



# Welcome to Retail Team Investigator Training

Andy Morley & Danny Saunders

Senior Investigations Managers, Central  
Investigations Unit

June 2023



Investigator Training Day 7<sup>th</sup> June 2023 – Spire Meeting Room Chesterfield

0945-1000 Welcome, introductions and Scene Setting - Andy & Danny

1000-1200 Disclosure (including a 15 minute comfort break) - Andy

1200-1300 Lunch(Lunch provided)

1300 – 1345 Investigation Strategy - Danny

1345-1400 Comfort Break

1400-1445 Action and Decision Logs - Danny

1445-1500 Comfort Break

1500 – 1530 Continuity of Evidence – Andy

1530 – 1535 Comfort Break

1535- 1600 Launch of Investigator's Manual - Andy & Danny

1600 – 1615 Q&A – Andy & Danny



# Disclosure in Civil and Criminal Investigations

Andy Morley, Senior Investigations Manager, Central Investigations Unit

June 2023

## R v Liam Allen 2017

*"Something has gone very, very wrong in the way this case was investigated and brought to court".....*

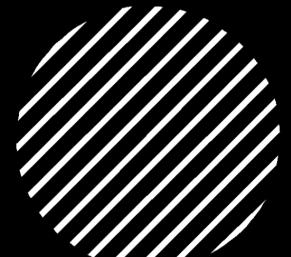
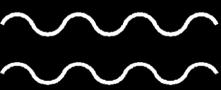
*"The CPS should be considering the matter at the very highest level..... there is a risk not only of this happening again, but that trial process will not detect what has gone wrong and there will be a very serious miscarriage of justice"*

*Judge Peter Gower*

## Agenda

1. Why do we have disclosure legislation
2. What happens when disclosure goes wrong
3. Criminal Procedures Investigations Act 1996
4. Civil Procedure Rules 1998
5. Break out exercise





## References for this session:

Criminal Procedure Investigations Act (CPIA) 1996 &  
The CPIA Code of Practice

The Attorney General Disclosure Guidelines 2022

The Civil Procedure Rules 1998

# European Convention of Human Rights

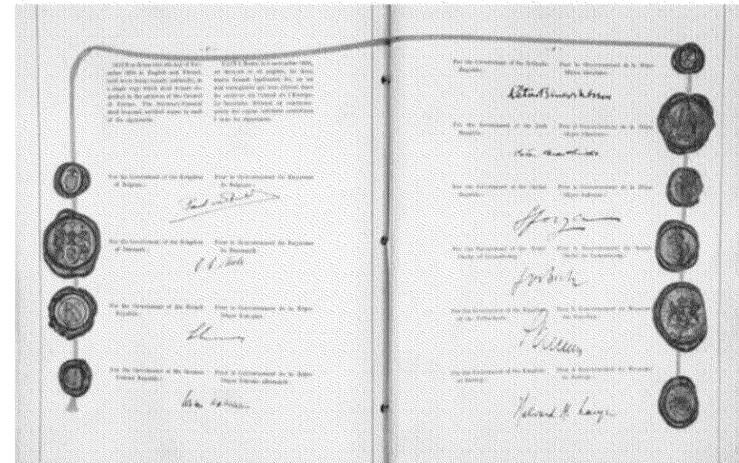
Article 6 of the European Convention of Human Rights (ECHR) guarantees in member states the right to 'a fair trial'.

It was intended to be a simple, flexible roundup of universal rights whose meaning could grow and adapt to society's changing needs over time.

The United Kingdom was the first country to ratify ECHR in March 1951.



Prime Minister Winston Churchill



Signatories to the European Convention on Human Rights 4<sup>th</sup> November 1950

## Under Article 6 of ECHR you have the right to:

1. Be presumed innocent until you are proven guilty
2. Be told as early as possible what you are accused of
3. Remain silent
4. Have enough time to prepare your case
5. Legal aid (funding) for a lawyer if you cannot afford one and this is needed for justice to be served
6. Attend your trial
7. Access all the relevant information
8. Put forward your side of the case at trial
9. Question the main witnesses against you and call other witness, and
10. Have an interpreter, if you need one.

## You have the right to:

### 7. Access all the relevant information

Disclosure is providing the defence with copies or access to all material that is capable of undermining the prosecution case and/or assisting the defence. Investigators, prosecutors, defence teams and the courts all have important roles to play in ensuring the disclosure process is done properly and promptly. *Crown Prosecution Service*

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, and it is a priority for this Government to encourage improvements in disclosure practice in order to ensure the disclosure regime operates effectively, fairly and justly. *The Rt. Hon. Suella Braverman QC MP -Attorney General*

# What Happens when Disclosure is Poorly Managed?

## M62 Coach Bombing

4 February 1974 **GRO** detonated a 25 pound bomb hidden inside the luggage locker of a coach carrying off-duty British Soldiers and their families. 9 Soldiers and 3 civilians killed.

