1. The Crown Prosecution (CPS) and National Police Chiefs’ Council (NPCC) are responding jointly to the Justice Select Committee’s report into ‘Disclosure of evidence in criminal cases’ in recognition that the disclosure process is a joint responsibility and one that we cannot successfully improve without the close cooperation of the other. For this reason, it has been necessary to develop and agree a number of our plans together.

2. Following the joint HMCPSI and HMIC report in 2017, which outlined the key disclosure problems that the criminal justice system is facing, the Director of Public Prosecutions convened a disclosure Summit with key stakeholders in the criminal justice system, and as a result we developed the joint National Disclosure Improvement Plan (NDIP). We recognise that change was not driven quickly enough and as such, we have redoubled efforts to put in place solutions that are effective and permanent.

3. The CPS and the police recognise that our performance on disclosure has not been good enough and we acknowledge that systemic issues have allowed disclosure failures to persist for too long. Addressing this has been a top priority for us in implementing the NDIP and continues to be of paramount importance to both organisations.

4. We recognise the seriousness of the issue and the impact on all those involved. We expect that the resolutions outlined below will give the public renewed and full confidence in the way justice is delivered.

5. We are also anticipating the results of the Attorney General’s Review into disclosure and will carefully consider any recommendations further to those outlined in the Justice Select Committee’s report.

6. We have restricted this response to the specific recommendations made by the Committee, and do not offer any comment on some of the broader opinions contained within the report. This should not be read as acceptance of all such observations. Below, we outline the joint approach taken to a number of the recommendations made in the report, as well as the individual approaches taken to those that are specific to the CPS.

Response to the Justice Select Committee’s recommendations

7. First and foremost, the Justice Select Committee (the Committee) inquiry into disclosure identified that there needs to be:

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

8. We welcome the recommendations of this report related to disclosure. The need to transform the culture of the investigative mind-set so that disclosure is viewed as an integral part of the investigation, is a key aim of the NDIP and is the foundation of the next phase of our disclosure improvement activity. Through revised training, disclosure champion events and the introduction of new form templates we have embedded prompts for officers to “think disclosure”. For example the form investigators submit to the CPS when seeking charging advice (the MG3 form) now includes a specific prompt to officers to record their reasonable lines of inquiry in cases of rape and serious sexual assault or other complex cases. It is essential that disclosure issues are addressed at the pre-charge stage, where possible. Our leaders and our disclosure champions will continue to drive that message to all operational colleagues.

9. The findings from the on-going pilots led by our cross-agency technology working group will be coupled with evidence from a more detailed landscape review undertaken by the NPCC Digital Policing Portfolio, to inform Home Office decisions about next steps in supporting police forces to respond to the challenges associated with managing ever increasing volumes of digital evidence.

10. We note the Committee’s observation about the need for guidance on handling sensitive personal information. Subject to any guidelines issued by the Attorney General, we will reflect that specific recommendation in our actions under NDIP Phase 2 and have already begun to work with the Information Commissioner’s Office and victim interest groups. This work will inform a national approach for police forces to guide the extraction of data from the digital devices belonging to complainants and witnesses.

Recommendations

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

12. The Digital Evidence Transfer Scheme (DETS) is expected to be rolled out by 2020. This is currently being managed by the NPCC’s “Digital First” programme which looks to provide all case file information and evidence digitally in such a way that it is accessible on demand. The Committee will be updated on the progress of DETS as part of the regular NDIP updates.

13. At the beginning of 2018, the CPS liaised with HM Court and Tribunal Service (HMCTS), who are responsible for the Digital Case System (DCS) to ascertain whether a new tab for unused material in the System was possible. It was agreed that HMCTS would begin work on implementing this tab as soon as their “multi defendant solution” was rolled out this summer. The multi-defendant solution is an important update that allows different material to be served on defendants separately in multi handed cases. Now this is complete we are working with HMCTS to establish a timeline for the development of the disclosure tab on the DCS and, through the National Disclosure Forum, we are seeking views from defence representatives as to what this should include.
14. **Recommendation:** “So that signatories to the National Disclosure Improvement Plan can be held to account, they should publish an update on progress quarterly until each action can be closed. This Committee will keep a watching brief on progress.” (Paragraph 79)

15. Since the publication of NDIP the CPS, police and college of Policing have written to the Home Secretary and the Attorney General in order to ensure that they are kept updated on the progress. In addition, we have kept the Government informed about progress through the National Disclosure Forum, the Joint National Disclosure Delivery Board and regular superintendence meetings. We published an [update in June](mailto:) and a full progress report accompanies this response and will be published on the dedicated Disclosure pages of the CPS website. We will launch the next phase of the NDIP in the autumn and we will also ensure that the Justice Select Committee receive these updates directly in the future.

16. **Recommendation:** “The new Attorney General should make it clear, in the review, that the duty to ensure “the right person is prosecuted for the right offence” is paramount, even if this is at the expense of timeliness or conviction rate. The Director of Public Prosecutions should set measures that enable her (and her successor) to report against this objective. We expect this to include improving data on cases that fail to ensure that the CPS are capturing and reporting on a true number of cases where errors have played a part.

“Although we welcome the National Disclosure Improvement Plan, we also think a more thorough review of the data, that goes beyond just rape and sexual assault cases, is required. The CPS should also consider what data they can capture on cases which proceed with disclosure errors but are not stopped. We expect Crown Prosecution Service performance measures to be updated before the end of the 2018–19 financial year so they can be outlined in the 2018–19 Annual Report and Accounts and reported against in the Annual Report and Accounts from 2019–20 (the first year that full data will be available)” (Paragraph 96)

17. The “duty to ensure the right person is prosecuted for the right offence” is the fundamental duty of the Crown Prosecution Service. It is explicit in the Code for Crown Prosecutors and it is never ignored in order to meet other targets. We report on this as part of our key performance measures in the annual report laid before parliament every year. However, we will consider what further measures we can introduce to ensure we are measuring the right aspects of our performance, in addition to the existing key indicators that measure whether we are making the right decisions and trying the right cases.

18. We are improving our data collection as our current measures have not allowed us to capture, analyse and use management information on disclosure effectively enough, and we need to be able to take a more consistent end-to-end view. Work is already underway to address this. We have already made changes to the way we record the outcome of cases and prosecutors will, from October, now have to record whether disclosure issues contributed to the outcome in 100% of cases across all offence types.

19. **Recommendation:** “The new Attorney General, Crown Prosecution Service, National Police chiefs’ Council and College of Policing should ensure that their efforts to resolve issues with disclosure, including their recommendations, are also applicable in the Magistrates’ Courts. The joint inspectorate should consider a review of disclosure in the Magistrates’ Courts, much as it did in the Crown Court.” (Paragraph 151)
20. We will ensure that our efforts to resolve issues with disclosure are applicable across both Crown and magistrates’ Courts. A focus of Phase 2 of the NDIP will be ensuring that the improvements we have introduced are making a real difference at a local level. This will include a focus on our magistrates’ court work.

21. Transforming Summary Justice streamlined the process of disclosure in the magistrates’ courts by introducing the Streamlined Disclosure Certificate for officers to complete. However, we acknowledge that there are concerns that this is not being properly completed in practice and that prosecutors have not been sufficiently robust in challenging inadequate schedules. We will investigate this further in the course of NDIP Phase 2 and will develop bespoke improvement measures based on what we find.