



By the end of the lesson learners will be able to:

- Explain what is the Criminal Procedure & Investigations Act 1996
- Describe the role of the investigator in relation to the disclosure of material
- Explain the stages of disclosure
- Identify material which is recorded, retained and revealed during an investigation
- Write entries on an MG6C and MG6D

Criminal Procedures And Investigations Act (CPIA) 1996



Why did CPIA come into being?

Show video – embedded in slide

Trainer to discuss video as below

The **Birmingham pub bombings** were carried out on 21 November 1974, when bombs exploded in two public houses in Birmingham,, England, killing 21 people and injuring 182 others

Six Irishmen were arrested within hours of the blasts, and in 1975 sentenced to life imprisonment for the bombings. The men who became known as the Birmingham Six maintained their innocence and insisted police had coerced them into signing false confessions through severe physical and psychological abuse. After 16 years in prison, and a lengthy campaign, their convictions were declared unsafe and unsatisfactory, and quashed by the Court of Appeal in 1991. The episode is seen as one of the worst miscarriages of justice in British legal history

Rumblings of discontent with the British criminal justice system began to grow in the 1980s. Campaigns started to spring up around individual cases. The phrase "miscarriage of justice" was crystallised around one big case - **The Birmingham Six**

It is 25 years since the convictions of the Birmingham Six were quashed amid

dramatic scenes at the Old Bailey in London.

Paddy Hill, Gerry Hunter, Johnny Walker, Hugh Callaghan, Richard McIlkenny and Billy Power had spent nearly 17 years in prison for crimes they had not committed, and are widely considered to be victims of one of the most notorious miscarriages of justice in British history. However, despite efforts to prevent future wrongful convictions, we find that innocent people are still at great risk of suffering perhaps the greatest injury that the state can inflict on its citizens.

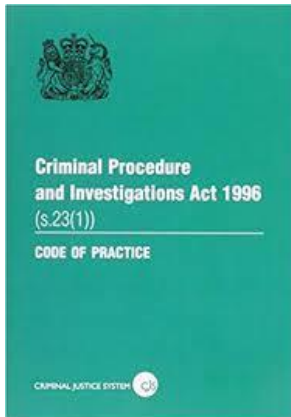
When the six were released in 1991, hot on the heels of other high profile miscarriages of justice such as the Guildford Four it was hoped that lessons would be learned so that wrongful convictions do not happen again.

A miscarriage of justice can result from non-disclosure of unused material by police or prosecution, fabrication of evidence, poor identification, overestimation of the evidential value of expert testimony, unreliable confessions due to police pressure or psychological instability and misdirection by a judge during trial.

Since 1984 two pieces of legislation have been introduced in an attempt to prevent further miscarriages. The **Police And Criminal Evidence Act (PACE)** gave detectives rigid rules on how long they could question suspects for and insisted interviews be taped to ensure there was no mistreatment or undue intimidation.

The criminal justice system needed a radical overhaul to make it "more open and accountable and the **Criminal Procedure and Investigations Act** was also introduced in an attempt to make sure police or the Crown Prosecution Service (CPS) disclose to the defence everything which could be relevant to their case. However a recent review of disclosure undertaken by the Crown Prosecution Service Inspectorate found the CPIA did not have the "confidence of criminal practitioners".

The CPIA was brought in to make police impartial in their investigations, as the police have a legal obligation to be impartial. Police have a responsibility to follow all lines of enquiry, whether this leads towards the suspect or away from the suspect.



Criminal Procedures And Investigations Act (CPIA) 1996



QTS – What does CPIA deal with?

“Disclosure”

Prior to the 1990's there was no legislation governing disclosure, only a few common law principle.

Several miscarriages of justice highlighted and reinforced the need for legislative intervention in order to redress the balance and prevent such instances.

The Act is in two parts:

Part I of the Act provides a statutory scheme of pre-trial disclosure, placing a clear and continuing duty on the prosecution to disclose any material that 'might reasonably be considered capable of undermining the case for the prosecution ... or of assisting the case for the accused' The Act requires the defence to disclose the nature of the defence in cases tried on indictment.

Part II of the Act. The Home Secretary to prepares a CPIA code of practice which is our 'bible' when handling unused material which is to be disclosed by the prosecution to the defence.

Disclosure rules under Criminal Procedure & Investigations Act 1996

Recording and **retaining** unused material, including distinguishing between **sensitive** and **non-sensitive** material is part of what is known as the disclosure process. The Criminal Procedure and Investigations Act 1996 is **concerned with material gathered during a criminal investigation**

What material must be retained?

The CPIA Code of Practice requires that **ALL** relevant material must be retained, including **information and objects**, which are obtained in the course of a criminal investigation and which may be **relevant** to the investigation



We all have a duty to record and retain relevant material generated during the course of an investigation.

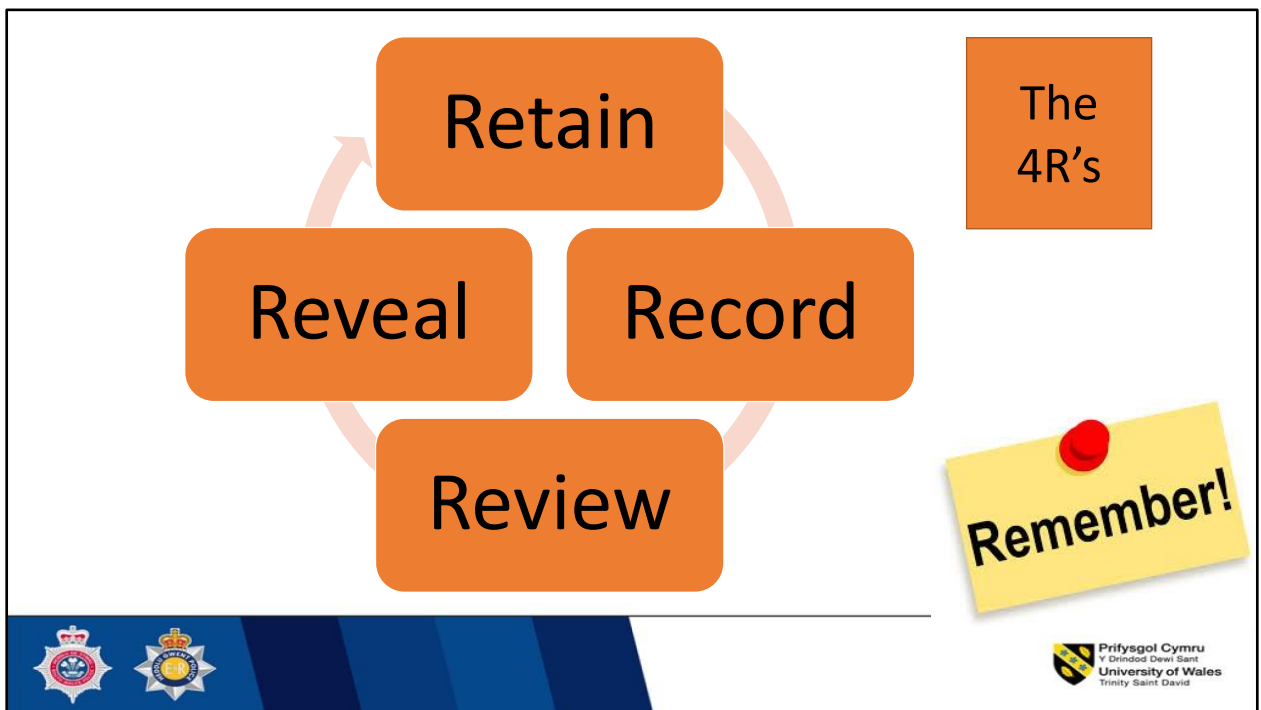
We have a duty to pursue all reasonable lines of enquiry irrespective of whether the resultant evidence assists the prosecution or defence.

We have a duty to create full and detailed schedules that contain relevant unused material and submit them to the Prosecutor (CPS).

“The legitimacy of our criminal justice system relies on the process being fair and even-handed. The public rightly expects to see the guilty convicted, but it is equally important to avoid the wrongful conviction of the innocent.”

Chief Constable Mike Cunningham, CEO, College of Policing
Page Content

Getting disclosure right is a fundamental part of a fair criminal justice system. In every case, any material that undermines the case for the prosecution or assists the case for the accused must be shared with the defence. Disclosure needs to be an integral part of the investigative mindset from the start.



Our responsibilities under the CPIA

1. We must **retain** all material relating to our investigation in a durable and retrievable format -
 - The investigator must retain material obtained in a criminal investigation which may be relevant to the investigation. Material may be photographed, video-recorded, captured digitally or otherwise retained in the form of a copy rather than the original at any time, if the original is perishable; the original was supplied to the investigator rather than generated by him and is to be returned to its owner; or the retention of a copy rather than the original is reasonable in all the circumstances.
 - The duty to retain material includes in particular the duty to retain material falling into the following categories, where it may be relevant to the investigation:
 - crime reports (including crime report forms, relevant parts of incident report books or police officers' notebooks);
 - custody records;
 - records which are derived from tapes of telephone messages (for example, 999 calls) containing descriptions of an alleged offence or offender;

- final versions of witness statements (and draft versions where their content differs from the final version), including any exhibits mentioned (unless these have been returned to their owner on the understanding that they will be produced in court if required);
 - interview records (written records, or audio or video tapes, of interviews with actual or potential witnesses or suspects);
 - communications between the police and experts such as forensic scientists, reports of work carried out by experts, and schedules of scientific material prepared by the expert for the investigator, for the purposes of criminal proceedings;
 - records of the first description of a suspect by each potential witness who purports to identify or describe the suspect, whether or not the description differs from that of subsequent descriptions by that or other witnesses;
 - any material casting doubt on the reliability of a witness.
1. We must **record** that we have this material and that the material exists - **Police have a duty to RECORD any material that MAY be relevant to the investigation in a durable or retrievable form.** This includes information given orally, use PNB, BWV, NICHE OEL. Where relevant material is not already recorded, it will need to be reduced into a suitable form. It is the responsibility of the officer in charge of the investigation to ensure that the material is recorded in a durable or retrievable form, for instance, in writing, on video or audiotape, or on computer disk.
 2. We must examine (**review**) the material, This will usually be done by a disclosure officer in a protracted investigation or the OIC in others.
 3. We must **reveal** this material via the MG6 forms. The reveal is our disclosure to CPS of the unused material.

Investigators and disclosure officers should be familiar with the CPIA Code of Practice 4F5 - in particular their obligations to **retain and record** the relevant material, to **review** it and to **reveal** it to the prosecutor

**When carrying out an
investigation,
ALWAYS**

think

DISCLOSURE!



When carrying out an investigation need to think of disclosure from the outset i.e. how will this impact on the case in court.