**GRO** convicted and jailed for life.

1992 **GRO** released having served 17 years – Government forensic scientist had deliberately withheld information from her defence counsels which strongly indicated her innocence.

The actual perpetrator(s) were never arrested or convicted.





# What Happens when Disclosure is Poorly Managed?

**GRO**

21 November 1974 **GRO** were charged for the bombings of 2 pubs in central Birmingham – subsequently convicted and sentence to life imprisonment.

Convictions quashed in May 1991 due to lack of disclosure.

**GRO** were subsequently charged with perjury and conspiracy in connection with the investigation.

The real bombers have never been prosecuted.

# What Happens when Disclosure is Poorly Managed?

**GRO** charged with 6 counts of rape 6 counts of sexual assault after woman claimed their relationship was unhappy and abusive and she did not want sex.

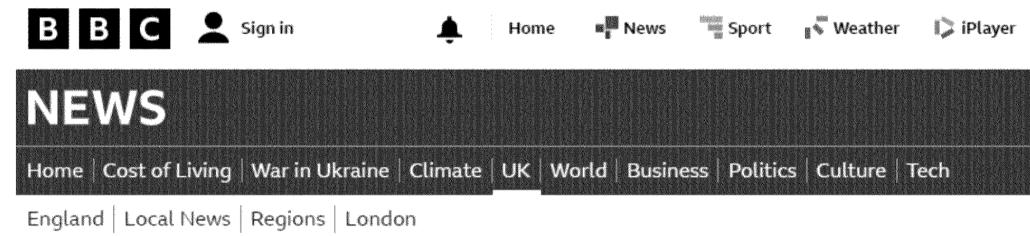
Met only informed defence one week before trial that complainant's mobile phone had been downloaded and only provided a copy of the disk the night before the trial.

Disk contained messages that completely undermined the prosecution case.

Resulted in the National Disclosure Improvement Plan January 2018 issued by the CPS

AG published a review of disclosure process in November 2018

AG Disclosure Guidelines 2022



The screenshot shows the BBC News homepage. At the top, there is a navigation bar with the BBC logo, a sign-in link, and a bell icon for notifications. Below the navigation bar, the word 'NEWS' is prominently displayed in large, bold, white capital letters. Underneath 'NEWS', there is a horizontal menu bar with links to various news categories: Home, News, Sport, Weather, and iPlayer. Below this menu, there is a secondary navigation bar with links to Home, Cost of Living, War in Ukraine, Climate, UK, World, Business, Politics, Culture, and Tech. The 'London' link is underlined, indicating it is the current section. At the bottom of the screenshot, there is a headline: 'Met Police apologise for rape case errors'.

**Met Police apologise for  
rape case errors**

**GRO**

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## 'Worst miscarriage of justice': Post Office scandal tore families apart, inquiry hears

14 February 2022, 16:02 | Updated: 14 February 2022, 16:07



Baljit Sethi, with wife Anjana, arrives at the International Dispute Resolution Centre in London. Picture: Alamy



By Patrick Grafton-Green

The Post Office scandal was "the worst miscarriage of justice in recent British legal history", ruining lives and tearing families apart, a top lawyer has said.

*“But I don’t conduct criminal investigations so what has this got to do with me?”*

Para 2.1 of the Code of Practice defines a criminal investigation as follows:

- 1) Investigations into crimes that have been committed;
- 2) Investigations whose purpose is to ascertain whether a crime has been committed;
- 3) Investigations which begin in the belief that a crime may be committed.

# The s31 Civil Procedure Rules 1998

## **Meaning of disclosure**

31.2 A party discloses a document by stating that the document exists or has existed.

## **Attorney General's Disclosure Guidelines 2022 Defines 'Relevant Material' as:**

Material may be relevant to an investigation if it appears to an investigator, or to the office in charge of an investigation, or to the disclosure officer, that it has some bearing on any offence under investigation or any person being investigated, or on the surround circumstances of the case, unless it is incapable of having any impact on the case

## **Para 2.1 of CPIA 1996 defines 'material' as:**

Material of any kind, including information and objects, which is obtained or inspected in the course of an investigation and which may be relevant to the investigation. This includes not only material coming into the possession of the investigator but also material generated by him.

