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REVISIONS TO THE ATTORNEY GENERAL'S GUIDELINES ON DISCLOSURE AND CPIA CODE OF PRACTICE

Dear Chief Constable,

I am writing to advise you of impending changes which merit urgent attention since they will have consequences for investigative practice and capacity.

On 26th February 2020 the Attorney General launched a public consultation into the proposed revisions to her guidelines on Disclosure and the CPIA Code of Practice.

These provisions set out what is required of police investigators in recording, retaining and revealing material gathered during an investigation. This Code is enshrined in statute and therefore forces must comply. The public consultation closed on the 22nd July 2020.

Before the consultation, Assistant Commissioner Nick Ephgrave, the NPCC Lead for Criminal Justice, met with the then Attorney General, Sir Geoffrey Cox, who had initiated the proposed revisions. AC Ephgrave subsequently met with the incumbent Attorney General, Suella Braverman. In each case he explained the inevitable impact on our investigative capacity, our workforce and the overall efficiency of the system. The NPCC Disclosure Portfolio has, since the consultation's inception, been represented on the AGO Working Group and I advanced the same arguments in a comprehensive written response to the public consultation. It is also the case that the same representations were formally made by the co-chairs of the National Disclosure Delivery Board and a number of individual forces

These representations were substantially to no avail since the revised guidelines laid before Parliament on 10th September were not materially different from those advanced for consultation. They will be the subject of debate at some point in the next 6 to 8 weeks with the earliest date for publication of the Code being 31st December 2020.

I have considered whether further representations should be made. Before and during the consultation period the views of policing were made plain. It is evident from the consultation summary (attached) that the Attorney General took account of these views before nevertheless including the original proposals in the final version. Due process has been followed and I cannot see how further representations would do more than recycle representations already made and rejected. This being the case, further representations would now serve little purpose and we would be wiser instead to make preparations for the coming changes.

This letter explains the likely changes and recommends how we should now prepare.

I have attached the notable revisions. These relate to:-

- 1. A rebuttable presumption in favour of disclosing material likely to meet the test for disclosure.**



2. Pre-charge disclosure schedules in not guilty anticipated plea cases expected to be heard in the Crown Court.

3. Pre-charge engagement with the defence.

Each reform certainly has merit. Rebuttable presumptions will reduce the risk of disclosure failings in volume cases. Pre-charge schedules will provide the CPS with a description of unused material at the point of charge. Pre-charge engagement with the defence will enable investigators to identify reasonable lines of enquiry which tend to exculpate the suspect – either demonstrating early on that there is no case to answer or addressing defences on which an accused might otherwise later have relied.

It is, however, the case that these reforms are very likely to create extra work for our investigators. Rebuttable presumptions will increase the amount of redaction that is required, since more material will routinely be revealed. The limitations of current redaction capability, which for many is no more advanced than manually editing printed documents, will increase the administrative burden. Pre-charge schedules will require files to be built to a degree that in many cases proves ultimately to have been unnecessary. And pre-charge engagement with the defence will create an additional obligation for investigators.

The Attorney General has agreed to sign off the Guidelines at yearly intervals. The Criminal Justice Board (CJB) and Disclosure Sub-Group will retain oversight of both the Guidelines and the Code. If there is evidence to demonstrate that the revisions are not sustainable for policing, further representations may be made through these channels.

In anticipation of this outcome, the National Disclosure Improvement Plan (NDIP) Delivery Board has been driving the development of a national redaction tool using Adobe Pro. The majority of forces now have this capability and it will, to a degree, ameliorate some of the additional burden on investigators.

Please ensure that your force has made contact with DCI Simon Yates, who is seconded to the Police ICT Company and working closely with Adobe. He will provide support to an appropriate contact in your force in order to see that investigators can access the necessary training and functionality. Simon may be contacted at simon.yates@ict.police.uk.

Should you or your staff have any other questions, please direct them to my staff officer, DCI Jon Groenen at jonathan.groenen@thamesvalley.pnn.police.uk and he will ensure that I consider them personally.

Yours sincerely

ACC Tim De Meyer
Assistant Chief Constable
NPCC Disclosure Lead

