correctly. In addition, it proposed that disclosure obligations should be considered from the outset rather than as an afterthought. The review emphasised that there were “significant improvements” to be gained from performing certain disclosure duties earlier.

Government Response to Justice Committee Inquiry (December 2018)

Following the Attorney General’s review, the Government published a cross-government response to the Justice Committee inquiry on 18 December 2018. Referring to the scale of the problem, the Government acknowledged that:

Ensuring the process of disclosure is done correctly and consistently is essential to maintaining a fair justice system. All agencies with a part to play in the process have accepted that for too long it has not operated effectively enough. There is now real recognition of the systemic problems with disclosure and a joint commitment to delivering sustainable culture change and improvement.⁶³

The Justice Committee’s inquiry provided recommendations to the Attorney General, Ministry of Justice and Home Office respectively. Key items from the recommendations and their respective responses were as follows:

Recommendations Made to the Attorney General

The Attorney General received the largest number of recommendations from the Justice Committee. These recommendations included rebuilding public confidence in the justice system by seeking

⁵⁹ Attorney General’s Office, [Review of the Efficiency and Effectiveness of Disclosure in the Criminal Justice System](#), November 2018, p 7.

⁶⁰ Ministry of Justice, [Criminal Procedure and Investigations Act 1996 \(section 23\(1\)\) Code of Practice](#), March 2015.

⁶¹ Attorney General’s Office, [Review of the Efficiency and Effectiveness of Disclosure in the Criminal Justice System](#), November 2018, p 7.

⁶² *ibid.*

⁶³ Ministry of Justice, [Government Response to the Justice Select Committee’s Eleventh Report of Session 2017–19: Disclosure of Evidence in Criminal Cases](#), December 2018, Cm 9744, p 3.

support from HM Courts and Tribunal Service (HMCTS), the judiciary and the defence community.⁶⁴ The Government agreed to this, confirming that a sub-group of the Criminal Justice Board was taking ownership of disclosure oversight.⁶⁵

The Justice Committee recommended an on-going review of the Attorney General guidelines and a commitment to sign off the guidelines at prescribed intervals.⁶⁶ The Government confirmed that the Criminal Justice Board would be the most appropriate body to coordinate this work. It stated that this would be an “important forum” where parties could raise concerns about the guidance and allow any changes to be coordinated.⁶⁷

One further recommendation for the Attorney General, CPS, NPCC and College of Policing to address was to ensure that their recommendations are applicable in the magistrates’ courts.⁶⁸ The Government confirmed that most recommendations made in the Attorney General’s review were applicable to both crown and magistrates’ courts. This included the overarching strategy of “ensuring that disclosure obligations are considered earlier in all cases”.⁶⁹

Recommendations Made to the Ministry of Justice

The Justice Committee asked the Ministry of Justice to outline actions taken to assess the impact of “operational and funding changes” over the last five years on the administration of justice; specifically on disclosure.⁷⁰ In response, the Government advised of an evidence-based assessment being conducted to determine the impact of the legal aid changes made by the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012. The Government confirmed the intended launch of a criminal legal aid fees review and this was subsequently published on 14 March 2019.⁷¹

The Justice Committee requested to be updated by CPS and HMCTS on progress of getting disclosed material onto the digital case system (DCS).⁷² The Government confirmed that HMCTS was in the process of working with the CPS and other stakeholders to enable unused material to be held on the DCS.⁷³

⁶⁴ House of Commons Justice Committee, [Disclosure of Evidence in Criminal Cases](#), 20 July 2018, HC 859 of session 2017–19, p 12.

⁶⁵ Ministry of Justice, [Government Response to the Justice Select Committee’s Eleventh Report of Session 2017–19: Disclosure of Evidence in Criminal Cases](#), December 2018, Cm 9744, p 4.

⁶⁶ House of Commons Justice Committee, [Disclosure of Evidence in Criminal Cases](#), 20 July 2018, HC 859 of session 2017–19, p 24.

⁶⁷ Ministry of Justice, [Government Response to the Justice Select Committee’s Eleventh Report of Session 2017–19: Disclosure of Evidence in Criminal Cases](#), December 2018, Cm 9744, p 6.

⁶⁸ House of Commons Justice Committee, [Disclosure of Evidence in Criminal Cases](#), 20 July 2018, HC 859 of session 2017–19, p 42.

⁶⁹ Ministry of Justice, [Government Response to the Justice Select Committee’s Eleventh Report of Session 2017–19: Disclosure of Evidence in Criminal Cases](#), December 2018, Cm 9744, p 8.

⁷⁰ House of Commons Justice Committee, [Disclosure of Evidence in Criminal Cases](#), 20 July 2018, HC 859 of session 2017–19, p 47.

