

# 9

## DISCLOSURE

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**9.01** One crucial feature of the criminal trial in England and Wales has always been the duty of the prosecution to disclose the evidence which is at its disposal to the defence. The rationale for this duty is the disparity of resources between the Crown on the one hand (with its access to the investigative facilities of the police and specialist services such as those of forensic scientists), and the individual accused of an offence on the other hand. In an effort to ensure a fair trial for the accused, and to achieve 'equality of arms' as far as possible between the Crown and the accused, there developed a common-law duty owed by the prosecution to the defence. This duty had two aspects:

- (a) The obligation to notify the defence of the evidence upon which the prosecution intend to rely. This can conveniently be referred to as the 'duty to provide advance information'. As far as trial on indictment is concerned, this is met in part by the statements and exhibits served upon the defence when the case is sent to the Crown Court (see Chapter 13). Any further evidence which the prosecution later decide to adduce as part of their case must be brought to the defence's attention by way of a notice of additional evidence (see 20.32 to 20.33). The duty in respect of summary trial is less comprehensive, and is dealt with in 8.09 to 8.15.
- (b) The duty to make available to the defence any material of relevance to the case upon which they do not intend to rely—'unused material'. It is upon this aspect of the prosecution's obligations (known as the 'duty of disclosure') that most of the remainder of this Chapter concentrates, but it will also deal with the duty placed upon the defence to make disclosure of the case upon which it will rely at trial.

**9.02** Although the prosecution duty of disclosure was evolved by the judges at common law, in an effort to ensure a fair trial for the accused, it has now been made subject to the statutory regime set out in the Criminal Procedure and Investigations Act 1996 (CPIA), as supplemented by a Code of Practice issued under that Act. The disclosure provisions of the CPIA came into effect on 1 April 1997. Their application is set out in s 1(3), which states that Pt I (containing the disclosure provisions) applies in relation to alleged offences into which no criminal investigation has begun before the appointed day (1 April 1997). 'Criminal investigation' is defined in s 1(4) as 'an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained (a) whether a person should be charged with an offence, or (b) whether a person charged with an offence is guilty of it'. The Act is supplemented by the Code of Practice and a series of rules and regulations which came into effect on the same day. A series of important amendments to

the CPIA came into force in 2005 as a result of the CJA 2003. The Criminal Procedure Rules (CrimPR) deal with disclosure in Part 22.

The scheme of the legislation is as follows:

**9.03**

- (a) There is a statutory duty upon the police officer investigating an offence to record and retain information and material gathered or generated during the investigation (see 9.07).
- (b) The prosecution should inform the defence of certain categories of that material which they do not intend to use at trial (see 9.13 to 9.15)—as stated, there are separate obligations to inform the defence of material which they do intend to use.
- (c) The defence then inform the prosecution of the case which they intend to present at trial (see 9.16 to 9.29).

The legislation makes provision for applications to be made to the court in certain circumstances where there is a dispute about whether the prosecution should disclose certain material (see 9.30); and there are sanctions laid down for defence failure to disclose, or disclosure which is false or inconsistent (9.41 to 9.53).

**9.04**

The cases to which this legislative scheme applies are laid down in s 1. In brief, it is compulsory in relation to cases sent to the Crown Court to be tried on indictment. It may also apply on a voluntary basis to any summary trial, including those in the youth court, whether the charges in question are summary, triable either way, or even (in the case of the youth court) indictable only (see 9.54 to 9.56 for the application of the statutory provisions to summary trial).

**9.05**

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## A THE INVESTIGATOR'S DUTY

Section 23 of the CPIA requires the Secretary of State to prepare a Code of Practice which will govern investigations carried out by police officers. By s 26, those other than police officers (e.g., customs officers and trading standards officers) charged with the duty of conducting criminal investigations must have regard to the Code's provisions.

**9.06**

The Code of Practice (see Key Documents at the end of the Chapter) makes the investigator responsible for ensuring that any information relevant to the investigation is recorded and retained, whether it is gathered in the course of the investigation (e.g., documents seized in the course of searching premises) or generated by the investigation (e.g., interview records). Where there is any doubt about the relevance of material, the investigator should retain it. The duty to retain material includes in particular the following categories:

**9.07**

- (a) crime reports, including crime report forms, relevant parts of incident report books, and police officers' notebooks;
- (b) final versions of witness statements;
- (c) draft versions of witness statements where their content differs from the final version;
- (d) interview records (written or taped);
- (e) expert reports and schedules;
- (f) any material casting doubt upon the reliability of a confession;
- (g) any material casting doubt on the reliability of a witness.

But the duty to retain material does not extend to items purely ancillary to that in the above categories which possess no independent significance, such as duplicate copies of documents. The material must be retained at least until criminal proceedings are concluded. Where the accused has been convicted, the material must be retained for at least six months after conviction, or until he is released from custody (whichever is the later).

- 9.08** Where the investigator believes that the person charged with an offence is likely to plead not guilty at a summary trial, or that the offence will be tried in the Crown Court, he must prepare a schedule listing material which has been retained and which does not form part of the case against the accused. If the investigator has obtained any sensitive material, this should be listed in a separate schedule. Sensitive material is material which the investigator believes it is not in the public interest to disclose. The Code gives a number of examples, which range from material relating to national security to material given in confidence, and include material relating to informants, undercover police officers, premises used for police surveillance, techniques used in the detection of crime, and material relating to a child witness generated, e.g., by a local authority social services department (see 9.33 to 9.40).
- 9.09** The investigator should draw the prosecutor's attention to any material which might undermine the prosecution case. The disclosure officer (defined as the person responsible for examining the records created during the investigation and criminal proceedings and disclosing material as required to the prosecutor or the accused) must certify that to the best of his knowledge and belief the duties imposed under the Code have been complied with.
- 9.10** If a defence statement is given (see 9.16), the investigator must look again at the material retained, and draw the prosecutor's attention to any material which might reasonably be expected to assist the defence disclosed. Again the disclosure officer must certify compliance with the duties imposed by the Code. If the investigator comes into possession of any new material after complying with the duties described above, then this must be treated in the same way.
- 9.11** If the prosecutor so requests, the investigator must disclose to the accused:
- (a) material which might undermine the prosecution case;
  - (b) where the accused has given the prosecutor a defence statement (see 9.16), material which might reasonably be expected to assist the defence which the accused has disclosed; and
  - (c) any material which the court orders be disclosed.
- 9.12** The statute has therefore placed the police disclosure officer at the centre of the obligation to disclose material in the possession of the prosecution. This role is controversial, and the way in which it is carried out has led to fierce criticism by the legal profession. As was noted in a major study carried out for the Home Office, most police forces regard the training which they receive on disclosure as inadequate—its average length is less than one day. Officers frequently provide to prosecutors documentation which is late, inaccurate, or incomplete. Frequently, prosecutors disagree with the assessment of disclosure officers as to whether material should be disclosed or not (Auld Report, pp. 449–51, relying in part on Plotnikoff and Woolfson, *A Fair Balance? Evaluation of the Operation of Disclosure Law*, Home Office, 2001).