Need to investigate to prove the case but also gather information that assists the defence i.e. approach each bit of evidence from both a prosecution and defence point of view – CPIA states that we must do this otherwise we are breaking the law.

“Witnesses that support the Defendant – statements should still be taken and disclosed to the defence or the officers notes if they refused to provide a statement. “

IMD – We utilise a document called the Investigation Management Document to ensure that we have a working document which contains an ongoing rationale of the reasonable lines of enquiry and disclosure strategy during any investigation.

Investigation Management Document



Investigation Management Document

The Case

Crime Reference Number	THESE DETAILS NEED TO BE ALL IMPORTED ON.
URN	
Offence(s) Under Investigation	
Date of Offence	
Date Investigation Commenced	
Officer in Case	
Disclosure Officer (if different)	
Suspect(s)	

1 Initial Circumstances

Set out allegations against each defendant and detail the matters in, or likely to be in issue e.g. alibi, self-defence, consent etc.

Date/Time refers to the date and time you make the entry on the IMD.

ENTER "NOT APPLICABLE" IN THE SECTION, IF IT IS NOT RELEVANT TO YOUR INVESTIGATION.

THIS IS A LIVING DOCUMENT ANY NEW VERSION NEEDS TO BE DATED WHEN SENDING TO CPS.



IMD – document ‘Investigation Management Document – Submission 1’ can be emailed to students or handed out as a print out. Also breakdown of the sections handout.

The IMD enables you to meet your disclosure obligations under the Criminal Procedure and Investigations Act 1996 (CPIA) and will be used by the prosecutor to complete the Disclosure Management Document (DMD). It will show the prosecutor and through the DMD, the Court and Defence how you identified your reasonable lines of enquiry. (RLE’s discussed later in this session). It is a working document to record reasonable lines of enquiry, disclosure decisions, rationale and contact with the prosecutor.

Response Officers will update sections of the IMD dependant on the circumstances of their investigation.

TRAINER TO GIVE OUT/TELL STUDENTS TO VIEW IMD AND BREAKDOWN OF IMD SECTIONS HANDOUTS EMAILED TO THEM. Trainer to go through each section and explain to students how to complete.

Trainer to emphasise to students that the process of disclosure and police requirements under 4R's are not simply done when the full file is produced, Items gathered or documented from the very first officer attending the incident (probably them as response officers) will be required to be disclosed under CPIA.

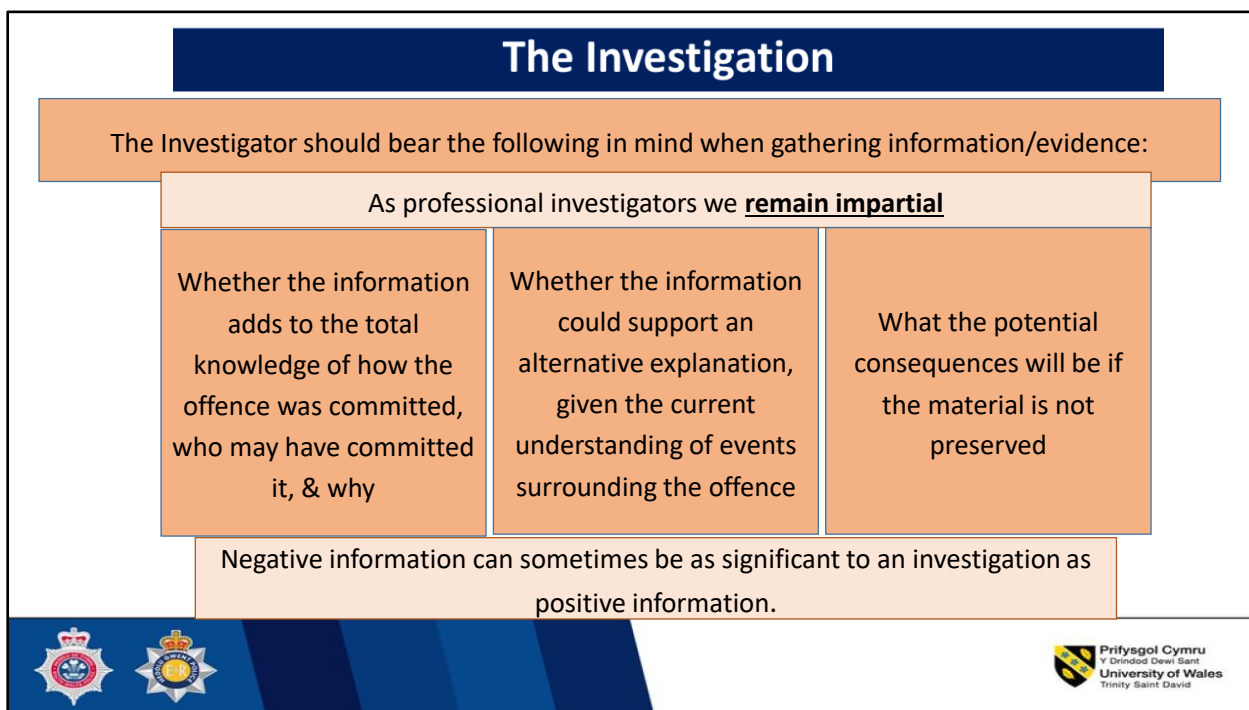
Most importantly.....

**We have a duty to disclose
material that**

***‘Might reasonably be considered capable of
undermining the prosecution case or assisting the
case for the accused’***



This would be recorded on an MG6E. We shall look at the MG6 series later on in the session...



QTS - What should we be as professional investigators?

Trainer to highlight the importance of remaining impartial and emphasise what the investigator should remember when gathering information or evidence. This includes information that may be detrimental to the case.

Negative Information

Not only must material or information that points towards a fact or an individual be retained, but also that which casts doubt on the suspect's guilt, or implicates another person. Examples of negative information include:

- a CCTV camera that did not record the crime/location/suspect in a manner which is consistent with the prosecution case
- where a number of people present at a particular location at the particular time that an offence is alleged to have taken place state they saw nothing

unusual

- where a finger-mark from a crime scene cannot be identified as belonging to a known suspect
- any other failure to match a crime scene sample with one taken from the accused.

It is important to record promptly any information from any source, which might be considered relevant to the investigation. A record should be made at the time the information is obtained, or as soon as practicable after that time.

When Investigating



=



+



**DUTY TO FOLLOW ALL REASONABLE
LINES OF ENQUIRY – POINTING
TOWARDS OR AWAY FROM SUSPECT**

**WHAT IS REASONABLE?
AND WHAT IS NOT?**



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When we investigate any offence it is important to always remember that the Police are duty bound to **impartially** investigate all **Reasonable Lines of Enquiry** and it is important to record promptly any information from any source, which might be considered relevant to the investigation. A record should be made at the time the information is obtained, or as soon as practicable after that time.

“Investigators should ensure that all reasonable lines of inquiry are investigated, whether they point towards or away from the suspect. What is ‘reasonable’ will depend on the context of the case. A fair investigation does not mean an endless investigation. Investigators and disclosure officers must give thought to defining, and articulating the limits of the scope of their investigations. When assessing what is reasonable, thought should be given to what is likely to be obtained as a result of the line of inquiry and how it can be obtained. An investigator may seek the advice of the prosecutor when considering which lines of inquiry should be pursued where appropriate

When conducting an investigation, an investigator should always have in mind their obligation to retain and record all relevant material”

Lynette White Murder

BBC Crime Watch
Appeal 17th March 1988



Trainer to click on BBC and play the link from the beginning (play first 7 mins) Crimewatch appeal regarding Lynette White 17/03/88

Briefly explain how this investigation (which originated in SWP) was pivotal in shaping the future of policing – ie introduction of CPIA legislation, subsequent investigations,

Brief outline of chronology is below....

Murder occurred on 14 / 2 /88

Crime Watch appeal - 17/3/88

Nov 1988 Charged 5 black / mixed raced males , although no forensic evidence to link them however various witnesses came forward stating that these men were involved.

Nov 1990 then Britain's longest running Murder case – 3 Found Guilty – Life Imprisonment

December 1992 Convictions ruled unsafe and quashed by court of appeal –

Police acted improperly.

SWP stated they weren't looking for anyone else – the acquittals were down to technicality

Jan 2002 DNA advances linked Jeffrey Gafoor

2003 Jeffrey Gafoor was arrested admitted Murder and sentenced to life no link to those originally charged.

2004 IPCC reviewed case - 30 people arrested including 19 Police Officers (retired / serving)

2007 3 of the original trial witnesses were convicted of perjury – 18mths imprisonment

2011 8 former Police Officers charged conspiring to pervert course of justice
Trial was longest Police Corruption trial in British history.
(4 further officers were to be charged in 2012)

Nov 2011 Defence Claimed prosecution hadn't disclosed necessary documents and that some had been destroyed.
Judge requested certain documents to test disclosure procedure. Missing documents.

Dec 2011 Judge acquitted all as they couldn't receive a fair trial. Six weeks later missing document found (Confidential Documents – placed in different location to protect the confidentiality)

July 2017 Mouncher Report Richard Horwell QC undertook a Silk lead enquiry

17 Recommendations have come out of the Mouncher report which highlighted numerous failings inadequacies in relation to CPIA legislation (Police and CPS failings)

Further examples of Miscarriages Of Justice

R v Kiszko



In 1976 Kiszko was convicted of the murder of an 11yr old Lesley Molseed.

- The main evidence was the confession he provided as he sat dazed & alone at a Police Station.
- He had learning difficulties & mental age of 12
- He was denied access to a Solicitor
- Confessed to the murder after he was told he could go home if he did
- He had never been in trouble with the Law
- He had an alibi that Police never explored
- He was infertile but there was semen on the victims underwear that contained healthy sperm – this was not disclosed to the defence
- Four female witnesses lied that he had exposed himself to them



Prosecution disclosure has been problematic for many years. There is a history of notorious cases of miscarriage of justice arising from non-disclosure. The subject has generated more official reviews than any other topic in the law of criminal process.

The reviews have largely agreed on the diagnosis of the problems and have come up with very similar recommendations. Despite these prescriptions, and despite the plethora of official guidance on the law and practice of disclosure, the problems persist.

The murder of **Lesley Molseed**, an 11-year-old British girl, occurred on 5 October 1975 in West Yorkshire England. Stefan Kiszko, an intellectually disabled man who lived near Molseed in Greater Manchester was wrongly convicted of sexually assaulting and murdering her, and served 16 years in prison before the conviction was overturned.

Kiszko's mental and physical condition deteriorated while he was in prison, and he died 20 months after his release in 1992, before he could collect money owed to him for his suffering.