# **Syndicate Exercise**

**List items of ‘Relevant Material’ generated in  
your investigations?**

**Give an example of something you might see  
during an investigation that is ‘Not Relevant’.**

**Time allowed 15 minutes**

# **The Criminal Procedure and Investigations Act (CPIA) 1996**

Record all Relevant Material

Retain all Relevant Material

Reveal all Relevant Material

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POL00448019

# Record all Relevant Material

# What Must be Recorded?

## Para 4 Code of Practice

4.1 - If material which may be relevant to the investigation consists of information which is not recorded in any form, the office in charge of an investigation must ensure that it is recorded in a durable or retrievable form (whether in writing, on video or audio tape, or on computer disk).

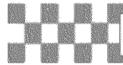
4.2 - Where it is not practicable to retain the initial record of information because it forms part of a larger record which is to be destroyed, its contents should be transferred as a true record to a durable and more easily-stored form before that happens.

4.3 - Negative information is often relevant to an investigation. If it may be relevant it must be recorded. An example might be a number of people present in a particular place at a particular time who state that they saw nothing unusual.



## **Relevant Sensitive Material**

Sensitive material is material that, if disclosed, would give rise to a real risk of serious prejudice to an important public interest. Investigators must ensure that all relevant unused sensitive material is retained, reviewed and revealed to the prosecutor. Sensitive material should be revealed to a prosecutor on a separate schedule to the non-sensitive material.



RESTRICTED (when complete) - Not Disclosable

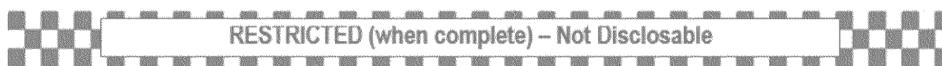
MG6D

## SCHEDULE OF RELEVANT SENSITIVE MATERIAL

Rv

119

2040/11



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# Retain all Relevant Material

# Retention and Storing of Material

## Para 5 Code of Practice

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

## Retain all Relevant Material - Reasonable Line of Enquiry

### **Reasonable Line of Inquiry**

**A reasonable line of inquiry is that which points either towards or away from the suspect. What is reasonable will depend on the circumstances of the case and consideration should be had of the prospect of obtaining relevant material, and the perceived relevance of that material.**

Record in the Decision and Act Log what lines of enquiry you have chosen and the reason why you have chosen to follow that line of enquiry - JAPAN Statement

Record in the Decision and Act Log any lines of enquiry you have considered and decided not to pursue and the rationale for not following the line of enquiry.

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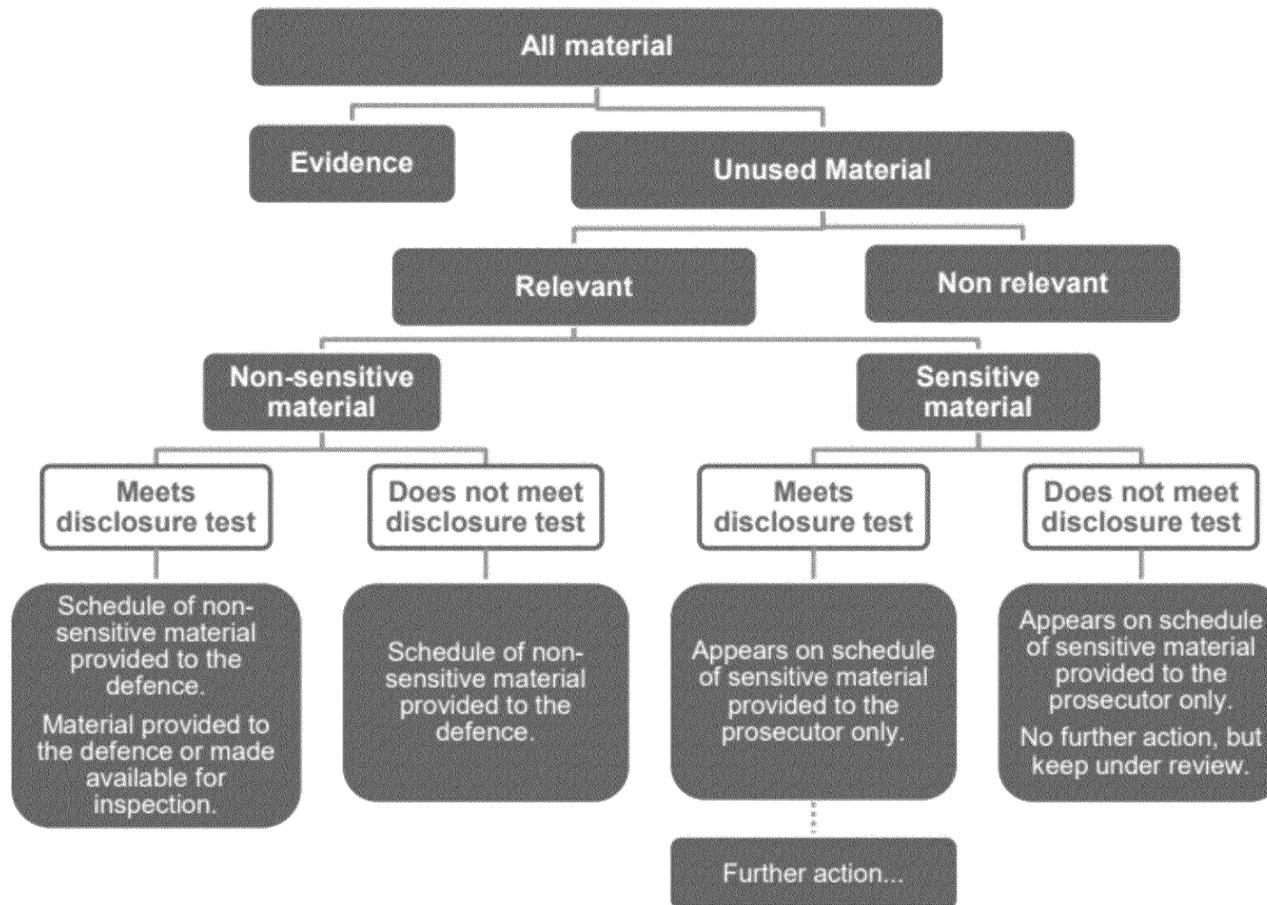
# Reveal all Relevant Material