⁷¹ Ministry of Justice, [‘Criminal Legal Aid Review’](#), 14 March 2019.

⁷² House of Commons Justice Committee, [Disclosure of Evidence in Criminal Cases](#), 20 July 2018, HC 859 of session 2017–19, p 22. The Digital Case System is an online system where case material can be accessed, prepared and presented digitally by the judge, clerk, defence, prosecution and probation.

⁷³ Ministry of Justice, [Government Response to the Justice Select Committee’s Eleventh Report of Session 2017–19: Disclosure of Evidence in Criminal Cases](#), December 2018, Cm 9744, p 9.

Recommendations Made to the Home Office

The Home Office, in consultation with the CPS, NPCC and College of Policing, was asked to produce a strategy. This strategy was to ensure that all 43 police forces were equipped to tackle the increasing volume and complexity of digital evidence.⁷⁴ The Justice Committee emphasised that a strategy must consider skills as well as technology, but “need not infringe the operational independence of the police”. The Government confirmed that the Home Office was already providing “significant investment” through the police transformation fund to support the development of digital capability in England and Wales forces.⁷⁵ They concurred that the activities, both current and proposed, should be streamlined into a comprehensive strategy.⁷⁶

The final recommendation to the Home Office was to consider whether capability to execute core criminal justice duties, including disclosure, should be included in the SPR.⁷⁷ The Government confirmed that the Home Office was assessing the suitability of the current SPR and will consider whether direction on core policing functions should be included.⁷⁸

Parliamentary Scrutiny

On 18 April 2019, Ben Lake (Plaid Cymru MP for Ceredigion) submitted a written question to the Attorney General.⁷⁹ He asked what recent discussions had been conducted between the Attorney General and Secretary of State on failures relating to the disclosure of evidence in criminal cases and police culture. In response, the then Solicitor General, Robert Buckland, advised that “frequent discussions” were taking place with the Home Office, with “extensive action” underway to “bring about the necessary cultural change” within the CPS and policing.

April 2019 also saw the introduction of national disclosure consent forms for digital evidence during NDIP phase two.⁸⁰ The NPCC confirmed that the forms were there to “ensure the public understood” how data may be used by police, whilst also allowing investigators to seek informed consent to review the digital evidence “proportionately and consistently”. The form’s rollout saw concerns spread across victim support groups and the media, so the CPS issued a statement clarifying their purpose.⁸¹ An urgent question, posed in the House of Commons by Anna Soubry (the then Change UK MP for Broxtowe), asked the Government for a statement on requests by police for victims of rape to provide their mobile phone and other digital devices.⁸² The Minister for Policing and the Fire Service, Nick Hurd, advised that the requesting of victims’ consent to review mobile phones

⁷⁴ House of Commons Justice Committee, [Disclosure of Evidence in Criminal Cases](#), 20 July 2018, HC 859 of session 2017–19, p 21.

⁷⁵ Ministry of Justice, [Government Response to the Justice Select Committee’s Eleventh Report of Session 2017-19: Disclosure of Evidence in Criminal Cases](#), December 2018, Cm 9744, p 9. The Police Transformation Fund is intended to assist policing by investing in digitalisation, the workforce and new capabilities to respond to changing crimes and threats.

⁷⁶ *ibid*, p 10.

⁷⁷ House of Commons Justice Committee, [Disclosure of Evidence in Criminal Cases](#), 20 July 2018, HC 859 of session 2017–19, p 33.

⁷⁸ Ministry of Justice, [Government Response to the Justice Select Committee’s Eleventh Report of Session 2017-19: Disclosure of Evidence in Criminal Cases](#), December 2018, Cm 9744, p 10.

⁷⁹ House of Commons, [‘Written Question: Criminal Proceedings: Evidence’](#), 30 April 2019, 245945.

⁸⁰ National Police Chiefs’ Council, [‘Progress Update in Meeting the Disclosure Challenge’](#), 29 April 2019.

⁸¹ Crown Prosecution Service, [‘Handing Over Mobile Phone Data in Rape Prosecutions’](#), 29 April 2019.

⁸² [HC Hansard, 29 April 2019, col 40.](#)

was not new, but instead the new national form hoped to replace individual force versions with a version that was consistent and provided clarity.

On 22 October 2019, during an oral question about the law on rape, Lord Morris of Aberavon (Labour) asked the Government whether it was satisfied that the problem of non-disclosure of evidence had been solved.⁸³ Answering for the Government, the Advocate-General for Scotland, Lord Keen of Elie, advised that the Government considered the issues of disclosure had been addressed. However, he noted the current Attorney General's instruction for an examination of disclosure issues to "ensure that, going forward, [disclosure] should not create a problem for these prosecutions".

⁸³ [HL Hansard, 22 October 2019, cols 482–3.](#)