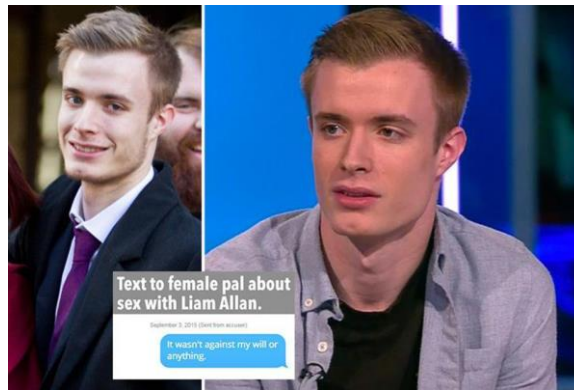
His ordeal was described by one British MP as "the worst miscarriage of justice of all time. Evidence that Kiszko could not have done the crime was suppressed by three members of the investigation team, who were initially

arrested in 1993 before charges were dropped. In 2006, however, a DNA match led to the arrest of Ronald Castree for Molseed's murder. He was convicted the following year and sentenced to life in prison

- 11 year old Lesley Molseed
- Found stabbed to death, her body was staged still clothed, the perpetrator had ejaculated onto her underwear.
- Kiszko was eastern European 23 year old who had never been in trouble
- Four girls made up evidence that he had exposed himself to them the day before.
- He had an alibi – he was with his aunt at the time of the murder but the police never explored this.
- Kiszko was incapable of producing semen the prosecution were aware that there was semen on the girls underwear but never disclosed this.
- He served 16 years in prison.
- He was released in 1992 and died a year later of a heart attack at the age of 41.

Further examples of Miscarriages Of Justice

Liam Allan



<https://www.youtube.com/watch?v=oTYHrMOTSRc>



It is important to note that a review of this case resulted in changes in the AG guidelines. Disclosure is no longer required just post charge but PRE-CHARGE.

In recent months several collapsed prosecutions have attracted extensive publicity, including the case of Liam Allan in which disclosure failings led to a public apology from the Director of Public Prosecutions

The Met has apologised to a student wrongly accused of rape for a series of errors in its handling of the case.

A review found that a "lack of knowledge" by police and prosecutors was to blame for the botched prosecution against Liam Allan. The officer in charge of the case failed to find key evidence among 57,000 messages on the alleged victim's mobile phone, the report found. Mr Allan, 22, had been charged with 12 counts of rape and sexual assault.

The case against Mr Allan at Croydon Crown Court was dropped after three days when the evidence on a computer disk containing 40,000 messages revealed the alleged victim had pestered him for "casual sex".

Mr Allan, from Beckenham, in south-east London, had been under investigation for nearly two years before his trial collapsed.

The problems with **disclosure** in Mr Allan's case were caused by "a combination of error, lack of challenge, and lack of knowledge", a joint review by the Met and Crown Prosecution Service (CPS) found.

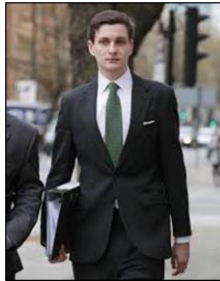
The entire download of messages from the phone was not passed to the defence because the officer in the case said there was "nothing relevant on it", the review said.

"It is clear from the review that both the Met and the CPS did not carry out **disclosure procedures** properly in this case,"

Thousands of current rape and serious sexual assault cases in England and Wales are to be reviewed to ensure evidence has been disclosed.

Video link shows Sky News interview with Allan about the case

Further examples of Miscarriages Of Justice



The prosecution have duties to disclose all the evidence on which they intend to rely, but **late disclosure of unused material** that meets the disclosure test is a common problem in both Crown Court and magistrates' court cases

1. The same OIC for Liam Allan was involved in the case of **Isaac Itiary**. The defendant was charged with offences of rape and sexual activity with a child aged 14 and 15 at the time of the offences. He spent four months in prison on remand. Despite repeated defence requests the police made **late disclosure** of the complainant's mobile phone records. The CPS dropped the case when the records revealed text messages showed that she had routinely posed as a 19 year old.
2. **Samuel Armstrong** was charged with two offences of rape and two sexual assaults. More than a year later and eight days before the trial the police disclosed the complainant's phone and medical records. These contained evidence which the defence used to undermine her credibility. The jury acquitted of all charges.
3. **Oliver Mears** was charged with rape. He spent two years on bail. The Surrey police handed over relevant evidence, including social media

material, just a few days before the trial. The CPS then reviewed all the evidence and dropped the case.

4. **Connor Fitzgerald** was charged with rape. He spent three months in jail and lost his job before the police made late disclosure of text messages from the complainant in which she had threatened to destroy him. One message read “I’m not just going to mess his life up, I’m going to ruin it.” The CPS dropped the case.
5. The case of **Petruta-Cristina Bosoanca** concerned a different type of offence. She was charged with trafficking a Romanian prostitute to Britain. She was pregnant when remanded in custody, and gave birth to her son while in prison for more than a year awaiting trial. Several days after the start of the trial the prosecution disclosed a medical record relating to the complainant and many social media messages undermining the complainant’s account of being brought to Britain to work as a prostitute and becoming pregnant after being raped. The CPS admitted that its handling of disclosure had “fallen below the standard we expect”

An even greater problem is nondisclosure of material that might undermine the prosecution case or assist the defence. The miscarriage of justice cases concern material that came to light only after the accused’s conviction, in some cases many years late

18 July 2017
News release



Promoting improvements
in policing to make
everyone safer



**HM Crown Prosecution
Service Inspectorate**

Inspectors find widespread concerns with disclosure practices across the Criminal Justice System

- A joint inspection by Her Majesty's Crown Prosecution Service Inspectorate (HMCPSP) & Her Majesty's Inspector of Constabulary (HMIC) found widespread failures across the Criminal Justice System when it comes to disclosure of evidence.
- Failures result in cases being discontinued, trial processes being delayed & unnecessary adjournments. This causes additional emotional distress to victims, witnesses & defendants.
- Failure to properly disclose material can lead to miscarriages of justice and the Criminal Cases.



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This review found that 78% of the case files submitted had disclosure issues.

Areas that the CPS will mark on

- Have the schedules been completed properly?
- Have the schedules been submitted?
- Has rebuttable presumption material been submitted?
- Has the MG6E been disclosed?
- Have reasonable lines of enquiry been articulated on the IMD?
- If we haven't provided any reasonable lines of enquiry

Criminal Procedures And Investigations Act (CPIA) 1996

“Proper disclosure of unused material remains a crucial part of a fair trial and is essential to avoiding miscarriages of justice. Disclosure remains one of the most important and complex issues in the criminal justice system”

Attorney General’s Guidelines on Disclosure 2022



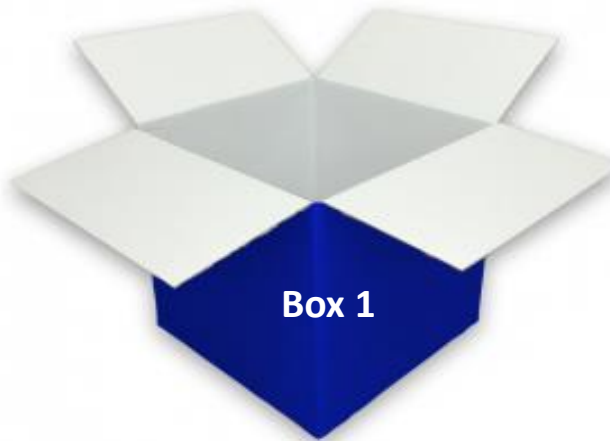
Disclosure should be considered in parallel with the investigation and NOT at the end as a paperwork exercise.

What does this all mean?



For the remainder of the session we will look at how CPIA affects our investigations as a police officer, following through the material gathered during an investigation and deciding what we need to do with this.

Material



QTS - What is all the information called that we gather during the course of an investigation?

Think of all the material that you collect during an investigation. All of this material will go into box 1.

You then have to decide what is evidence and what is unused material. (see next slide)

What is Material?



INFORMATION



OBJECTS

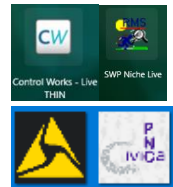
Material is material of any kind, **including information and objects**, which is obtained or inspected in the course of a criminal investigation and **which may be relevant** to the investigation.



OBTAINED



INSPECTED



GENERATED



QTS – What is material?

CPIA Codes of Practice (Chapter 2) – Section 2.1

Material is material of any kind, **including information and objects**, which is obtained or inspected in the course of a criminal investigation and **which may be relevant** to the investigation.

This includes not only material coming into the possession of the investigator (such as documents seized in the course of searching premises) but also material generated by the investigation (such as interview records);

The Code of Practice issued under s 23(1) of the Criminal Procedure and Investigations Act 1995 (CPIA) defines **material** as:

Material of any kind, including information and objects, which is obtained in the course of a criminal investigation and which may be relevant to the investigation; Material may be relevant to an investigation if it appears to an investigator, or to the officer in charge of an investigation, or to the disclosure officer, that it has some bearing on any offence under investigation, or on the

surrounding circumstances of the case, unless it is incapable of having any impact on the case.

QTS – What types of material would be gathered during the investigation?

Common formats of material include:

- statements
- documents
- reports
- physical exhibits
- fingerprints
- images
- audio or video recordings

Evidence vs Unused Material

DOES THIS RELEVANT MATERIAL HELP
US TO PROVE OUR CASE?

