

The National Disclosure Standards



Contents

| | |
|--|----------|
| Summary | 2 |
| 1.1. About this document | 2 |
| 1.2. Expiry or review date | 2 |
| 1.3. Who is this document for?..... | 2 |
| 1.4. Main points | 2 |
| National Standards for Disclosure | 3 |
| 2.1 Standard 1 – Statement of principles and practice..... | 3 |
| 2.2 Standard 2 – Provision of schedules | 4 |
| 2.3 Standard 3 – Content of schedules | 5 |
| 2.4 Standard 4 – Third Party Material..... | 7 |
| 2.5 Standard 5 – On-going Review | 7 |

Summary

1.1 About this document

- 1.1.1 This document contains a statement of the national standards (standards) for the completion of the MG6 schedules and the Streamlined Disclosure Certificate. These standards do not override the need for police officers to comply with the Criminal Procedure and Investigations Act 1996 (CPIA) and the associated Code of Practice, together with any other legislation which sets the standards for police practice.

1.2 Expiry or review date

- 1.2.1 This document will be reviewed in March 2019. The National Police Chiefs' Council Lead for Criminal Justice and the Director of Public Prosecutions will keep the standards under review and may publish amended versions as appropriate.

1.3 Who is this document for?

- 1.3.1 The standards apply in England and Wales to:

- Officers in the case
- Disclosure officers
- Non-warranted police employees
- Crown Prosecution Service (CPS) lawyers

1.4 Main points

- 1.4.1 This statement refers to the standards required for the completion of the MG6 schedules and the Streamlined Disclosure Certificates and is published jointly by the National Police Chiefs' Council Lead for Criminal Justice and the Director of Public Prosecutions.
- 1.4.2 It provides the standards which police forces are expected to meet in the preparation of disclosure schedules, Streamlined Disclosure Certificates and the continuing duty of disclosure under CPIA and the Code of Practice.
- 1.4.3 Compliance with the standard is key to continuously improving disclosure performance.
- 1.4.4 The reference to an officer refers to the officer in the case or disclosure officer, and can include a non-warranted police employee.

National Standards for Disclosure

2.1 Standard 1 – Statement of principles and practice

- 2.1.1 The founding principle of the criminal justice system is that a person is innocent until proven guilty. Every person has a fundamental right to a fair trial. To help guarantee a fair trial an individual has a right to be provided with any material which could assist them in defending themselves. They have a right to an open and honest prosecution which reveals any weakness in its case against them.
- 2.1.2 We have an absolute duty to ensure we deal with disclosure in an appropriate, just and fair way, compliant with the right to a fair trial. Defendants must not be deprived of information which may assist them in defending a criminal charge.
- 2.1.3 We must foster a culture in which disclosure is not a separate exercise, discreet from the criminal investigation. Investigators must apply their minds to disclosure from the very outset of the case and not view disclosure as an adjunct to be undertaken only once they have formed the view that a suspect should be charged with an offence. Proper disclosure of unused material is vital if there is to be a fair trial, which is in the interests of the complainant, the accused and the whole community.
- 2.1.4 Officers and prosecutors must ensure that they are fully aware of the law and policy governing disclosure. They should refer to the CPIA 1996 and the Code of Practice, the Attorney General’s Guidelines, the Judicial Protocol on the Disclosure of Unused Material in Criminal Cases and the CPS Disclosure Manual for further guidance.
- 2.1.5 Investigators must pursue all reasonable lines of enquiry. This includes investigating matters which could point towards innocence as well as guilt. Any material which may affect the decision to charge must be brought to the attention of the prosecutor.
- 2.1.6 The officer has a duty when preparing the pre charge report to highlight to the prosecutor any material that may undermine the prosecution case or assist the defence on the MG3/Digital Case File or, where local arrangements exist, the MG6.¹
- 2.1.7 The officer is responsible for preparing the disclosure schedules or, where applicable, Streamlined Disclosure Certificates and submitting them to the prosecutor via the local systems in place.
- 2.1.8 It is essential that both the officer and the prosecutor apply a ‘thinking approach’ to the disclosure exercise. Where officers require guidance about the relevance of material, the advice of the prosecutor should be sought.
- 2.1.9 If the schedules, certificates or descriptions of items listed on them are not sufficient for the prosecutor to carry out their duty of disclosure, they will be returned to the officer with a request to rectify the issues and resubmit them.
- 2.1.10 The officer has a continuing duty to review the unused material throughout the case and in particular in light of any issues raised in a defence statement.