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## B PROSECUTION DISCLOSURE

- 9.13** The main duty of the prosecution to disclose unused material is contained within the CPIA, within the framework set out in 9.03. Before this statutory obligation arises, however, the prosecution may be under a common-law duty to disclose such material to the defence at an earlier stage, e.g., because it might help the defence in a bail application, or to prepare for trial: *DPP ex parte Lee* [1999] 1 WLR 1950.

However, the main duty of the prosecution arises as a result of the scheme set out in the CPIA. Section 3 requires the prosecutor to disclose previously undisclosed material to the accused if it ‘might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused’ (CPIA, s 3(1)(a), as amended by the CJA 2003, s 32). If there is no such material, then the accused must be given a written statement to that effect. Prosecution material includes material which the prosecutor possesses or has been allowed to inspect under the provisions of the Code (see 9.06 to 9.12). It may be disclosed either by giving it to the defence, or allowing them to inspect it at a reasonable time and place. Prosecution disclosure must be carried out as soon as reasonably practicable (s 13). Material must not, however, be disclosed under this provision if a court has concluded that it is not in the public interest that it be disclosed (s 3(6), dealt with at 9.33 to 9.40). By s 4, if the prosecutor has been given a document indicating any non-sensitive material which has not been given to the accused, that document must be given to the accused at the same time as primary prosecution disclosure takes place. 9.14

It will be the prosecutor who will judge, then, whether material should be disclosed to the defence. On what basis will that judgement be exercised? The common-law position prior to the CPIA was encapsulated in the test laid down in *Keane* [1994] 1 WLR 746, which held that material fell to be disclosed (unless subject to immunity) if it could: 9.15

be seen on a sensible appraisal by the prosecution: (a) to be relevant or possibly relevant to an issue in the case; (b) to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; (c) to hold out a real (as opposed to a fanciful) prospect of providing a lead on evidence which goes to (a) or (b).

When the Government introduced the new statutory disclosure scheme contained in the CPIA they aimed, by the use of the word ‘undermine’, to narrow the test of relevance as defined in *Keane* (Hansard, Lords, 18 December 1995, cols 1436–47; and see Leng and Taylor, *Blackstone’s Criminal Procedure and Investigations Act 1996*, pp. 13–14). Parliamentary attempts by amendment to incorporate the relevance test as laid down in that case were resisted. Nevertheless, it was also made clear during the passage of the Bill that material which might undermine the prosecution case would include more than evidence which was fatal to the prosecution case. The test was, for example, described as follows by the Home Office Minister, Mr David McLean:

The test for primary disclosure is designed to ensure that the prosecutor discloses at the first stage material that, generally speaking, has an adverse effect on the strength of the prosecution case. It is not confined to material raising a fundamental question about the prosecution . . . The disclosure scheme is aimed at undisclosed material that might help the accused, notwithstanding the fact that there is enough evidence to provide a realistic prospect of conviction (Hansard, House of Commons Standing Committee B, 14 May 1996, col 34).

One category of material which ‘might undermine’ the prosecution case is notification of the previous convictions of prosecution witnesses. In *Vasiliou* [2000] Crim LR 845, the Court of Appeal held that the appellant’s conviction had been rendered unsafe because the prosecution had failed to reveal the previous convictions of their witnesses. This had meant that the appellant was deprived of the chance to challenge those witnesses as to their character. Lack of knowledge had resulted in the appellant being unable to pursue a different strategy at trial from that which had been taken. The conviction was quashed and a retrial ordered. Guidance as to the type of material which satisfies the test for disclosure is set out in paras 6 to 8 of the Attorney-General’s Guidelines (for the website

address, see Key Documents at the end of this Chapter). Consideration should be given, among other factors, to:

- (a) the use which might be made of such material in cross-examination;
- (b) its capacity to support submissions which might lead to the exclusion of evidence, a stay of proceedings, or the conclusion that a public authority had breached the accused's rights under the ECHR;
- (c) whether it might explain the accused's actions;
- (d) whether it might be relevant to the scientific or medical evidence in the case;
- (e) any relevance to the accused's mental or physical health, intellectual capacity, or any ill-treatment which he may have been subjected to in custody.

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## C DEFENCE DISCLOSURE

**9.16** By s 5, once primary prosecution disclosure has taken place, and the case is sent to the Crown Court, the accused must give a defence statement to the prosecutor and the court. The position is different if the matter is to be dealt with in the magistrates' court, where the defence statement is voluntary, rather than compulsory (see 9.54 to 9.56). Where a defence statement is served, whether in the magistrates' court or the Crown Court, its contents are prescribed by CPIA, s 6A, which says that it is a written statement which:

- (a) sets out the nature of the accused's defence, including any particular defences on which he intends to rely;
- (b) indicates the matters of fact on which he takes issue with the prosecution;
- (c) sets out why he does so; and
- (d) indicates any point of law (including those as to the admissibility of evidence or abuse of process) which he wishes to take, and any authority relied on.

**9.17** If the defence statement discloses an alibi, particulars of alibi must be given, including the name, address, and date of birth of any alibi witness, or information which might be of use in finding the witness if his or her name or address is not known. The definition of alibi evidence is 'evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission' (see 20.61 to 20.63 for examples of the way in which this definition has been applied). The duty in relation to such witnesses is triggered by the accused's belief that the witness has evidence of alibi, and it is not necessary that the witness should give evidence, or be willing to do so: *Re Joseph Hill & Co, Solicitors* [2014] 1 WLR 786.

