

# CPIA for Local Authority Officers



A webinar presented by:

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Attendee Notes



## CPIA for local authority officers

Dr Andy Bowles  
Solicitor



## CPIA 1996

- Criminal Procedure & Investigations Act 1996
- Code of Practice
  - March 2015
    - England and Wales



## Criminal Procedure Rules

The screenshot shows the Ministry of Justice website. At the top is the 'Justice' logo and a search bar. Below the logo are links for 'Courts', 'Procedure rules', and 'Offences'. The main content area is titled 'Rules and Practice Directions' and includes a breadcrumb trail: 'Home > Courts > Procedure rules > Criminal > Rules and Practice Directions (2015)'. A section titled 'On this page, you can:' lists several links: 'Read online or download and save the latest versions of the Criminal Procedure Rules and Criminal Practice Directions', 'Read or download the complete Rules and Practice Directions, or read or download separate Parts of the Rules and separate chapters of the Practice Directions. (The complete edition includes content annotations and can be searched.)', 'Rules and Practice Directions contents', 'General rules', 'Preliminary proceedings', 'Criminal trial', 'Discipline', and 'Evidence'. On the right side, there is a 'Related pages' section with links for 'What's new', 'Forms', and 'Contact'. The 'abc Food Law' logo is visible in the bottom right corner.

## General Duty

- “Investigator should pursue all reasonable lines of enquiry, whether these point towards or away from the suspect” CPIA CoP




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## Main obligations of CPIA

Roles of officers

Recording of information

Retention of material

Disclosure of material to accused




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## CPIA Roles of officers

Investigator

Officer in charge

Disclosure officer

Prosecutor




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## Investigator

- Any officer involved in the conduct of the investigation
- Specific duties to record and retain material




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## Officer in charge

- Directs criminal investigation
- Ensures proper procedures are in place to
  - Record
  - Retain




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## Disclosure officer

- Examines and reveals relevant material to prosecutor
- Certifies that this has been done
- Discloses material to the accused



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## Prosecutor

- Officer responsible for the conduct of Criminal Proceedings



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## Recording of Information

- **Officer in Charge** must ensure:
  - relevant material is recorded in durable and retrievable form
- Negative info should be recorded
- Relevant info should be recorded
  - contemporaneously or
  - as soon as practicable after an event




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## Retention of Material

- **Investigator** must retain relevant material including:
  - Material coming into his possession
  - Material created by him
- **Officer in Charge** must keep this under review
  - "Relevant material"




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## Retention of Material

- In particular the following should be retained:
  - Offence reports ie note books,
  - Final versions of witness statements
  - Draft witness statements where differ from final
    - Including exhibits
  - Interview records
  - Communications with experts
  - Material that may cast doubt over reliability of witness
- Also:
  - File notes etc




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## Retention of Material

- Any material which may be disclosed to the accused
  - Anything that offers explanation for the offence
  - Material that casts doubt on reliability of a confession
  - Material casting doubt on the reliability of a prosecution witness.




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## Retention of Material

- All relevant material should be retained until:
  - Defendant is acquitted
  - Not proceeded against
  - If convicted
    - After released from custody
    - 6 months from conviction
  - Until after any appeal is determined




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## CPIA

- *"The right of every accused to a fair trial is a basic or fundamental right and his right to fair disclosure is an inseparable part of his right to a fair trial."*
- **R v Brown (Winston) 1994**



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## Initial details of prosecution

- See Part 8 CPR (April 2017)
  - a summary of the circumstances of the offence,
  - any account given by the defendant in interview, whether contained in that summary or in another document,
  - any written witness statement or exhibit that the prosecutor then has available and considers material to plea, or to the allocation of the case for trial, or to sentence,
  - the defendant's criminal record, if any, and
  - any available statement of the effect of the offence on a victim, a victim's family or others.



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## Disclosure - overview

### ■ Magistrates Court (Summary)

- Streamlined process
  - If guilty plea anticipated
    - No schedules or certificates required
  - If not guilty anticipated
    - Schedules and certificates in Annex to CoP used

### ■ Crown Court

- Schedules of "non-sensitive" and "sensitive" material.