YES

NO

USED MATERIAL
(better known as
evidence)

UNUSED MATERIAL

Anything gathered
but not forming
part of the case
will be **unused
material**

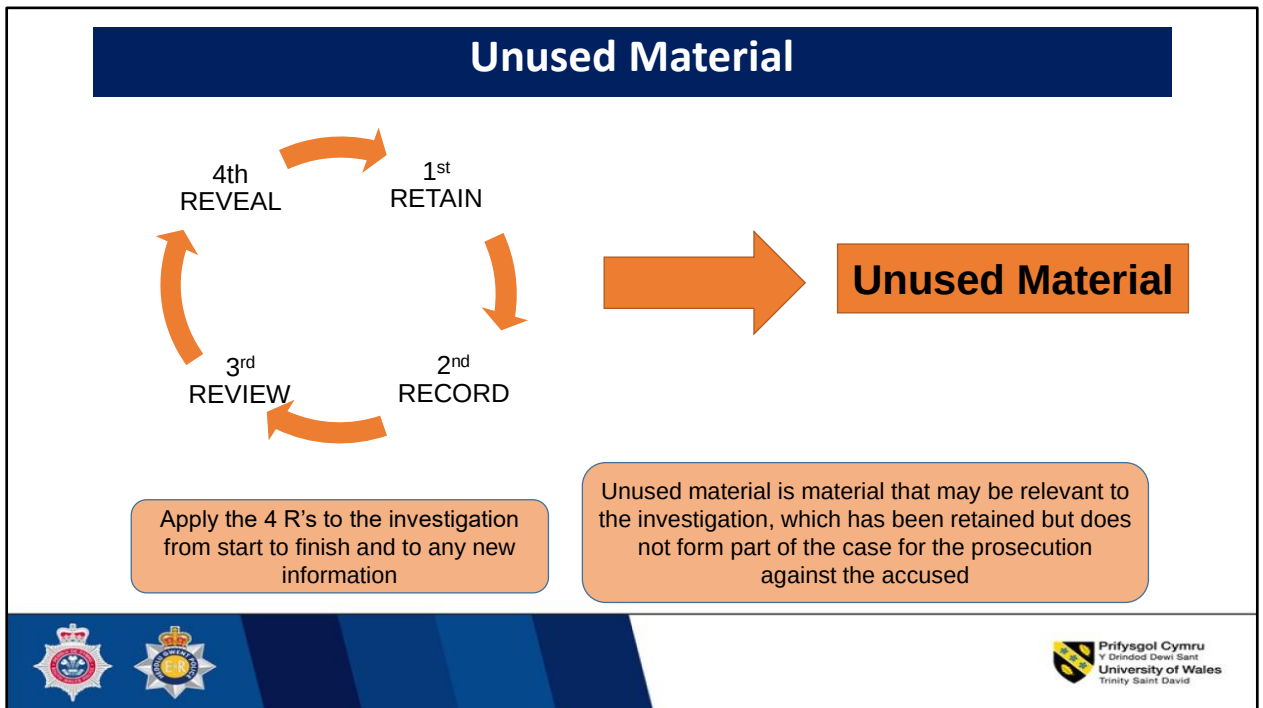


QTS – what is evidence?

QTS – what is unused material?

Evidence – anything that provides assistance in an investigation – direct, physical, forensic, digital, expert, intelligence and so on.

“Unused material is material that is relevant to the investigation but which does not actually form part of the case for the prosecution against the accused.



Unused material - any material that is relevant to the investigation but which does not actually form part of the case for the prosecution against the accused.

Activity 1

**Evidence
or
Unused**



ACTIVITY 1

Trainer notes – Separate students into manageable groups of about 4 dependant on the size of the class.

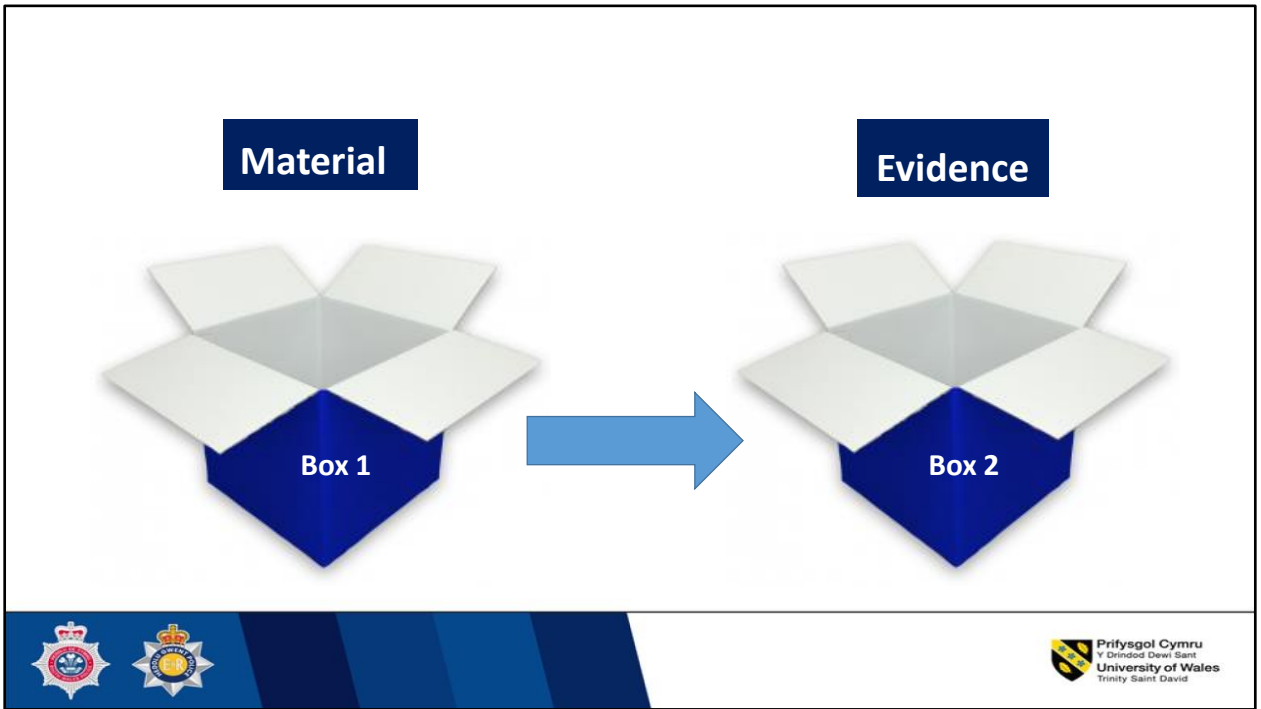
You have a very simplified case summary regarding a burglary.

You also have a bundle of documents that represents material generated within the investigation.

Get the students to review the material you have given them and identify what is evidence and what is UNUSED

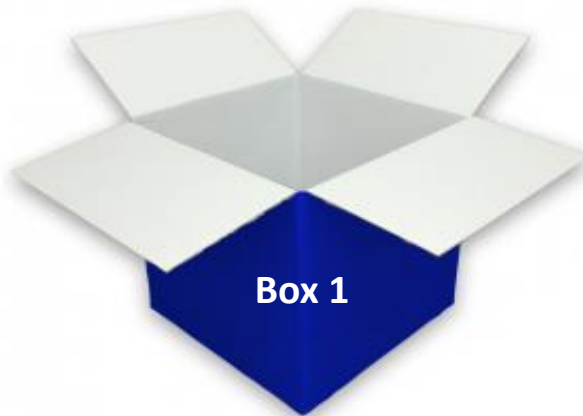
(Students to separated the material into two piles, hand out the sheets marked - Evidence and Unused Material)

There is an answer sheet as to what should be evidential amongst the course material. The remainder is obviously going to be unused material.



All of the evidence will go into box 2 which will be used in the prosecution case. Dependant on the lines of enquiry, there may be more key evidence, this will regularly be reviewed to ensure that it remains relevant to the prosecution.

Unused material



All of the information left in Box 1 is now unused material. We now have to apply the relevancy test to all that material (see next slide)

Relevant material

Assess Relevance
What is Relevant?

Material that appears to have **SOME BEARING** on,

SUSPECT

OR

OFFENCE

OR

SURROUNDING
CIRCUMSTANCES

unless it is **incapable of having any impact on the case.**



QTS – What type of information do you think could be relevant but not used in the case file?

Once we have identified what material is evidence and what is unused, we then have to examine the material in order to assess its relevance

What is relevant material? This is what is known as the relevance test.

It is any material that appears to have some **bearing** on the **offence** under investigation

or

Material that has some bearing on the **suspect** under investigation

or

Material that has some bearing on the **circumstances surrounding** the offence under investigation

Unless

It is incapable of having an impact on the investigation

REMEMBER SOS!

Only relevant material should be placed on MG6 schedules

If you decide that the material is not relevant, this is regularly reviewed by the disclosure officer. Unused material that was non relevant may become relevant if a further piece of evidence comes to light – **remember 4Rs is a continual cyclical process.**

****Please note the following in relation to phone downloads****

1. The reasonable line of enquiry relating to phone downloads will come from questions asked of our complainant/witness and suspect so we can set time parameters/applications/key word searches in order to narrow the material generated for review
2. From the downloaded material there will either be evidence of the alleged offence (which will be submitted in the evidence bundle) or unused material.
3. From the unused material : -
The relevancy test will determine what is to be scheduled (ie does the material have a bearing on suspect, offence or surrounding circumstances AND is likely to have an impact on the case)
 1. **Non-relevant** downloaded material **will not** be scheduled and as such **will not** need to be redacted (as it won't be going anywhere -it will not be used in any way by CPS or defence). This material is likely to relate to the private life of the witness which has no bearing or relevancy to the case (as per the relevancy test)
 2. **Relevant** unused downloaded material will only go on the MG6D if the material will lead to a real risk of serious prejudice to an important public interest

(CPIA sensitive). Most of the time a phone download doesn't fall to be CPIA sensitive but will have personal /sensitive data (DPA sensitive). This information is to be redacted (as it is not required to prove the case) and scheduled on the MG6C. On the rare occasion that this information is required to prove the case, advice will need to be sought from CPS or disclosure champion. Basically the officer will need to think about it.

The same is applied to all digital devices.

The defence have apparently crept into the habit of asking for full downloads to be disclosed – the CPS must challenge this and ask for a reason for the full download. Our reasonable lines of enquiry relating to digital material should be explained via the IMD so it should negate the request from CPS /defence to ask for a full download (as we have shown our investigative workings out). No reason no full download (same applies to medical records etc)

Activity 2

Relevant
or
Non-Relevant



This is what Officers traditionally struggle with most is identifying what is relevant unused material

ACTIVITY 2

Get students in their groups to review all the material in the **unused pile** and apply the relevance test.

Students should be left with 3 piles. At the end of the exercise - Evidence, Relevant Unused Material and Non Relevant Unused Material.

There is an answer sheet as to what should be relevant unused material and what is not amongst the course material. The remainder is obviously going to be unused material.

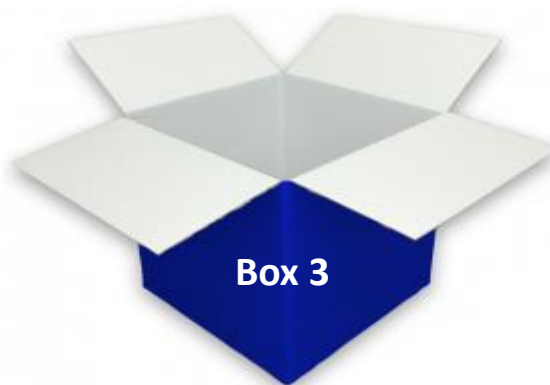
Please Note

Should the students come up with a different items on the list to the answer sheet do not correct them just ask them to explain their rationale for why they consider the item is not relevant or is relevant.