**9.18** The duty which the CPIA places upon the defence was, when it was introduced, a novel one as, with certain limited exceptions such as the revelation of a defence of alibi discussed in the preceding paragraph, there has historically been no obligation for the defence to reveal their case in advance of trial. The argument against placing the defence under such a duty has traditionally been that it erodes two fundamental principles: that the prosecution have the burden of proof, and that the accused is entitled to protection against self-incrimination. As soon as any pressure is placed on the accused to reveal his defence, so the argument runs, then he may in effect be conscripted to help fill in the gaps in the prosecution case against him. Notwithstanding these arguments, the CPIA introduced the duty of defence disclosure (at least in the Crown Court). It does place the defence lawyers in a difficult tactical quandary. They must weigh up the advantages and drawbacks of a detailed defence statement. An appropriate degree of detail can trigger off

the release of further prosecution material (see 9.31), whereas non-disclosure can result in the drawing of inferences potentially unfavourable to the defendant (see 9.41 to 9.53). On the other hand, if the defence are bound by a detailed statement which later proves to be inaccurate, there is the danger of adverse inferences being drawn for that reason. Whatever the benefits and drawbacks of the defence statement, however, it is clear that its provision is a statutory obligation, and the courts will be unsympathetic to lawyers who advise their clients not to submit one. In *Essa* [2009] EWCA Crim 43, Hughes LJ said, with respect to advice given by the appellant's lawyers not to submit a defence statement:

It is not open to those who advise defendants to pick and choose which statutory rules applicable to the conduct of criminal proceedings they obey and which they do not.

A tight time limit for defence disclosure is laid down by regulations: the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 2011 (SI 2011 No 209) which came into effect from 28 February 2011. They lay down that the defendant must present the compulsory defence statement for cases in the Crown Court within 28 days beginning with the day on which the prosecutor complies (or purports to comply) with the initial duty to disclose. The period can be extended by the court if it is satisfied that the defendant could not reasonably have given a defence statement within the time limit. There is no limit upon the length of any such extension, or the number of applications for extensions which may be made. However, any application must be made within 'the relevant period', i.e., the period between the prosecution making its disclosure and the expiry of 28 days. The regulations which were in force before 28 February 2011 laid down a 14-day time limit. This has now been extended as outlined for trial on indictment, but the 14-day limit remains in force for service of a voluntary defence statement in summary proceedings (see 9.54). **9.19**

It should be stressed that the duty of disclosure imposed on the defence is of a different kind from what is normally meant when one talks about 'the prosecution duty of disclosure'. The prosecution duty is to disclose unused material, i.e., material which they do not intend to introduce at trial. As far as defence disclosure is concerned, the duty is to reveal the case which will be presented at trial. There is no obligation on the defence, either at common law or under the statutory scheme of the CPIA, to reveal material which is not to be used at trial. **9.20**

While that much is clear, it is less certain just how detailed the defence statement needs to be. Does it have to provide the prosecution with an account of the evidence which will be produced at trial? Should it include the lines upon which it is intended to cross-examine prosecution witnesses? The question is an important one, because of the inference which the court may draw if the defence statement is inconsistent with the defence which is run at trial. **9.21**

In addressing this question, one needs to consider what the defence will have received by the time their duty to serve a defence statement is triggered off, and what they will not have received. The prosecution must have served the evidence upon which they base their case for trial in the Crown Court. The prosecution must also have complied, or purported to comply, with the duty to make primary disclosure (s 5(1)(b)). What the prosecution will not have done is to serve a statement of the way in which they intend to put the case. The prosecution case, in this latter sense, consists of the inferences and conclusions to be drawn from the evidence upon which it relies. Whilst in some cases the evidence relied on by the prosecution will be self-explanatory, in others it may be impossible for the defence to say in what way they take issue with the prosecution case, or the reasons (see the contribution of Lord Ackner during the debate on the Bill: Hansard, Lords, 18 December 1995, cols 1458–9). The defence is now statutorily obliged, in the case of Crown Court **9.22**



trial, to provide its legal arguments, including any as to abuse of process and the admissibility of evidence (see 9.16). There must therefore be a powerful case for the prosecution to reciprocate by giving notice in advance of its arguments and authorities on the points in issue, if they are sought.

- 9.23** The degree of detail in which the defence statement must now be set out (see 9.16) results from a perception among some prosecutors and members of the judiciary that defence lawyers were providing defence statements which were couched in the most general way. One extreme example was commented on in *Bryant* [2005] EWCA Crim 2079 by the Court of Appeal as ‘woefully inadequate’ because it consisted merely of a general denial of the charges, accompanied by a statement that the defendant took issue with any witness purporting to give evidence contrary to his denial. Such a document, said their lordships, did not meet the purposes of a defence statement. The central purpose of the defence statement is its role in helping to define the issues in the case, in the hope that benefits in terms of improved case management will result. Whatever the reason for the expanded duty, it clearly puts a greater burden on defence representatives to embark on detailed preparation, at an earlier stage. Further, given the early notification which the defence must now give of its legal arguments, which include those in relation to any alleged abuse of process and admissibility of evidence (see 9.16), there would seem to be a strong case for the prosecution to be compelled to give advance notice of its arguments and authorities on such points, if sought. To fail to do so would not be in accordance with the principle of equality of arms which underlies the concept of a fair trial and would lay the prosecution open to a charge of conducting trial by ambush. Similar reasoning might be advanced in appropriate circumstances for the prosecution to spell out the inferences which it will be asking the trier of fact to draw from the primary facts adduced in its evidence, given that the defence is obliged to set out the reasoning surrounding the anticipated factual disputes. It follows that the scope of the defence statement should be viewed in the context of what might reasonably be required of the defence at a stage when they may not be clear about the way in which the prosecution put their case.
- 9.24** Section 34 of the CJA 2003 amends s 6C of the CPIA 1996 so as to introduce an expanded duty for the defence to notify the court and the prosecutor of any witnesses. This duty (which came into force on 1 May 2010) involves notification of witnesses other than alibi witnesses (as to alibi witnesses, see 9.17). The duty is separate from that attaching to the defence statement, with the result that it applies to the defence in the magistrates’ court as well as the Crown Court, on a compulsory basis. The accused is required to give to the court and the prosecutor, within 28 days in respect of Crown Court proceedings, a notice indicating whether he intends to call any witnesses at trial, other than himself and any alibi witnesses already notified. The defence has to provide names, addresses, dates of birth, or other identifying information if any such details are not known. Any change in the plans to call witnesses (including a decision not to call a previously notified witness, or to call a witness not previously notified) has to be dealt with by way of an amended notice to the court and the prosecutor. One interesting point is that, while there are sanctions in relation to a failure to notify the court and prosecution of prospective witnesses (see 9.43 to 9.47), there are none in respect of a failure to call a witness who has been so notified.
- 9.25** Section 21A of the CPIA 1996 (inserted by CJA 2003, s 40) envisaged a Code of Practice for police interviews of witnesses notified by the accused (either to support an alibi or otherwise). This resulted in the Code of Practice for Arranging and Conducting Interviews of Witnesses Notified by the Accused. It deals with such matters as the information to be provided to the witness and the accused in advance of any interview, attendance of solicitors on behalf of the accused and the interviewee, and the recording of the interview.