¹The provision of MG6 schedules pre charge is subject to local arrangements. This is currently under review by the National File Standards working group.

- 2.1.11 The prosecutor will provide guidance to the officer in light of any issues raised in the defence statement and will ensure that inadequate defence statements are challenged.

2.2 Standard 2 – Provision of schedules

- 2.2.1 In all cases the officer must comply with the common law disclosure obligations under [R v DPP ex parte Lee \[1999\] 2 All ER 737](#) and certify that, to the best of the officer's knowledge and belief, no information has been withheld which would assist the accused in the preparation of the defence case, including the making of a bail application. In accordance with ex parte Lee, in every case irrespective of the anticipated plea, if there is material known to the officer in the case/disclosure officer, for example a key prosecution witness has relevant previous convictions, or a witness has withdrawn their statement and this material may assist the defence with the early preparation of their case or at a bail hearing, a MG6 must be prepared, on which a note must be made to advise the prosecutor and a copy of the material provided to the prosecutor, who will disclose it to the defence if they consider it meets the test.

Streamlined Summary Disclosure

- 2.2.2 For all summary only cases, and cases which are either way but assessed to be clearly suitable for summary trial, a Streamlined Disclosure Certificate (SDC) will be completed in anticipated not guilty plea (NGAP) cases. There is no requirement to complete a SDC for anticipated guilty plea (GAP) cases.
- 2.2.3 For NGAP, and cases where a not guilty plea is entered to a GAP case, there are two versions of the Streamlined Disclosure Certificate. The first should be used when the police officer believes that there is nothing which is disclosable; the second should be used where a police officer believes some material satisfies the test for disclosure.
- 2.2.4 In any NGAP case where there is sensitive material the Sensitive Schedule (MG6D) should be completed. In SDC cases where there is no unused sensitive material, no additional form is required. Where sensitive material either undermines or assists it should be recorded on the Disclosure Officer's report (MG6E).

Crown Court cases

- 2.2.5 In indictable only cases, cases which are likely to be deemed not suitable for summary trial and cases in which the defendant elects trial in the Crown Court, the Non-Sensitive Schedule (MG6C) must be completed along with the MG6D and MG6E. This includes youth court cases that are likely to be considered 'grave crimes'.
- 2.2.6 Following the receipt of a defence statement the officer must undertake a further full review of all unused material and provide a further report on an MG6E to the prosecutor indicating whether anything now falls to be disclosed.
- 2.2.7 When schedules are provided to the prosecutor they must be accompanied by an MG6E and copies of the material which is considered to satisfy the test for disclosure, unless they are sensitive. Sensitive items on the MG6E will still need to be considered by the prosecutor, who will make arrangements to do this.

2.3 Standard 3 – Content of schedules

- 2.3.1 The disclosure officer must examine all unused material seized during an investigation and schedule it where appropriate. The test to be applied to scheduling is relevance. All relevant material must be scheduled unless it is evidence. The definition of relevance is contained within the Code of Practice as *‘anything that appears to have some bearing on any offence under investigation, or any person being investigated, or on the surrounding circumstances unless it is incapable of having any impact on the case’*.
- 2.3.2 The purpose of the schedules is to reveal to the prosecutor the existence of relevant unused material. Non-sensitive schedules will also be provided to the defence. Each item on the schedule must be fully described so that an assessment can be made about whether the item is capable of undermining the prosecution case or assisting the defence. Prosecutors will return inadequate schedules to the officer to be re-written.

Streamlined Disclosure Certificates

- 2.3.3 All relevant non-sensitive unused material should be listed in the box marked ‘schedule of unused material’ on the Streamlined Disclosure Certificate. This should:
- Be consecutively numbered; and
 - Contain descriptions that allow the prosecutor to understand what the item is and whether it should be disclosed.
- 2.3.4 Where there is no material to be disclosed, the officer should use the appropriate form and sign the declaration that there is nothing to disclose. If the prosecutor disagrees with that assessment, they will endorse the form accordingly and request any material that needs to be disclosed.
- 2.3.5 Where material is identified which, in the opinion of the officer, satisfies the test for disclosure, the second form must be used. This must be endorsed with the reason why the item(s) either undermines the prosecution case or assists the defence. A copy of the disclosable items must be provided with the certificate. Officers must ensure personal information or data is redacted where it is supplied to the prosecutor.
- 2.3.6 A copy of the SDC and any material, which in the opinion of the prosecutor satisfies the test for disclosure (redacted where appropriate) will be provided to the defence as part of the Initial Disclosure Prosecution Case bundle.