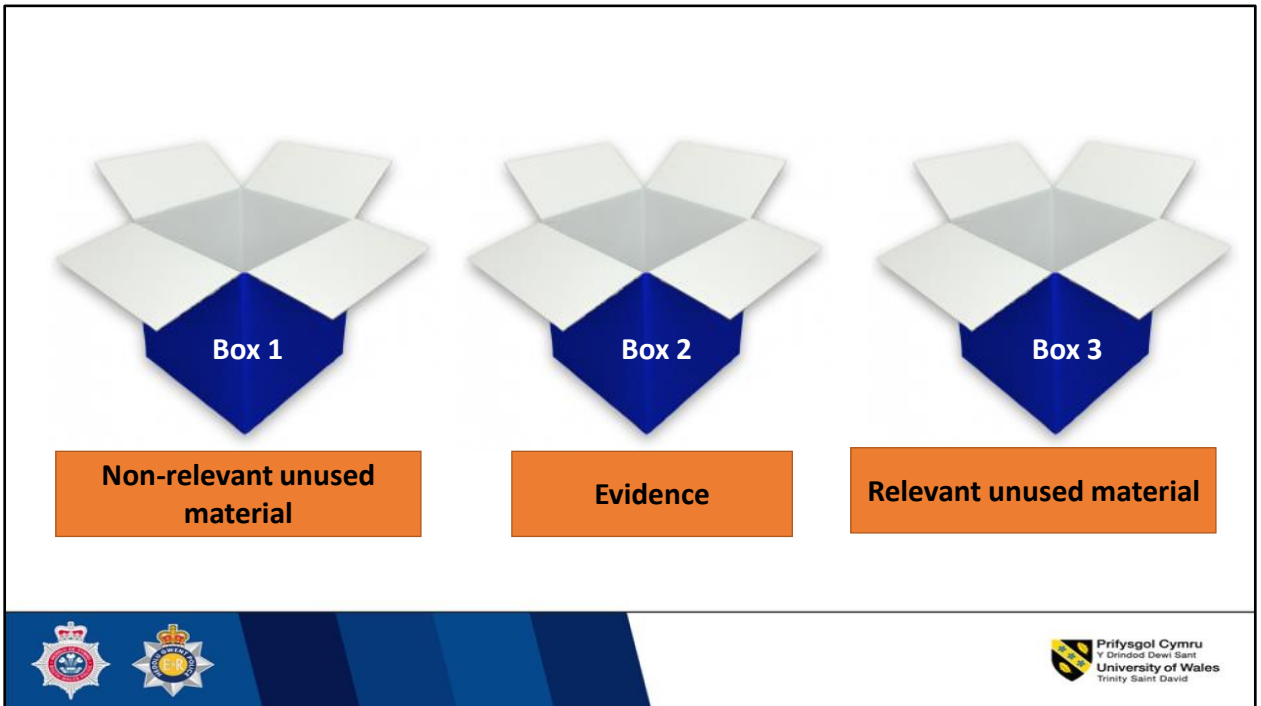
The relevance test is subjective as long as they apply the relevance test and have a reasonable rationale for why they think the material is relevant or not relevant they cannot be really criticised.

Even if the unused material is classes as non relevant, it will be regularly reviewed by the disclosure officer as non relevant material may become relevant if new evidence comes to light.

Relevant Unused Material



The relevant unused material will then go into box 3 leaving unused non relevant in box 1



By the end of the process :-

Box 1 will contain – non relevant unused material

Box 2 will contain – evidence

Box 3 will contain – relevant unused material

Box 3 is where CPIA now kicks in and you work through the tests

In reality, this is a cyclical process to review all of the material. You may have to revisit these boxes and apply the relevancy test several times and potentially in different orders as new information comes to light and your lines of enquiry establish more facts.

MG6 Series

The MG6 series of forms relate to the **relevant unused material** held by the police that does not form part of the casefile.

This may be required to be disclosed to the defence at a later stage. When submitting MG6 forms all relevant unused material needs to be listed for the CPS to decide what (if anything) will ultimately be disclosed to the defence.

The MG6 series consists of several forms which we will consider in turn



The procedure for disclosure of relevant unused material starts with the police.

A designated disclosure officer, who may or may not be an investigating officer of the offence in question, is required to prepare schedules of the unused material.

The schedules are divided between **non-sensitive** and **sensitive material**.

The non-sensitive material should be listed separately and in sufficient detail to enable the prosecutor to decide whether he or she needs to inspect the material before deciding whether to disclose it to the defence.

In addition, the disclosure officer must prepare a report identifying to the prosecutor any material in either schedule which the officer believes to satisfy the CPIA test for disclosure.

The officer should submit the schedules and the report to the prosecutor as part of the case submission process. On receipt of the schedules the prosecutor should review them thoroughly and identify any relevant material which may exist and has not yet been revealed. The prosecutor is expected to

challenge substandard schedules and insist that a fully compliant schedule is produced. The prosecutor must then decide how far to endorse the schedules with respect to what material is to be disclosed or withheld.

MG6 CASE FILE – EVIDENCE AND INFORMATION (Obsolete for pre-charge, it is still used post-charge)

MG6A RECORD OF PRE-INTERVIEW BRIEFING (not used by SWP)

MG6B POLICE OFFICER/ STAFF – MISCONDUCT RECORD

MG6C/SDC NON – SENSITIVE Material Schedule

MG6D SENSITIVE Material Schedule

MG6E DISCLOSURE OFFICERS REPORT

An important element of disclosure is the understanding of the stages of non-sensitive (MG6C) & sensitive (MG6D) material. What the differences are between the two and of course for MG6D material there must be a 'risk of serious prejudice to an important public interest'.

MG6

MG6 is a
between

It highlights
prosecutor
the OIC and
provide the
the prosecu
dis

standing
estimated
pletion.

Information will
in a CM01

RESTRICTED		MG6
CASE FILE EVIDENCE and INFORMATION Not Disclosable		
R v SMITH	URN	62AA00222218
This document is a communication between the police and CPS only.		
1. Medical Evidence: (Physical or psychiatric injuries of defendant / victim / witness): N/A If medical evidence is required in this case, what is the target date for obtaining it? Medical notes obtained during investigation and will be part of unused material		
2. Forensic evidence: (attach copy of MG21 / MG21A): N/A If forensic evidence has been submitted for examination, what is the target date for the results?		
3. Visually recorded evidence (CCTV / Photographs etc.): N/A a. Has all visually recorded material currently in police possession been viewed and copied? No . If No , give a target date for when this will be completed: b. If there is additional visual material to be obtained, state what it is and give a target date for obtaining it:		
4. Disclosure: a. Is there any relevant material that may undermine the prosecution case or assist the defence case? If Yes , provide details: No b. Is there any third party material* in this case? Yes . If Yes , give brief details of what it is and who has it: Medical notes (*third party material is that which belongs to people other than those in Prosecution Team, e.g. Social services, Local Authority, owners of CCTV material, forensic experts, police surgeons (GPs, hospital doctors).)		
5. Victim(s) / Witness(es): a. Are there any outstanding witness statements to be obtained? No . If Yes , give a target date for completion: b. If this is an anticipated not-guilty plea case, are there any vulnerable/intimidated witnesses? No . If "yes" complete form MG2 Witness Assessment for Special Measures. (*consult with CPS if unsure) c. Will a Special Measures meeting be required? No d. If any witnesses have refused to give a statement, give their name and address and state their role/involvement: N/A		
6. Other offenders: In relation to the incident leading to this case file, give the name, address and offence details of any others:		

The CM01 came into force in 2021 as part of the new CPS Guidelines on case file building and as part of the pilot in preparation for Digital Case Files.

It is a very detailed document accessible on NICHE and MUST be included in every pre-charge case.

The CMO1 replaces MG3 and MG6 (Pre-charge).

MG6B

Police Officer Disciplinary Record

Past criminal and/or disciplinary matters relating to police officers who are witnesses in the case

RESTRICTED (WHEN COMPLETE)
(FOR PROSECUTION AND CPS ONLY)

MG 6B
Page 1 of 1

POLICE OFFICER'S DISCIPLINARY RECORD

URN 62CA101320

Name: Fred Jones

Rank: DC No. 1243

Station: Roath

1. I have a disciplinary finding of guilt / have failed to meet the appropriate standard of conduct at a misconduct hearing (see notes 2-5).

2. I have a criminal conviction/criminal caution (see notes 6).

3. I have been charged with a disciplinary offence / notified of a failure to meet the appropriate standards indicated below but the case has not yet been concluded (see note 7).

4. I have been charged with a criminal offence indicated below but the case has not yet been concluded.

5. I have an adverse judicial finding against me (see note 8).

6. I have been given a relevant formal written warning or relevant caution (see note 9).

(Please check as appropriate)

Date of finding/charge or notification	Nature of offence/allegation or details of the conduct which (it is alleged) failed to meet the appropriate standards	Punishment / Sanction	Date of expunction
20/10/1998	CONVICTED OF DRIVING WITHOUT DUE CARE AND ATTENTION	FINED £100	N/A
10/01/2001	LOST AN EXHIBIT / VICTIMS PROPERTY	FORMAL WRITTEN WARNING	10/01/2002



Any officer who is involved in an investigation who has a disciplinary record is responsible for submitting their own MG6B. The OIC is not responsible for submitting these for other officers.

Trainer to highlight on the MG6B points 1 to 6 are quite wide ranging circumstances that Officers need to be aware of.

MG6C

Schedule of Non-sensitive unused material

RESTRICTED			
Form MG 6C			
POLICE SCHEDULE OF NON-SENSITIVE UNUSED MATERIAL			
R: OSWALD, JOHN		URN: 62CA101320	
The Disclosure Officer believes that the following material, which does not form part of the prosecution case, is NOT SENSITIVE <i>Additional rows can be added by using the tab key (above caps lock) on the keyboard and tabbing through last row</i>		FOR CPS USE: * Enter: D = Disclose to defence 1 = Defence may inspect CND = Clearly not disclosable E = Item is evidence	
Item No.	DESCRIPTION AND RELEVANCE (Give sufficient detail for CPS to decide if material should be disclosed or requires more detailed examination. For further guidance refer to the Prosecution Team Disclosure Manual and Attorney General's Guidelines)	LOCATION State precisely where the item can be found/located	COMMENT
1	Recorded 999 voice DVD to South Wales Police control room. Details initial reporting of incident by informant Claire Williams. Location given as The Rose and Crown PH and the nature of the incident as being a stabbing. She names the victim as David and suspect as Johnny. Details first description of suspect as being male, black, 5ft 8" and is known to her. Details injuries to suspect as bleeding from the chest. (Can be edited - contains personal details of witness).	Master copy with EACR - Fairwater police station.	
2	Transcript of above compiled by Pc 1234 Jones. Police Ref: F1/6. Written record transcribed verbatim. (Can be edited - contains personal details of victim / witness).	Original with OIC.	
3	NSPIS incident report No: 123 dated 10/03/10 - 1809hrs. Details first recording of incident by South Wales Police. Details name of informant, nature of incident and 1 st description as recorded above. Details force policy imposed by FIM relating to use of firearms (traditional policing methods initially) and all officers attending. Updated to incident closure. (Can be edited - contains personal details of victim / witness).	NSPIS	



Non-sensitive unused material should be described on the MG6C. This form will be disclosed to the defence. Where continuation sheets are used, or additional schedules sent in later submissions, item numbering must be consecutive to all items on earlier schedules.