Section 6D of the CPIA 1996, inserted by the CJA 2003, s 35 (not in force at the time of writing), deals with any expert report commissioned by the accused. If he instructs a person with a view to providing any expert opinion for possible use at trial, he must give the court and the prosecutor the name and address of the expert in question. The aim is presumably to stop ‘expert shopping’ on the part of the defence. However, the innovation appears to offend against the principle that the defence has never been subject to an obligation to disclose material which it does not intend to use, as opposed to notifying the case which it intends to run at trial (see 9.20). Potentially, such notification might open the door to the prosecution seeking evidence from the expert, as there is no property in a witness (subject to any considerations of legal professional privilege: see *Blackstone’s Criminal Practice 2015*, F9.60). **9.26**

The CJA 2003, s 33, introduced an amendment relating to defence statements in multi-defendant cases, inserting s 5(5A), (5B), and (5D) in the CPIA 1996. The court will be able to order each defendant to give copies of his defence statement to his co-accused. The court may take the initiative in the matter, or respond to an application by any party. The usual practice will no doubt be to order simultaneous exchange of statements by co-defendants, to avoid any advantage being gained by a defendant who exchanges his statement late. Although these statutory provisions are not yet in force, the court is able to order disclosure of defence statements to co-accused, and should do so under s 8 of the CPIA if the prosecution has not done so: *Cairns* [2003] 1 WLR 796. **9.27**

Section 6B of the CPIA, inserted by the CJA 2003, s 33(3), applies where the accused has given a defence statement before prosecution disclosure. It requires the accused to provide an ‘updated defence statement’, or alternatively a statement that he has no changes to make to his initial defence statement (not in force at the time of writing). **9.28**

Authorship of the defence statement (or an updating statement, or a statement that no updating is necessary) is covered by s 6E(1) of the CPIA. It lays down that where an accused’s solicitor purports to give such a statement on behalf of the accused, it is given on behalf of the accused, unless the contrary is proved. Of course, evidence can be adduced to show that it was not given with the accused’s authority, but that may result in the waiving of legal professional privilege (as to legal privilege, see *Blackstone’s Criminal Practice 2015*, F9.49 to F9.73). **9.29**

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## D APPLICATIONS TO THE COURT

The prosecutor may make application to the court that material should not be disclosed, either at the primary or the secondary stage, on the basis that it is not in the public interest to disclose it. For its part, the defence can under s 8 apply to the court for an order that the prosecutor should disclose material. This applies to material held or inspected by the prosecutor (s 8(3)), but also to any material which the disclosure officer must either supply to the prosecutor, or allow the prosecutor to inspect if requested (s 8(4)). Such an application may only be made, however, after the defence have served a defence statement (s 8(1)). In practice, the defence may find it difficult to mount a successful challenge to prosecution disclosure. First, the scope of any such challenge is limited to matters which were raised in the defence statement. The failure to include matters in a defence statement may not, of course, mean that the defence in question is invalid, let alone that the accused is inevitably guilty. What about the case of the defendant who is mentally ill, too drunk to remember events with any clarity, or prone to confess to crimes which he has not committed? (Judith Ward is perhaps the most memorable instance of a victim of a miscarriage **9.30**



of justice falling into the latter category: see *Ward* [1993] 1 WLR 619.) Secondly, there is the problem of identifying the material which has not been disclosed. In doing this, the defence will be reliant on the good faith and efficiency of the investigator, who is charged with bringing to the prosecutor's attention the material which ought to form the basis of secondary disclosure. The investigation will in most cases be long closed, and the case passed over to the Crown Prosecution Service, so that any incentive to ferret out relevant material will be negligible. The investigator will almost inevitably have formed a firm view of the accused's guilt, and will be sceptical (at any rate at a subconscious level) about whether any material really does assist the defence. And the investigator is unlikely to have the legal skills (let alone the defence perspective) to be able to identify material which an advocate could turn to advantage at trial. Thirdly, the defence will have to satisfy the court that it has 'reasonable cause to believe':

- (a) that 'there is prosecution material which might reasonably be expected to undermine the case for the prosecution against the accused or of assisting the case for the accused' (s 7A) as notified; and
- (b) that the material has not been disclosed to the accused.

The operation of s 8 is crucial to the whole disclosure scheme, for it provides the means whereby the court can monitor its operation. It is therefore important, if there is to be some corrective to the disparity of resources between prosecution and defence, that the courts should recognize the practical difficulties faced by the defence in mounting a successful challenge to what is suspected to be inadequate disclosure, and reflect that recognition in deciding upon applications for review. It is submitted that an order for disclosure should follow where there is a reasonable chance that it might assist the defence.

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## E CONTINUOUS REVIEW

- 9.31** The prosecutor remains under a continuing duty to review questions of disclosure (s 7A). If he at any time before the accused is acquitted or convicted forms the opinion that there is material which might undermine the prosecution case, or be reasonably expected to assist the accused's defence, then it must be disclosed to the accused as soon as reasonably practicable (provided that the court has not ruled against disclosure in respect of that material). This duty of continuous review would come into play, e.g., where a prosecution witness gives evidence which is materially inconsistent with a statement made earlier to the police. If the defence are unaware of the statement, prosecuting counsel should disclose it to his opposite number so that he can use it in cross-examination to discredit the witness' testimony (*Clarke* (1931) 22 Cr App R 58—although the case was many years before the CPIA, it is submitted that the principle still holds).
- 9.32** For its part, the court must keep under review the question of whether it is still not in the public interest to disclose material affected by its order (s 15).