MG6 Series – C, D and E

MG6C

- 2.3.7 The MG6C schedule is to be used in Crown Court cases, i.e. those cases which are indictable only, not suitable for summary trial or the defendant has elected trial in the Crown Court.
- 2.3.8 All relevant non-sensitive material must be included on the MG6C. This should:
- Be consecutively numbered (or follow the index sequence on HOLMES); and
 - Contain descriptions that allow the prosecutor to understand what the item is and whether it should be disclosed.

- 2.3.9 Where appropriate, use should be made of the block listing provisions in paragraph 6.12 of the Code and paragraph A50 of the Attorney General's Guidelines, in particular when dealing with large volumes of electronic material or in cases where there are many items of a similar or repetitive nature, it is permissible to describe them by quantity and generic title. When items are described generically, the disclosure officer must ensure that items which might meet the disclosure test are described individually.
- 2.3.10 Prosecutors will inform the officer if material which was submitted as part of the evidence, after review, is determined to be unused material. The officer must then ensure that this material is scheduled as appropriate.

MG6D

- 2.3.11 The MG6D schedule should be used to reveal to the prosecutor the existence of relevant unused material which the officer believes is sensitive. Sensitive material is that which, if revealed, would give rise to a real risk of serious prejudice to an important public interest. The officer must state the reason for that belief. The MG6D is not disclosed to the defence.
- 2.3.12 In cases where there is no sensitive unused material, the officer should endorse and sign an MG6D to this effect and should submit this together with the MG6C and MG6E.
- 2.3.13 The MG6D should only contain relevant, sensitive material. This should;
- Be consecutively numbered (or follow the index sequence on HOLMES); and
 - Contain descriptions that allow the prosecutor to understand what the item is, why it is considered sensitive and whether the material meets the test for disclosure. In cases where there are complex sensitive material issues, there should be a discussion between the investigator and prosecutor to ensure that the prosecutor is fully aware of the content of all of the material.
- 2.3.14 When the schedule and any material are sent to the prosecutor, a protective marking should be applied to it consistent with the level of sensitivity of the content. This will determine the manner in which the material is conveyed to, and stored by, the CPS.
- 2.3.15 In some particularly sensitive cases, there may be material which is too sensitive to put in the schedule. In exceptional circumstances where the existence of the material is so sensitive that it cannot be listed on the MG6D it should be listed on a highly sensitive schedule (HSMG6D) and revealed to the prosecutor separately. Highly sensitive material (including CHIS material) is that which, should it be compromised, would lead directly to loss of life or directly threaten national security. The lead disclosure officer should record the existence of a HS MG6D (but not the content) on the principal MG6D and submit a HSMG6E. Such material and schedules will remain at all times under the control of the police. It is only in exceptional cases that the HSMG6D is not listed on the principal MG6D

MG6E

- 2.3.16 The MG6E is used to bring to the prosecutor's attention any material that could reasonably be considered capable of undermining the prosecution case or of assisting the case for the defence. The MG6E should explain why each item satisfies the test for disclosure.

- 2.3.17 The items must be listed with reference to the schedule they appear on and the number of that item on the schedule, for example the second item listed on the MG6C would be listed on the MG6E as item C2.
- 2.3.18 If any material is recorded on the MG6E, a copy of that material must be supplied with the schedule to the prosecutor, or arrangements made to view it if it is sensitive.

2.4 Standard 4 – Third Party Material

- 2.4.1 Where it is apparent to an investigator that a third party has material that may be relevant to an issue in a case, all reasonable steps should be taken to identify and consider such material.
- 2.4.2 Investigators and prosecutors should have reference to the Joint Third Party Material Protocol, which reflects national police policy in identifying and seeking access to relevant third party material as early as possible in the investigation and provides a streamlined and standard process in contacting third parties and passing information to the prosecutor using the appropriate schedules.

2.5 Standard 5 – On-going Review

- 2.5.1 There is a continuing duty to review unused material and to schedule relevant material. Officers should submit updated schedules when further relevant unused material is identified.
- 2.5.2 The prosecutor will draw the attention of the officer to any key issues raised within the defence statement and identify the actions that should be taken.
- 2.5.3 Upon receipt of a defence statement the officer must re-review all the unused material, including that which was previously assessed not to be relevant, and must draw the attention of the prosecutor to any material which now satisfies the test for disclosure. A further MG6E must be provided and endorsed to confirm that the material has been reconsidered following receipt of the defence statement and to identify any material which is assessed to satisfy the test for disclosure.