In the description column of every schedule, each item should be individually described and consecutively numbered. The schedule must be a clear record of the nature of the item and should contain sufficient detail to enable the prosecutor to decide whether they need to inspect the material before deciding whether or not it should be disclosed. It is not sufficient merely to refer to a document by way of a form number. Where the disclosure officer is unsure whether an item is relevant to the investigation, the prosecutor should be consulted as soon as practicable.

MG6D

Schedule of Sensitive unused material

Items 2 & 3 would be considered 'Highly Sensitive' and should be submitted on a separate MG6D

RESTRICTED

CONFIDENTIAL INFORMATION NOT TO BE DISCLOSED
POLICE SCHEDULE OF SENSITIVE MATERIAL
NOT DISCLOSEABLE

Form MG 6D
Page 1 of 3

R v Oswald, John URN 62 CA 1013 20

* Tick if copy supplied to C.P.S.

The Disclosure Officer believes that the following material, which does not form part of the prosecution case, is SENSITIVE
Additional rows can be added by using the tab key (above caps lock) on the keyboard and tabbing through last row

Item No.	DESCRIPTION	REASON FOR SENSITIVITY	* Agree sensitive Yes / No	Count application Yes / No	C.P.S Views
1	NO SENSITIVE MATERIAL KNOWN TO THE SUBMITTING OFFICER AT THIS STAGE				
2	Anything dealing with informants (Also consider Crime stoppers material if it contains anything that may disclose the identity of the informant, i.e. it was reported when the crime was taking place and the suspect may know that there was only one other person present at this time)	POTENTIAL TO IDENTIFY SOURCE			
3	Anything that will lead to the disclosure of an observation post or any other surveillance procedures.	REVEAL POLICE SURVEILLANCE TECHNIQUES / REVEAL OWNER OF PROPERTY			
4	The disclosure of any police policy documents	SEEK ADVICE			



- This schedule should be used to reveal to the prosecutor the existence of relevant unused material which the disclosure officer believes should be withheld from the defence.
- The disclosure officer must describe on the MG6D any relevant material which he or she believes would give rise to a real risk of serious prejudice to an important public interest if the existence of that material were revealed to the defence.
- The disclosure officer must also state the reason for that belief. This form will not be disclosed to the defence.
- The Disclosure Officer must describe on the MG6D any material is believed would give rise to a **real risk of serious prejudice to an important public interest** and the reason for that belief.
- The MG6D document is **NOT** to be disclosed to the defence.
- **No intelligence or anything in relation to covert operations should be put onto the MG6D as this would be classed as 'Highly Sensitive' (i.e**

anything that could lead to a threat in National Security or loss of life). Anything deemed as 'Highly Sensitive' would need to be submitted on a separate MG6D

If you are in any doubt seek advice from your BCU disclosure champion.

If an officer attends court and are asked questions by the prosecution or defence in relation to intelligence relating to the case, the officer would need to seek advice before answering the question posed to them. Recent examples have identified prosecution barristers putting pressure on OIC'S to provide witness evidence on what Niche intelligence there is on a defendant. This is a massive **NO** and cannot be done under any circumstances.

If material is relevant, sensitive and DISCLOSABLE, it needs to go through the Public interest immunity (PII) process.

The police and the CPS must always take care to protect intelligence information and information given to the police in confidence. That will be so whether or not it is thought likely that the court will order its disclosure. If the investigator is unsure whether information was given in confidence, the position should be clarified with the person who provided the information.

The investigator doesn't just look at what information assists the prosecution but also negative information such as intelligence held on Niche casting doubt on the suspects guilt. (This would have to be documented on an MG6D and dealt with by the new process that has recently been adopted by SWP – SWP Officers only)

Question officers should ask themselves, where/when does an investigation actually commence?

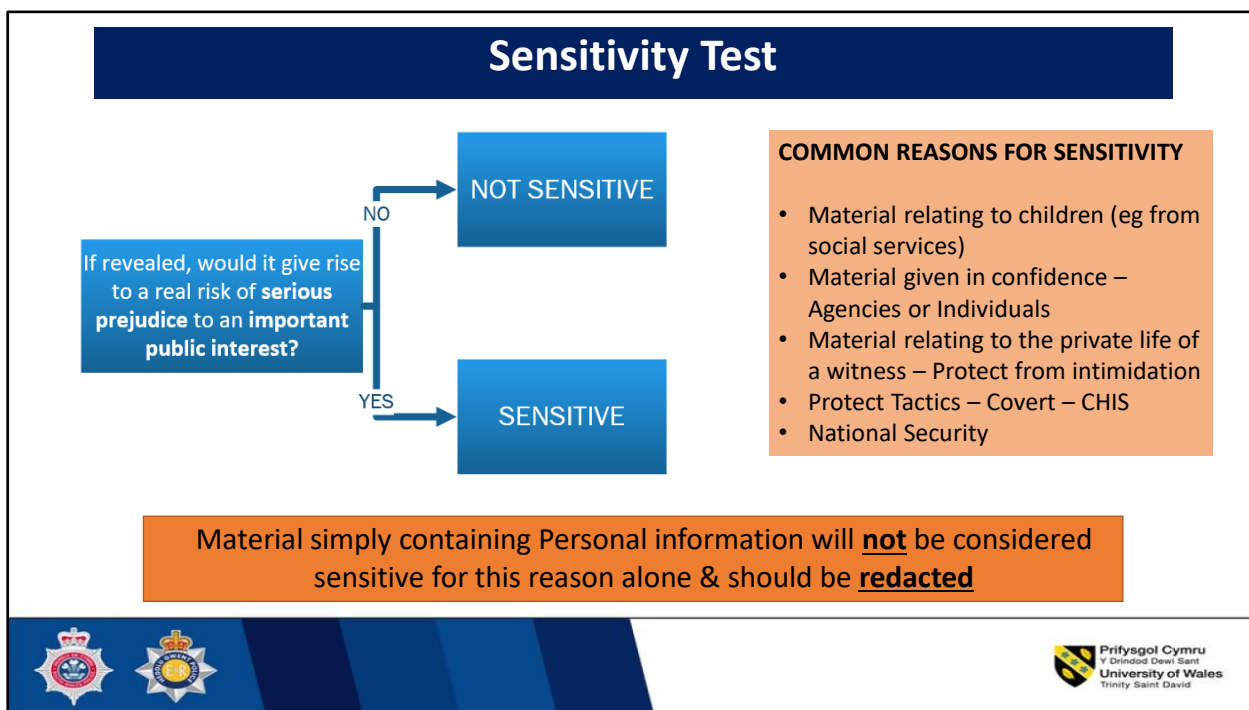
For the majority of cases response officers will deal with the initial stages of an investigation which will be the incident itself, but officers need to be aware of precursor incidents, ongoing operations and other material held that may have a bearing on the investigation i.e. family court material, social media, false allegations.

Question - Where is the information recorded?

An example of this would be a member of the public provides intelligence to an officer. This is initially recorded in their PNB. On return to the station an intelligence report is created on Niche. Technically the entry in their PNB is relevant as this was the first location of where it was recorded and therefore should be retained and recorded etc. along with the actual intel report.

Be careful what goes on the MG5. In most cases this is disclosed to the defence. Officers should not make reference to MG6D sensitive material on the MG5.

Question - **What is evidence and what is unused?** For example a PC submits an intel report re a sighting of a person driving a specific vehicle. This later becomes relevant at an investigation stage. The intelligence report can be turned into a statement so it becomes evidence. If this was a member of the public then in the main it would remain as intelligence – unused.



CPIA Codes of Practice – Chapter 6

6.15 Subject to paragraph 6.16 below, the disclosure officer must list on a sensitive schedule any material the disclosure of which he believes would give rise to a real risk of serious prejudice to an important public interest, and the reason for that belief. The schedule must include a statement that the disclosure officer believes the material is sensitive. Depending on the circumstances, examples of such material may include the following among others:

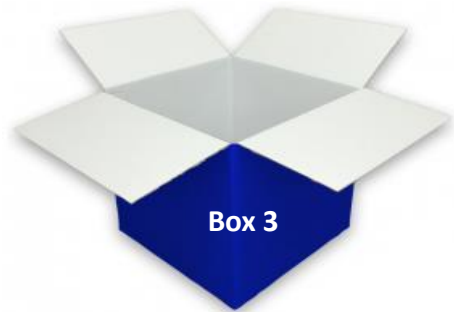
- relating to national security;
- intelligence and security agencies;
- intelligence from foreign sources which reveals sensitive intelligence gathering methods;
- material given in confidence;
- material relating to the identity or activities of informants, or undercover police officers, or witnesses, or other persons supplying information to the police who may be in danger if their identities are revealed;
- material revealing the location of any premises or other place used for police surveillance, or the identity of any person allowing a police officer to use them for surveillance;
- material revealing, either directly or indirectly, techniques and methods

relied upon by a police officer in the course of a criminal investigation, for example covert surveillance techniques, or other methods of detecting crime;

- material whose disclosure might facilitate the commission of other offences or hinder the prevention and detection of crime;
- material upon the strength of which search warrants were obtained;
- material containing details of persons taking part in identification parades;
- material supplied to an investigator during a criminal investigation which has been generated by an official of a body concerned with the regulation or supervision of bodies corporate or of persons engaged in financial activities, or which has been generated by a person retained by such a body;
- material supplied to an investigator during a criminal investigation which relates to a child or young person and which has been generated by a local authority social services department, an Area Child Protection Committee or other party contacted by an investigator during the investigation;
- material relating to the private life of a witness

Activity 3

**Non-sensitive (MG6C)
or
Sensitive (MG6D)**



Back to box 3.

All of the material in box 3 will now be sorted into non sensitive (recorded on a MG6C) and sensitive (recorded on a MG6D)

ACTIVITY 3

USING THE 'RELEVANT' PILE OF PAPERS, IDENTIFY IN THIS CASE WHAT YOU CONSIDER IS SENSITIVE MATERIAL & NON SENSITIVE MATERIAL

MG6C – NON SENSITIVE

MG6D – SENSITIVE

Students should be left with 4 piles. At the end of the exercise –

- Evidence,
- Non Relevant Material.