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## F PUBLIC INTEREST IMMUNITY

- 9.33** The prosecution duty of disclosure is subject to immunity where the public interest so dictates. There will be some cases where the prosecution take the view that the material should be withheld, e.g., because it is so sensitive that it is subject to public interest immunity (PII). This would be the case if the material disclosed the identity of an informer (*Marks v Beyfus* (1890) 25 QBD 494). The obvious reason for the rule is to prevent retaliation against informers, and the fear that revelation of their identity would lead to the

drying up of sources of information for the police. *Marks v Beyfus* made it clear, however, that the rule may be departed from if the judge is of the opinion that the informer's name should be disclosed in order to show the defendant's innocence. The rule about police informers has been extended to observation posts used by the police (*Rankine* [1986] QB 861). The reasoning is that those members of the public who make premises available for the police to observe suspected criminals might be subject to retaliation in the same way that informers are.

Even if the Crown believes that the unused materials should be immune from disclosure, at common law that did not end the matter. The case of *Ward* [1993] 1 WLR 619 makes it clear that it is for the court, and not the prosecution, to make the final decision as to whether immunity from disclosure should be granted. Judith Ward had been convicted of multiple murder and explosives offences. The prosecution failed to disclose material relevant to her alleged confessions and certain scientific evidence. The Court of Appeal held that, if the prosecution claimed that they were entitled to withhold material documents on the basis of PII, the court must be asked to rule on the legitimacy of their claim. If the prosecution were not prepared to have the issue determined by a court, they would have to abandon the case. **9.34**

Although the CPIA generally disapplies the rules of common law in relation to the prosecution duty of disclosure (s 21(1)), it preserves 'the rules of common law as to whether disclosure is in the public interest' (s 21(2)). **9.35**

PII is a thread which runs through the provisions of the CPIA. By s 3(6), prosecution disclosure is made subject to PII. Section 8(5) prohibits the court from ordering disclosure where it would be contrary to the public interest. Section 7A(8) places a similar limitation on the prosecution's continuing duty of review. **9.36**

In addition, the Code of Practice has bearing on the question of PII, in that it compels the disclosure officer to 'list on a sensitive schedule any material the disclosure of which would give a real risk of serious prejudice to an important public interest, and the reason for that belief' (para 6.12). The Code gives examples of such sensitive material, which include material: **9.37**

- (a) relating to national security;
- (b) given in confidence;
- (c) relating to the identity or activities of informants or under-cover police officers;
- (d) revealing the location of premises used for police surveillance;
- (e) revealing surveillance techniques and other methods of detecting crime;
- (f) relating to a child or young person and generated e.g., by a local authority social services department.

Crucially, inclusion on a 'sensitive' schedule is in no way conclusive of the question whether disclosure is in the public interest. That question is quite clearly one to be answered by the court, both in terms of the statutory provisions referred to above, and the common-law rules which the statute preserves. The principle in *Ward* [1993] 1 WLR 619 therefore remains intact: the court, rather than the prosecutor (let alone the investigator) is the final arbiter as to whether disclosure can be avoided on the basis of PII. Further, it is clear that the categories of 'sensitive material' as spelt out in the Code are wider than the types of material which the courts have been prepared to shield behind PII. The Code gives as an example of sensitive material, 'material given in confidence'. But the fact that material has been given in confidence is not sufficient of itself to ensure that it attracts PII, so as to enable the prosecution to avoid disclosing it. It is submitted that the courts should be alive to the dangers of a category such as this. If 'sensitivity' was sufficient to attract PII,

then all that a police officer would have to do in order to ensure non-disclosure would be to state to the informant that material would be treated in confidence, and such an assurance could be given even if it was not sought by the informant. In *H and C* [2004] 2 AC 134, the House of Lords dealt with the questions which the judge must address in making a decision on PII (see 9.39).

**9.38** There may be certain circumstances in which the prosecution want to make an application for non-disclosure, but believe that revealing the arguments in favour of PII (or even the fact that they are making the application) would ‘let the cat out of the bag’, e.g., by revealing the existence of an informer and hence allowing the defendant to guess who that informant might be. The CrimPR, r 22.3 follows the procedure set out in *Davis* [1993] 1 WLR 613 governing the circumstances in which the defence must be informed of applications made for non-disclosure. The hearing can be either *inter partes* or *ex parte*, and notified to the defence or not notified, depending on the type of application made by the prosecutor. The problem with an *ex parte* hearing is, of course, that there is no opportunity for the defence to argue in favour of disclosure. The court will hear only arguments from the prosecution. As a result, the *ex parte* procedure was challenged in the European Court of Human Rights in *Rowe and Davis v United Kingdom* (2000) 30 EHRR 1. The following points emerged from the decision of the Court:

- (a) the right to a fair trial means that the prosecution authorities must disclose to the defence all material evidence in their possession for and against the accused;
- (b) the duty of disclosure is not absolute and ‘in any criminal proceedings there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation which must be weighed against the rights of the accused’;
- (c) only such measures restricting the rights of the defence to disclosure as are strictly necessary are permissible under Art 6(1) of the ECHR (the right to a fair trial);
- (d) any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedure followed in court.

The case in fact focused upon the procedure adopted by the Court of Appeal in hearing the appeal of the defendants against their conviction. Central to that appeal was the fact that the prosecution had withheld evidence from the defence at trial without notifying the judge. The Court of Appeal had dealt with the disclosure issue *ex parte*, which gave the defence no opportunity to put forward arguments on disclosure. It was argued for the accused in the European Court of Human Rights that this procedure should have been counterbalanced by the introduction of a special independent counsel who could argue the relevance of the undisclosed evidence and test the strength of the prosecution claim to public interest immunity. The European Court of Human Rights held that the applicants did not get a fair trial, and in doing so cast doubt upon the ability of the Court of Appeal to remedy defective disclosure at trial, in any event where it dealt with the matter *ex parte*. What it did not do, however, is to give a clear indication as to the fairness of *ex parte* procedure, insofar as that procedure is adopted at first instance (now embodied in CrimPR, r 22.3). The question of introduction of a special independent counsel was scrutinized by the House of Lords in *H* [2004] 2 WLR 335. Their lordships declined to lay down a general principle that the appointment of special counsel was necessary wherever the *ex parte* procedure was adopted. Their guidance did, however state that:

In appropriate cases the appointment of special counsel may be a necessary step to ensure that the contentions of the prosecution are tested and the interests of the defendant protected.