## Disclosure Test

Material that might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused.

	<b>RESTRICTED (when complete) - Not Disclosable</b>	<small>MO6E</small>
<p><b>Certification in all cases :</b></p> <p>To the best of my knowledge and belief, all material that is or may be relevant has been retained and made available to me. It has been inspected, viewed or listened to and revealed to the prosecutor in accordance with the Criminal Procedure and Investigations Act 1996 as amended, Code of Practice and the Attorney General's Guidelines.</p> <p>Signature of Disclosure Officer: .....</p> <p>Name: ..... Date: .....</p> <p><i>I have reviewed all of the relevant material, OR I have considered the defence statement and further reviewed all the relevant material (delete as applicable) that 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.</i></p> <p>Signature of Disclosure Officer: .....</p> <p>Name: ..... Date: .....</p>		
<p><b>CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 (S.23(1)) CODE OF PRACTICE</b></p> <p><b><u>Revelation of material to the prosecutor</u></b></p> <p>Sec.7.3 states:</p> <p>'At the same time as complying with the duties in paragraphs 7.1 and 7.2, the disclosure officer must give the prosecutor a copy of any material which falls into the following categories (unless such material has already been given to the prosecutor as part of the file containing the material for the prosecution case):</p> <ul style="list-style-type: none"> <li>- information provided by an accused person which indicates an explanation for the offence with which he has been charged;</li> <li>- any material casting doubt on the reliability of a confession;</li> <li>- any material casting doubt on the reliability of a prosecution witness;</li> <li>- any other material which the investigator believes may fall within the test for prosecution disclosure in the Act.'</li> </ul>		

# Retention and Storing of Material



# The s31 Civil Procedure Rules 1998

## **Meaning of disclosure**

31.2 A party discloses a document by stating that the document exists or has existed.

## **Standard disclosure—what documents are to be disclosed**

31.6 Standard disclosure requires a party to disclose only—

- (a) the documents on which he relies; and
- (b) the documents which—
  - (i) adversely affect his own case;
  - (ii) adversely affect another party's case; or
  - (iii) support another party's case; and
- (c) the documents which he is required to disclose by a relevant practice direction.

# The s31 Civil Procedure Rules 1998

## 31.5

(1) In all claims to which rule 31.5(2) does not apply –

- (a) an order to give disclosure is an order to give standard disclosure unless the court directs otherwise;
- (b) the court may dispense with or limit standard disclosure; and
- (c) the parties may agree in writing to dispense with or to limit standard disclosure.

(2) Unless the court otherwise orders, paragraphs (3) to (8) apply to all multi-track claims, other than those which include a claim for personal injuries.

(3) Not less than 14 days before the first case management conference each party must file and serve a report verified by a statement of truth, which –

- (a) describes briefly what documents exist or may exist that are or may be relevant to the matters in issue in the case;
- (b) describes where and with whom those documents are or may be located;
- (c) in the case of electronic documents, describes how those documents are stored;
- (d) estimates the broad range of costs that could be involved in giving standard disclosure in the case, including the costs of searching for and disclosing any electronically stored documents; and
- (e) states which of the directions under paragraphs (7) or (8) are to be sought.

## Summary

1. Why do we have disclosure legislation
2. What happens when disclosure goes wrong
3. Criminal Procedures Investigations Act 1996
4. Civil Procedure Rules
5. Break out exercise

# Any Questions