- Relevant Unused Material (MG6C)
- Relevant Sensitive Material (MG6D)

There is an answer sheet as to what should be SENSITIVE RELEVANT unused material MG6D amongst the course material.

Once it has been debriefed, student to pick 3 entries from sensitive and non sensitive and practice writing in the MG6C and MG6D

MG6C Entry Example

Item	Description and Relevance	Location
1	Copy of CCTV footage from Master Gunners PH dated 1 st May between 1200hrs and 2330hrs.	Central Property Store
2	Occurrence No 123 Dated 1 st May	Niche



Click – Is this enough information? = NO

Detailed Clear Accurate MG6C Entry Example

Item	Description and Relevance	Location
1	Copy of CCTV footage from Master Gunners PH dated 1st May between 1200hrs and 2330hrs. The CCTV covers the entrance and the bar areas: The footage shows the victim (description) entering the bar at 1932hrs and enters into conversation with a number of customers at the bar. The victim can be seen leaving at 2015hrs and is seen purchasing 2 pints of lager whilst at the bar.	Central Property Store
2	Occurrence No 123 Dated 1st May This is the original and only Occurrence created by the Police Control Room Operator. It contains details of the informant, attending Officers and the log of actions and enquiries that were conducted by investigating/attending officers. The first description provided by the caller is contained together with personal details of the informant and witnesses name, address, telephone number.	Niche



Can you now tell what the relevance of this item is? = YES

Lack of detail in the description and a failure to show the relevance of the material within the schedules have been heavily criticised during the HMIC review. Detail is vital to allow the prosecutor to make a fully informed decision in the disclosure process.

Schedules

Must be

DETAILED - CLEAR – ACCURATE

- The officer is required to summarise the nature and content of the item so that its relevance is clearly understood by the CPS.
- Must contain sufficient information to enable prosecutor to decide whether material should be viewed

Remember the actual material listed is NOT SUBMITTED with the MG6c and MG6d schedules.

The prosecutor will then review the schedule and then make a decision on

each Item as to its disclosure.

This is impossible without the full detail.

You do not need to send the CPS edited material from the MG6c as the defence will not see this material unless it undermines or assists the defence or falls into Rebuttable Presumption Material (which we will discuss later) The defence are not entitled to see it.

To enable the prosecutor to fulfil their disclosure obligations, provide accurate and sufficiently detailed descriptions of all items of relevant unused material. Descriptions may be vital to strengthening a case and assisting the prosecutor to make their disclosure decisions - without requiring them to review every item of unused material. The person acting as the DO must; provide each item with a unique sequential reference number, fully describe the item and explain the context of how it is relevant to the case.

If the schedules or descriptions are not sufficient, the prosecutor will need to request further details or request to view the material.

Trainer to email/distribute 'MG6C Practice Guide final' to students

Activity 4

Time to Practice



Trainer to put students into pairs. – **ACTIVITY 4**

Students to be given 3 items from the sensitive and non-sensitive unused material and practice completing the MG6C and MG6D. The forms will be emailed to the students prior to the start of the session. The items that they are to practice can be found on the MG6C/D 'gold model' handout. It is up to the trainer to tell them which ones they want them to practice.

From Bryan Heard (Investigative Training)

I have included 5 Items on the MG 6 c,
With regards to item 5, PNC print out, this is written in a way that does not disclose the presence of any convictions, so a disclosure re a Witness may be written 'PNC print out re Witness A.N.OTHER' or 'Witness A.N.OTHER PNC print out which may state on the actual PNC Print 'No Trace'.

If the PNC Print out were to highlight relevant material re Dishonesty conviction re a witness or Defendant Bad Character then this would be referred to and in the application requesting introduction of evidence of Bad Character.

With regards the 4 items on the MG 6 d,

I have included a (bracketed reminder for officers to check with the Intel Unit as they will have access to how the Source was initially recorded. This may indicate it is a Partner of, or Neighbour of the subject, etc , which would be of note in any risk assessment / management or if anything other material became available casting doubt on the reliability / motive of the source.

Statutory Disclosure Test

Does the material?

Undermine the prosecution case
Or
Assist the case for the defence

For Example;

- Something which is contrary to the prosecution case
- Casts doubt on witness
- Points to someone else

If so record on MG6E



We now have to carry out the **STATUTORY DISCLOSURE TEST** on both the MG6c and MG6d material to ascertain if any of it either,

UNDERMINES THE PROSECUTION CASE

or

ASSISTS THE DEFENCE CASE.

It could also relate to breach of process

Records of previous convictions and cautions for prosecution witnesses;

• Any other information which casts doubt on the reliability of a prosecution witness or on the accuracy of any prosecution evidence;

• any motives for the making of false allegations by a prosecution witness;

• any material which may have a bearing on the admissibility of any prosecution evidence;

• the fact that a witness has sought, been offered or received a reward;

• any material that might go to the credibility of a prosecution witness;

• any information which may cast doubt on the reliability of a confession. Any item which relates to the accused's mental or physical health, his intellectual capacity, or to any ill-treatment which the accused may have suffered when in the investigators custody is likely to have the potential for casting doubt on the

reliability of a purported confession; and

- information that a person other than the accused was or might have been responsible or which points to another person, whether charged or not (including a co-accused) having involvement in the commission of the offence.

- a breach of Pace
- an Illegal search
- Any Illegally obtained evidence i.e. from a mobile search without authority etc

These item will fall to be disclosed on the MG6e

We must inform the prosecutor as early as possible whether any material weakens the case against the accused.

Early disclosure is know as “common law” disclosure. **R v DPP ex parte Lee (1999).**

There is a continuing duty of disclosure by the Prosecution throughout the criminal proceedings, to appeal stage.

Note: the need to constantly review the case material for unused material/disclosable material.

MG6E

Disclosure Officer's Report

Schedule of information which undermines the prosecution case or assists the case for the accused.

RESTRICTED/CONFIDENTIAL* - FOR POLICE AND PROSECUTION ONLY (when complete)			
DISCLOSURE OFFICER'S REPORT			Page No. 1 of 1
R: Oswald, John		URN	
SCCA10130			
The following items are listed on the schedule(s) for this case and relate to:			
*Material which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused and/or			
* Material required to be supplied under paragraph 7.3 of the Code (see overleaf)			
* Enter C or D to denote schedule MG6C or 6D and enter item no. from schedule			
• Schedule	Item no.	Reason	Tick if attached
SC	4	THE WITNESS AT SCENE PROVIDES A DESCRIPTION OF THE SUSPECT THAT DIFFERS FROM THAT ON THE 999 TAP. SHE HAS FURTHER MENTIONED THAT HE WAS WEARING A WHITE VEST AND BLACK, BAGGY JOGGING BOTTOMS. MENTION ANY PREVIOUS CONVICTIONS OF WITNESS / VICTIMS PARTICULARLY RELATING TO DISHONESTY / FALSE ALLEGATIONS ETC. ANY RELATIONSHIP / CONNECTION BETWEEN WITNESS / VICTIM / SUSPECTS. FOR EXAMPLE WITNESS COULD BE A PREVIOUS VICTIM OF BURGLARY - COULD BE SEEN TO BE BIASED.	☐

The disclosure officer should use the MG6E to bring to the prosecutor's attention any material that could reasonably be considered capable of undermining the prosecution case against the accused or of assisting the case for the accused.

This also applies to sensitive material.

This is called the disclosure test

Examples include:

- records of previous convictions and cautions for prosecution witnesses;
- any other information which casts doubt on the reliability of a prosecution witness or on the accuracy of any prosecution evidence;
- any motives for the making of false allegations by a prosecution witness;
- any material which may have a bearing on the admissibility of any prosecution evidence;
- the fact that a witness has sought, been offered or received a reward;
- any material that might go to the credibility of a prosecution witness;
- any information which may cast doubt on the reliability of a confession. Any item which relates to the accused's mental or physical health, his intellectual



capacity, or to any ill-treatment which the accused may have suffered when in the investigators custody is likely to have the potential for casting doubt on the

reliability of a purported confession; and

- information that a person other than the accused was or might have been responsible or which points to another person, whether charged or not (including a co-accused) having involvement in the commission of the offence.

MG6E

Where the disclosure officer believes there is no material that satisfies the disclosure test, the officer should endorse the MG6E in the following terms:

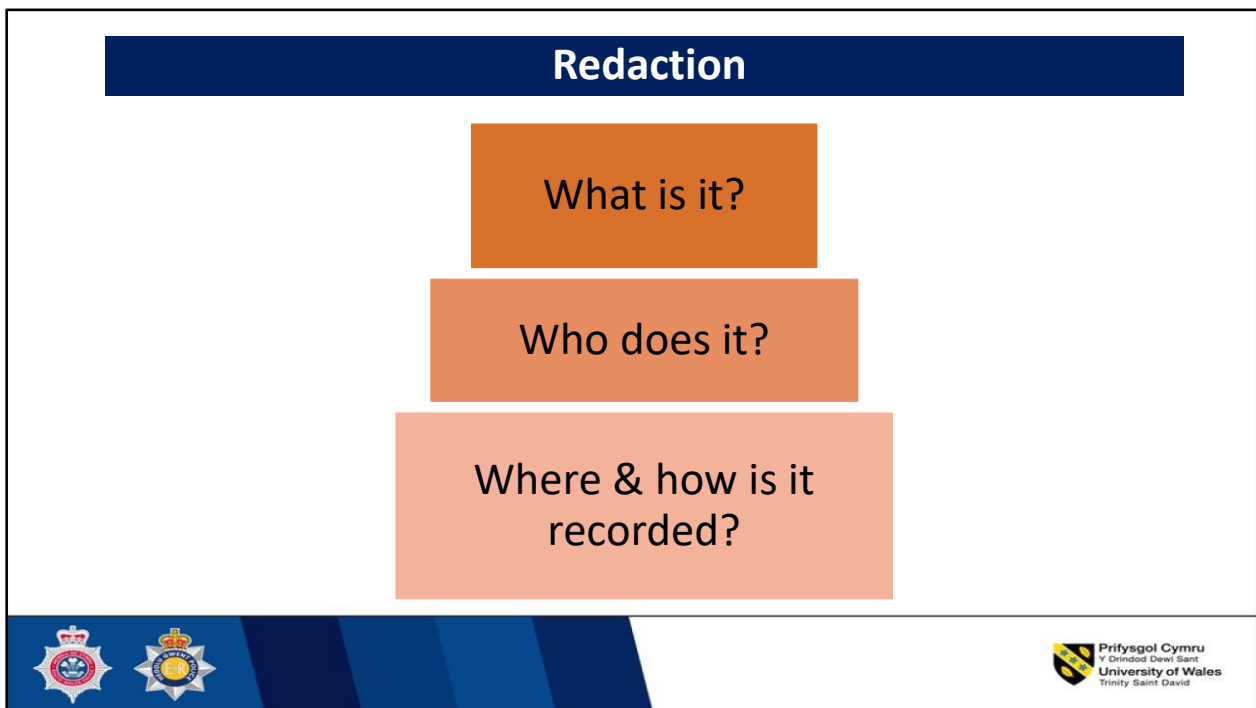
"I have reviewed all the relevant material which has been retained and made available to me and there is nothing to the best of my knowledge and belief that might reasonably be considered capable of undermining the prosecution case against the accused or assisting the case for the accused."