The case of *H* looked at the broader issues involved and laid down a series of important steps which a court should take when deciding on questions of public interest immunity (PII). Judges should approach the question as follows: **9.39**

- (a) Does the material which the prosecution seeks to withhold weaken the prosecution case or strengthen that of the defence? If it does either of those things, the golden rule is that it should be disclosed unless PII prevents it. If it does neither of those things (e.g., because it is neutral, or damaging to the accused), then it should not be disclosed.
- (b) In deciding whether PII applies, the court should ask whether there is a real risk of serious prejudice to an important, and identified, public interest. If the material does not comply with that test, it does not attract PII, and must be disclosed.
- (c) If the material attracts PII, the court must consider whether the defendant's interests can be protected without disclosure, or whether disclosure can be ordered in such a way as to protect both the public interest and the interests of the defence.
- (d) In considering whether limited disclosure is possible, the court must consider ordering the prosecution to make admissions, prepare summaries or extracts of evidence, or provide documents in an edited or anonymized form.
- (e) If the court is minded to order this kind of limited disclosure, it should ask whether it represents the minimum derogation necessary to protect the public interest in question. If it does not, it must order more disclosure. If the effect of limited disclosure is to render the trial process unfair to the defendant, fuller disclosure must be ordered, even if this means that the prosecution will have to discontinue the case.
- (f) The issue of disclosure should be reviewed as the trial proceeds.

The procedure for a review of a ruling in relation to PII is set out in CrimPR, r 22.6.

In *Jasper v United Kingdom* (2000) 30 EHRR 441, the European Court of Human Rights held (by a majority of nine to eight) that, in the particular circumstances of the case under consideration, there was no violation of Art 6(1). The application for an order permitting non-disclosure had been heard on an *ex parte* basis. However, the defence were notified that the application had been made, the trial judge gave them as much information regarding the nature of the withheld evidence as possible without revealing what it was, and the defence were permitted to outline their case to the judge. **9.40**

The question of protection for defendants in proceedings to determine disclosure issues came before the European Court of Human Rights again in *Edwards v United Kingdom* (2003) *The Times*, 29 July 2003. In that case, the tribunal of fact was the trial judge, who had to decide whether to exclude evidence because the accused had been entrapped. Material was produced to the trial judge in *ex parte* hearings. The defence was not aware of the material, and was unable to put forward an argument on it. The material included evidence that the accused had been involved in the supply of heroin before the start of the undercover operation. The case of *Jasper* was distinguished by the court because the evidence subject to PII in that case had not been put to the tribunal of fact (the jury). Here the tribunal of fact was the judge, and he saw the undisclosed evidence. The defence should have been given the opportunity to counter the evidence and show the judge that it was mistaken or unreliable. The court held that the right of the accused to a fair trial under Art 6(1) had been violated.

## G SANCTIONS RELATING TO DEFENCE DISCLOSURE

One disadvantage that the defence faces if it has not served a defence statement is that it is unable to make an application for specific disclosure under s 8 of the CPIA. **9.41**

- 9.42** In addition, the failure to serve a defence statement may mean that the attention of the prosecution is not directed to a particular line of defence, with the result that it does not identify material which might be expected to assist that defence.
- 9.43** Section 11 of the CPIA lays down additional sanctions to which the defence will be liable if they are deficient in the duty of disclosure. They apply if the defendant:
- (a) fails to give the initial defence statement required under CPIA 1996, s 5;
  - (b) fails to provide an updated statement required under s 6B(1) or a statement that no updating is necessary under s 6B(4);
  - (c) fails to give notice of defence witnesses, as required by s 6C;
  - (d) supplies any of the above outside the applicable time limit;
  - (e) sets out inconsistent defences in the defence statement;
  - (f) puts forward a defence at trial which was not mentioned in the defence statement;
  - (g) relies on a matter which should have been mentioned in his defence statement to comply with s 6A, but was not;
  - (h) gives evidence of alibi or calls a witness to give evidence in support of alibi without having complied with the provisions relating to notification of alibi witnesses; or
  - (i) calls a witness not included or adequately identified in his notice of defence witnesses.

(The sanctions relating to (b) have not yet been brought into force.)

- 9.44** By the CPIA 1996, s 6E(2), inserted by CJA 2003, s 36, if it appears to the judge at a pre-trial hearing (see Chapter 16) that the accused has failed to serve a defence statement or notice of intention to call defence witnesses, so that there may be comment made or inferences drawn under the CPIA 1996, s 11(5), he should warn the accused of that possibility. Once the relevant duty is in force, a similar sanction is imposed in respect of a failure to update the defence statement when required to do so. The implication is that the defendant may be in a position to remedy the defect at this stage, with the result that the comment or inferences might be avoided.
- 9.45** At trial, the judge may, if any of the conditions listed in 9.43 apply, ensure that the jury receives a copy of any defence statement (whether initial or updated), edited to exclude any reference to inadmissible evidence. This can be done of the judge's own motion or on application, but only if it would help the jury to understand the case or resolve any issue in it (s 6E(4), (5), and (6)).
- 9.46** In the event that any of the listed conditions are met, then the court may comment upon the failure in question. Further, the court or jury may draw such inferences as appear proper in deciding whether the accused is guilty of the offence in question. The accused may not, however, be convicted solely on the basis of such an inference (CPIA 1996, s 11(10)). Other parties (the prosecution and co-accused) may also comment upon the defect, but in certain circumstances such comment requires the leave of the court. Those circumstances are where the defect which triggers off the sanction is:
- (a) a failure to mention a point of law or legal authority to be relied on;
  - (b) a failure to mention a point about admissibility of evidence or abuse of process; or
  - (c) a failure to give notice of or adequately identify a witness, or failure to give such notice in time.
- 9.47** Guidance is given about the making of comments and drawing of inferences in three situations:
- (a) where the defect in question is that the accused put forward a defence different from that set out in his defence statement, the court shall have regard to the extent of any difference, and whether there is any justification for it (s 11(8));

- (b) where the defect concerns failure to give notice of, or identify adequately a defence witness the court shall have regard to whether there is any justification for the failure (CPIA 1996, s 11(9)); and
- (c) where the defect is that the accused issued a notice indicating that no updating is required to the defence statement, the question whether there has been a breach of the requirements for the contents of the defence statement or of the duty to supply particulars of alibi must be determined at the time when the statement under s 6B(4) was made and as if the original defence statement had been made at that time.