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## Disclosure - overview

### ■ Stage 1: Initial disclosure by the prosecution.

### ■ Stage 2: "Defence disclosure"

- mandatory in Crown Court cases and voluntary in magistrates' court cases.

### ■ Stage 3: Continuing duty of disclosure by the prosecution.

- specifically arises following receipt of a defence statement




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## CPIA 1996 Definitions:

### ■ Material

- Of any kind
  - Obtained or inspected in course of criminal investigation
  - May be relevant to the investigation

### ■ Sensitive Material:

- Disclosure of which Disclosure Officer believes
  - Would give rise to real risk of serious prejudice
  - To important public interest




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## Sensitive material

- Examples include material:
  - Given in confidence
  - Relating to identity of informants
  - Whose disclosure might facilitate other offence(s)
  - Relating to the private life of a witness
- If in doubt, consult your lawyer.




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## Disclosure to accused

- Test for disclosure for prosecutor
  - disclose material which is in his possession or which he has inspected in pursuance of this code,
  - and which might reasonably be considered capable of undermining the case against the accused,
  - or of assisting the case for the accused;




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## Disclosure to the accused

- Some examples of material which may undermine the prosecution case or assist the defence are:
  - Witness statement which contradicts or casts doubt on prosecution evidence
  - Notebook entry that is inconsistent with the investigator's final conclusions
  - Variations in results of examination or analysis
  - A draft expert statement or certificate that indicates a view which conflicts wholly or partly with the final opinion
  - A draft witness statement which differs in a material particular from the final signed version
  - A relevant previous conviction or disciplinary record of a witness




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## Common law disclosure

R v DPP ex parte Lee [1999] 2 All ER 737

- In every case, irrespective of anticipated plea,
  - if there is material known to the officer in the case/disclosure officer, and
  - this material may assist the defence with the early preparation of their case,
- Must advise the prosecutor and
  - a copy of the material provided to the prosecutor, who will disclose it to the defence if he/she thinks it meets the test.



## Streamlined summary disclosure

**Streamlined Summary Disclosure**  
Legal Guidance

**Overview**  
This guidance applies to any case which is summary only on which, on a reasonable assessment of the case, is likely to remain in the magistrates' court. The amended CPSA Code of Practice applies to all criminal investigations, not just summary only cases.

**The Code for Crown Prosecutors**  
The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions that sets out the general principles Crown Prosecutors should follow when they make decisions on cases.

[Continue reading](#)

www.cps.gov.uk

## Criminal Procedure Rules

**The Criminal Procedure Rules** October 2015

**PART 15  
DISCLOSURE**

**Contents of this Part**

|   |           |
|---|-----------|
| When this Part applies                        | rule 15.1 |
| Prosecution disclosure                        | rule 15.2 |
| Prosecution's application in public interest  | rule 15.3 |
| Defence disclosure                            | rule 15.4 |
| Defence's application to prosecute disclosure | rule 15.5 |
| Review of public interest                     | rule 15.6 |
| Defence's application to disclose material    | rule 15.7 |
| Unauthorised use of disclosed material        | rule 15.8 |
| Court's power to vary requirements            | rule 15.9 |

**When this Part applies**

15.1. This Part applies

- (a) in a magistrates' court and in the Crown Court;
- (b) where Parts 1 and 2 of the Criminal Procedure and Investigations Act 1996 apply;
- (c) where the disclosure requirements of the Criminal Procedure and Investigations Act 1996 are at the end of the Part.

## Disclosure – Process

### Anticipated Guilty Plea (GAP)

1. FOR USE IN GAP CASES AT 1<sup>ST</sup> HEARING WHERE THERE IS NOTHING TO DISCLOSE PURSUANT TO R v DPP *ex parte* LEE

URN: Defendant: First Name Last Name

#### Reporting Officer's Certification

In accordance with Common Law I certify that to the best of my knowledge and belief there is no relevant unused material that might reasonably assist the defence with the early preparation of their case or at a bail hearing.