Consolidation



Trainer to click onto the icon which will take you to the College Learn portal. Input your details and then it will take you straight to a summary video to consolidate learning which is 10 and a half minutes long.



The disclosure process has been in force since CPIA was introduced in 1996. When the new AG Guidelines were introduced in 2020 Redaction and Rebuttable Presumption Material was introduced.

Redaction – the purpose is to remove personal and sensitive data that falls under the Data Protection Act (not CPIA). This is done by the OIC via Adobe Pro.

Sometimes, unused material that is not sensitive per se but contains sensitive information will require redacting.

‘Sometimes documents that fall to be disclosed may contain a mixture of sensitive and non-sensitive material. In these cases there may be no objection to the sensitive part being permanently blocked out on the copy document which is to be sent to the prosecutor. The original should not be marked in any way. The redacted document should be described on the MG6C (provided that the revelation of the existence of the document itself is not sensitive). The prosecutor should be informed of the nature of the edited material, if not obvious, on the MG6. The disclosure officer should edit out issues of sensitivity on material that is

routinely revealed. **The responsibility to edit rests with the investigator**, but the prosecutor should be consulted where editing or separating is other than straightforward.’
(Disclosure manual)

Contained within the entry on the MG6C should be an explanation of why the document required editing.

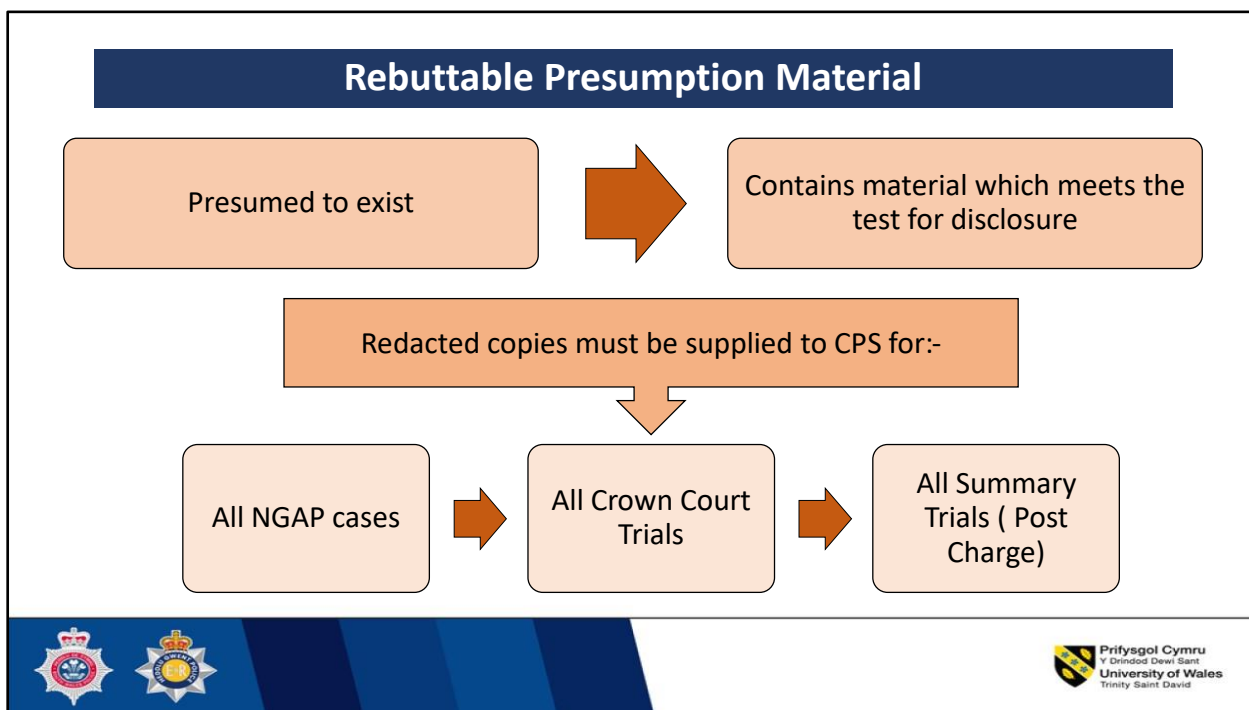
It is the investigator’s or disclosure officer’s (if there is one) responsibility to carry out any necessary redaction.

Eg if the officer is OIC then they should be completing any necessary redaction(s). If the Case is being handed over to the Hub (in SWP) then any sensitive information within any unused material should be brought to their attention.

Prior to sending to the CPS for a charging decision, all personal and sensitive information **MUST BE REDACTED** – unless it is of relevant evidential value

Annexe D on the AG Guidelines 2022 has been introduced and purely deals with Redaction.

If students are struggling with this then they should be encouraged to watch Mark Bateman’s podcast (which is about 30 minutes long)



QTS - What do you think Rebuttable Presumption Material is?

A rebuttable presumption is an assumption made by a court that is taken to be true unless someone comes forward to contest it and prove otherwise. For example, a defendant in a criminal case is presumed innocent until proven guilty

For us Rebuttable Presumption Material is material presumed to exist and likely to include material which meets the test for disclosure.

You may sometimes hear this referred to as Routine Revelation Extended.

Trainer to handout/direct students to 'Rebuttable Presumption Interpretation Table'

Rebuttable Presumption Material			
999 Calls	Control Works Incident	NICHE Occurrence	Notes – EPNB, notes prepared for statement etc
Record of 1 st descriptions	Relevant Account/info noted by investigator	Record of Actions e.g H2H, CCTV., Forensic	CCTV/BWV
Custody Record	Any previous accounts- V/W	Interview Records	Witness Precons

QTS - So what is the rebuttable material that we must disclose? Boardblast answers

CPIA Cop – para 5.4 and 6.6
AGG para 86

- Records which are derived from tapes or recordings of telephone messages (for example 999 calls) containing descriptions of an alleged offence or offender
- Any incident logs relating to the allegation;
- Crime reports, including: crime report forms or any contemporaneous recording of an incident; an investigation log; any record or note made by an investigator, on which they later make a statement or which relates to contact with the suspects, victim or witnesses; an account of an incident or information relevant to an incident or record of actions carried out by officers (such as house-to-house, CCTV or forensic enquiries) noted by a police officer in manuscript or electronically;
- The defendant’s custody record;
- Any previous accounts made by a complainant or by any other witnesses;

- Interview records (written records, or audio or video tapes, of interviews with actual or potential witnesses or suspects);
- Any material casting doubt on the reliability of a witness e. g. previous convictions and cautions of any prosecution witnesses and any co-accused.
This material must be listed on the schedule by the disclosure officer in addition to all other material which may be relevant to an investigation; it is likely that some of this material will need to be redacted (see 6.12).

The point at which the case file is submitted to the CPS will depend on the circumstances of the charging decision and on the anticipated plea:

- a. Where the police are seeking a charging decision under the Full Code Test from the CPS, and it is anticipated that the defendant will plead not guilty, the unused material schedules should be provided to the prosecutor by the disclosure officer at the same time as seeking this charging decision.
- b. Where the police have charged a suspect on the Full Code Test under the arrangements contained in the Director's Guidance on Charging, and a not guilty plea is anticipated, then the unused material schedule should be provided to the prosecutor at the point at which the case file is submitted to the CPS.
- c. In all other cases the disclosure officer must provide the schedules as soon as possible after a not guilty plea has either been indicated or entered.

Trainer to email handout '**Routine Revelations**'

Trainer to continue to discuss routine revelations using the handout and PPT slide for reinforcement

REMEMBER.....	
D	Disclose to the defence only material which might reasonably be considered capable of undermining the prosecution case or assisting the case for the Defence. The CPS (rather than the police) makes disclosure to the defence.
I	Investigate ALL reasonable lines of enquiry leading either towards or away from an individual/suspect. This is a statutory requirement under CPIA.
S	Schedule ALL RELEVANT unused material on either an SDC1 or SDC2 (Magistrates Court NGAP cases only) or the MG6C, MG6D and MG6E (either-way NSST and Indictable only offences). Give FULL & meaningful descriptions for CPS to be able to understand what relevant material we have.
C	CPS have to read & mark up schedules. If they do not contain full descriptions they can return them to be done again.
L	Legal obligation under CPIA to comply & can be subject to disciplinary proceedings if we fail.
O	Openness & fairness is the basis of Disclosure. We must be transparent when dealing with all aspects of Disclosure by applying the legislation properly.
S	Sensitivity. The Disclosure Officer makes this decision so you must understand the definition. <i>'Is there a real risk of a serious prejudice to an important public interest.'</i>
U	Undermining material. Look carefully for anything that could meet the disclosure test & describe it on the relevant form (SDC2 for Magistrates Cases or MG6E for Crown Court cases). 'Anything that MAY undermine the prosecution case or assist the case for the Defence'.
R	Relevancy test. All unused material MUST be scheduled unless you are happy that it is incapable of having ANY impact on the case. 190809-000193A - IF IN DOUBT SCHEDULE IT.
E	Evidence. If the material is part of the prosecution file then you do not have to schedule it.



Quick guide to disclosure and aide memoire

Handout available to students on Moodle

Every investigation has to be balanced, unbiased, proportionate and professionally curious

Further information on disclosure can be found on the Crown Prosecution Service Disclosure Manual - <https://www.cps.gov.uk/legal-guidance/disclosure-manual>

****Trainer should also direct students to the Authorised Professional Practice' in relation to disclosure including disclosure of data considerations and third- party disclosure on the College of Policing website****



*****For Trainers information there are two value added podcasts available by DS Mark Bateman from Swansea CPU in relation to Redaction (60 minutes) and the IMD (90 minutes). All students can view these but may be more pertinent for SWP processes. Links provided below and on PPT *****

Podcast Links

Redaction

https://youtu.be/oppp3c_sqQ4

IMD

<https://bob.swp-rest.police.int/sorce/beacon/singlepageview.aspx?content>

[Type=Videos&row=9621702&SPVPrimaryMenu=&SPVReferrer=developmenthub_doneitwhatnow](#)