(The duty set out in (c) is not yet in force.)

In a trial on indictment, where the judge decides to allow the jury to draw an inference, this may sometimes trigger off the need for a direction in accordance with *Lucas* [1981] QB 720 (see *Burge* [1996] 1 Cr App R 163 as to the circumstances in which a *Lucas* direction ought to be given). The judge would need to direct the jury to consider whether the defence statement constituted a deliberate lie, on a material issue, which was due to the realization of guilt and the fear of the truth. As far as the final point is concerned, the admonition in *Lucas* that a lie did not equate with guilt, but might originate from a variety of causes, including the wish to bolster a just cause, is perhaps particularly apposite in the case of a defence statement which makes exaggerated claims. It is difficult to predict what inference could be drawn where the accused might have lied in order to gain a tactical advantage, let alone where the accused alleges that the falsehood originates in faulty legal advice, or an administrative error on the part of his solicitor. **9.48**

In *Wheeler* (2000) 164 JP 565, the Court of Appeal gave important guidance on the consequences where there is inconsistent defence disclosure. The defendant was charged with knowingly importing cocaine from Jamaica. He had been arrested at Gatwick when 'swallower' packages of the drug were found in his briefcase. Four further packages were found in the room where he was detained, and a further 17 packages were later excreted from his body. When interviewed he said that he did not know how many of the packages he had swallowed. He had brought them into the country out of desperation because he was being threatened by drug suppliers, to whom he owed money. **9.49**

The issue at trial was whether he knew that he had been carrying the drugs. He gave evidence that he had been given the drugs to swallow at the airport in Jamaica, but had later vomited, and thought that he had vomited all the packages. He stated that he was not aware that any drugs remained in his stomach when he was stopped at Gatwick, and did not realize that he had drugs with him until the customs officers had found the drugs in his luggage. That version of events was at odds with the defence statement served by his solicitors prior to the trial, which indicated that he was aware that he was carrying drugs, but had done so under duress. When that statement was put to the defendant in cross-examination, he said that the statement was a mistake. Prosecuting counsel then suggested that he had knowingly lied about his defence. In summing up, the judge mentioned that the defendant had said that his defence statement was mistaken, but gave no specific direction to the jury about the inconsistency between it and the defendant's evidence. The defendant was convicted, and appealed. It was the appellant's case, and was accepted by his solicitors, that the defence statement did not reflect his instructions, and had not been approved by him. **9.50**

The appeal was allowed. In cases where there was a conflict between the defence statement and the defendant's evidence at trial, the judge ought to give the jury a specific direction on how to approach that inconsistency. The defendant's credibility had been crucial to his case, and the conviction was unsafe in all the circumstances. A retrial was ordered. **9.51**

The court made it clear that it was undesirable for solicitors to serve a defence statement without obtaining the defendant's signature as acknowledgement of its accuracy. **9.52**



- 9.53** It seems right that the Court of Appeal should insist on clear guidance to the jury in cases where there is apparent inconsistency between the defence statement and the case run by the defence at trial. The judge needs first to make a decision as to whether the jury should be permitted to draw an inference from the inconsistency, in accordance with s 11(3)(b) of the CPIA 1996. Even where it is likely that the defendant has lied, either in the defence statement or in his evidence, then there may be the need for a direction in accordance with *Lucas* [1981] QB 720, although in many cases such a direction may be unhelpful: *Hackett* [2011] 2 Cr App R 35 (and see *Blackstone's Criminal Practice 2015*, F19.32). In the instant case, it seems that the fault did in fact lie with the solicitors in any event. The Court of Appeal made the point that it would have been wise for the judge to have accepted that, given that the conduct of the defence at trial was in accordance with the version of events given in interview.

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## H SUMMARY TRIAL

- 9.54** The account in the preceding paragraphs relates to trial on indictment. As far as summary trial is concerned, the CPIA partially incorporates such proceedings into the statutory disclosure scheme, by virtue of s 1(1). The prosecution's duty of primary disclosure applies whenever the accused pleads not guilty and the court proceeds to summary trial. Once the prosecutor has complied (or purported to comply) with that duty, the accused may give the prosecutor and the court a defence statement (s 6). If he does so, that means that the court may allow comment or draw inferences from disclosure which is late, defective or inconsistent, in much the same circumstances as it may do so in a jury trial (s 11(2) and see 9.41 to 9.53). These sanctions for the defence apply also to the notification of alibi evidence (which until the CPIA had no formal role in summary proceedings). The voluntary regime applies to summary trial, whether it is of a summary or an either-way offence or even (in the case of a juvenile) of an indictable-only offence (s 1(1)). Where the defence chooses to serve a defence statement in summary proceedings, it must do so within 14 days of the prosecution complying (or purporting to comply) with its duty of primary disclosure. The defence can apply, within that period, for an extension, which the court can grant if satisfied that the accused could not reasonably have given notification within the relevant period (Criminal Procedure and Investigations Act (Defence Disclosure Time Limits) Regulations 2011 (SI 2011 No 209)). It is worth stressing, however, that the duty to give notice about the witnesses the defence intends to call is not voluntary, and calling a witness not properly notified to the court and the prosecution will render the defence liable to sanctions as set out in 9.43 to 9.47.
- 9.55** Few defendants in summary proceedings have in any event volunteered to enter the scheme. Most defence lawyers see the balance of advantage as lying in remaining firmly outside the statutory scheme where that is an available option. The obligation to notify the court and the prosecution of witnesses whom the defence intends to call (see 9.24 and 9.25) is one which falls outside the defence statement, which is voluntary as far as the magistrates' court is concerned. It follows that the defence must send notification about the witnesses whom it intends to call, regardless of whether it chooses to serve a defence statement or not. This has introduced an important compulsory element to defence disclosure in the magistrates' court. If the defence fails to fulfil this duty, it will be open to the sanctions described in 9.41 to 9.47. The case of *R (Firth) v Epping Magistrates' Court* [2011] EWHC 388 (Admin) sounds a cautionary note for those representing defendants, although it does not deal with a defence statement as such. The defence admitted in a case progression form that F had contact with the victim of an assault, but stated that he

acted in self defence. The magistrates' court decided to admit this statement in evidence, It was contended on F's behalf on appeal that no pre-trial admission could be used at trial, because it would offend against the principle that no defendant could be required to incriminate himself. The Divisional Court dismissed the appeal, stating that it was repugnant to the new approach to criminal justice in the CrimPR whereby both sides disclosed their case. However, this decision should be read subject to that in *Newell* [2012] 1 WLR 3142, which laid down that, while admissions by legal representatives in case progression forms are admissible in evidence, it will rarely be appropriate for the court to refuse to exercise its discretion under s 78 of PACE 1984 to exclude them (see 3.08 for the operation of s 78 of PACE).