Reporting Officer Name

SIGNATURE

Date



## Disclosure – Summary process

### Anticipated Not Guilty Plea (NGAP)

Investigator  
Reviews  
material

• Note: This role  
normally falls  
to disclosure  
officer

Completes  
relevant  
schedule

Provides  
certificate to  
prosecutor




2. FOR USE IN ALL NGAP CASES AT 1<sup>ST</sup> HEARING WHERE THERE IS NOTHING TO DISCLOSE

URN: Defendant: First Name Last Name

#### SCHEDULE OF NON-SENSITIVE UNUSED MATERIAL – NOT FOR DISCLOSURE

| No. | Police use<br>(Brief description of materials) | CPS use  |
|-----|--|--|
| 1   |  | Having applied the disclosure tests set out in the CPIA 1996, I am satisfied from the descriptions listed in this schedule that the items in question are clearly not disclosable. |
| 2   |  |  |
| 3   |  |  |
| 4   |  |  |
| 5   |  |  |
| 6   |  |  |
| 7   |  |  |
| 8   |  |  |
| 9   |  |  |
| 10  |  |  |

|   |            |                     |
|---|------------|---------------------|
| <b>Disclosure Officer's Certification</b><br>I certify – <ul style="list-style-type: none"> <li>that any relevant unused material has been recorded and retained in accordance with the CPIA 1996 Code of Practice (as amended),</li> <li>that such material as is non-sensitive is shown on the schedule above,</li> <li>and that to the best of my knowledge and belief there are no items shown in the schedule that might reasonably undermine the prosecution case, or, so far as it is apparent, assist the defence with the early preparation of their case or at a bail hearing.</li> </ul> |            | CPS Prosecutor Name |
| Disclosure Officer Name   | SIGNATURE: |                     |
| SIGNATURE:  |            |                     |
| Date  | Date       |                     |
|    |            |                     |

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| <b>3. FOR USE IN ALL NGAP CASES AT 1<sup>ST</sup> HEARING WHERE THERE ARE SOME ITEMS TO DISCLOSE</b><br>URN:                  Defendant: First Name Last Name |   |   |
|---|---|---|
| SCHEDULE OF NON-SENSITIVE UNUSED MATERIAL   |   |   |
| No.   | Police use<br>(Brief description of materials including those falling under para.7.3 of the Code) | CPS use<br>(Against each item insert <b>D</b> for disclose; <b>I</b> for inspect; <b>CND</b> for clearly not disclosable) |
| 1   |   |   |
| 2   |   |   |
| 3   |   |   |
| 4   |   |   |
| 5   |   |   |
| 6   |   |   |
| 7   |   |   |
| 8   |   |   |
| 9   |   |   |
| 10  |   |   |

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|  |            |                     |
|--|------------|---------------------|
| <b>Disclosure Officer's Certification</b><br>I certify – <ul style="list-style-type: none"> <li>that any relevant unused material has been recorded and retained in accordance with the CPIA 1996 Code of Practice (as amended)</li> <li>that such material as is non-sensitive is shown on the schedule above,</li> <li>and that to the best of my knowledge and belief items...<br/>in the schedule might reasonably undermine the prosecution case, or assist the defence with the early preparation of their case or at a bail hearing, because....</li> </ul> |            | CPS Prosecutor Name |
| Disclosure Officer Name  | SIGNATURE: |                     |
| SIGNATURE:   |            |                     |
| Date   | Date       |                     |
|   |            |                     |

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## Disclosure to accused: Crown Court

- **Investigator**
  - makes initial decision as to which material should be retained ("relevant material").
- **Disclosure officer**
  - categorises material as sensitive or non-sensitive material.
- **Disclosure officer**
  - compiles a schedule of non-sensitive unused material and a schedule of sensitive unused material.
- **Disclosure officer**
  - decides what material must be revealed to the prosecutor.

## Further information

CPS Disclosure manual  
[https://www.cps.gov.uk/sites/default/files/documents/legal\\_guidance/Disclosure%20Manual\\_0.pdf](https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/Disclosure%20Manual_0.pdf)

|   |    |
|---|----|
| <b>Disclosure Manual</b>                                      |    |
| Revised: 26 February 2018                                     |    |
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## Main obligations of CPIA

Roles of officers

Recording of evidence

Retention of evidence

Disclosure of evidence

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