The question of PII in summary trial is dealt with in s 14. Where the court has made an order that material should not be disclosed because it is not in the public interest, the accused may apply at any time for the ruling to be reviewed. Section 14 does not impose upon the court an obligation to keep under continuous review any decision not to disclose on PII grounds in summary trial, however, despite the fact that s 15 does impose such an obligation upon the Crown Court in respect of trial on indictment. The difference would appear to stem from the dual role of the magistrates as triers of both fact and law, which was encountered in *South Worcester Magistrates' Court ex parte Lilley* [1995] 1 WLR 1595 (and see the commentary at [1995] Crim LR 954). The problem is that, when the magistrates (in their role as triers of law) conduct a review of documents for which PII is claimed, it may appear to prejudice them in their role as triers of fact; the problem is compounded when the review is conducted *ex parte*, in the absence of the defendant and the defence lawyer. As a result, a new bench may be needed to try the case, after the old bench rules against disclosure. If that new bench were under a duty of continuous review, it would mean that it would be impossible ever to recruit a bench proof against the contamination which results from looking at the material. Hence the onus is put on the defendant to make the application, presumably inhibited by knowledge of the consequences.

## I THIRD PARTY DISCLOSURE

Sometimes the information which the accused needs for his defence will be in the hands of someone other than the prosecution—a 'third party' as far as the criminal case is concerned. This would be so, e.g., if an alleged victim in a child abuse case had files which were in the possession of the local authority, and which the accused alleged were relevant. In such a case, the local authority would be likely to oppose disclosure in any event, on the basis of public interest immunity. But how could the accused apply for disclosure? **9.57**

In some cases, the documents would have come into the possession of the police, and possibly the prosecution as well, in the course of the investigation. If so, the documents in question must be retained by the police, and fall within the CPIA disclosure regime (Code, para 5.1). **9.58**

If the material remains in the hands of the third party there cannot be an absolute duty on the Crown to disclose it. The duty is to take reasonable steps to obtain it (*Flook* [2010] 1 Cr App R 434, adopted in both the Attorney-General's Guidelines and the Judicial Disclosure Protocol). Where such steps prove ineffective, the accused is obviously entitled to request the material. If the third party is not prepared to hand it over, the procedure available to the accused (or anyone else seeking disclosure from a third party, but it is usually the accused who is in this position) is laid down by s 2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965, as far as Crown Court trial is concerned. In the magistrates' court, the procedure is governed by the Magistrates' Courts Act 1980, s 97. The procedure involves seeking a witness summons to compel the third party to attend **9.59**

with the document(s) to give evidence, and/or to produce the document(s) in advance. The person seeking the witness summons must satisfy the court that the third party:

- (a) is likely to be able to give or produce material evidence in the case; and
- (b) will not voluntarily attend or produce the evidence.

**9.60** The application will usually be heard on notice to the person to whom the summons is directed (the third party), who may appear or be represented at the hearing. The application should be supported by an affidavit, setting out the charges, identifying the evidence or document sought, stating the grounds for believing that the third party is able to give or produce it, and the grounds for believing that it is material and that it is in the interests of justice to produce it. At the hearing, the third party would be able to argue, e.g., that there is no evidence held, or that it is not material, or that it should not be disclosed on the grounds that his rights or duties, including that of confidentiality, outweigh the reasons for issue of the summons. The details of the procedure are set out in the CrimPR, Part 28.

**9.61** In *Alibhai* [2004] All ER (D) 573 (Mar), Longmore LJ stated that there were unsatisfactory features of the procedure for disclosure of material held by third parties:

- (i) It is not possible to issue a witness summons to a person outside the jurisdiction.
- (ii) A witness summons to produce a 'document or thing' will not elicit information.
- (iii) The 'document or thing' must itself be likely to be material evidence, and a witness summons will not be issued for documents which will not themselves constitute evidence in the case but merely give rise to a line of enquiry which might result in evidence being obtained, still less for documents merely capable of use in cross-examination as to credit.
- (iv) There is no provision for the prosecution or defence, unless they so agree, to examine the documents before they are produced to the court as a result of the witness summons.

**9.62** In *Brushett* [2001] Crim LR 471, the Court of Appeal considered a case where disclosure of reports held by social services departments was sought by the accused in a case of alleged sexual abuse of children. Their lordships stated that the principles governing disclosure by third parties were 'narrower' than those where the prosecution held such material. They took the view that disclosure should nevertheless be granted, e.g., where there had been false accusations made by the subject of a social services report in the past, or where there had been sexual activity with another adult.

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## KEY DOCUMENTS

Criminal Procedure and Investigations Act 1996, as amended.

Code of Practice on Disclosure available at: <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/362928/cipa-1996-code-of-practice-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362928/cipa-1996-code-of-practice-consultation.pdf)>.

Parts 22 and 28 of the Criminal Procedure Rules 2014, available on the website of the Ministry of Justice at: <<http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu>>.

The Attorney-General's Guidelines on Disclosure of Information in Criminal Proceedings and the Judicial Protocol on the Disclosure of Unused Material in Criminal Cases (both are available at: <<https://www.judiciary.gov.uk/publications/protocol-unused-material-criminal-cases/>> and are reproduced in Appendix 4 in *Blackstone's Criminal Practice 2015*).

CPS/Police Disclosure Manual: available at: <[http://www.cps.gov.uk/legal/d\\_to\\_g/disclosure\\_manual](http://www.cps.gov.uk/legal/d_to_g/disclosure_manual)>. It contains links to many of the other documents referred to in this list.