

Justice Committee

Oral evidence: [Disclosure of evidence in criminal cases](#), HC 859

Wednesday 13 June 2018

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Members present: Robert Neill (Chair); Ruth Cadbury; Alex Chalk; David Hanson; John Howell; Victoria Prentis.

Questions 410 - 511

Witnesses

[I](#): Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service, Home Office.

[II](#): Rt Hon Jeremy Wright QC MP, Attorney General.

Examination of witness

Witness: Rt Hon Nick Hurd MP.

Chair: Welcome to our evidence session on disclosures. This will be the last of our series. The first of our witnesses is the Minister for Policing and the Fire Service. Welcome, Minister.

Before I move on to the questions, we have to go through the formalities of declaring interests. I am a non-practising barrister and a consultant to a law firm.

Alex Chalk: I am a practising barrister.

Victoria Prentis: I am a non-practising barrister.

Q410 **Chair:** Mr Hurd, thank you very much for coming to give evidence to us. There has been a real problem with disclosure, hasn't there?

Nick Hurd: It has been a serious problem for a very long time.

Q411 **Chair:** It has been described as a blight on the system, hasn't it?

Nick Hurd: Yes, and a complete mess by others.

Q412 **Chair:** Where do you think the police service is now with it?

Nick Hurd: I do not want to be naive about this, because we need to keep the process under intense scrutiny, both in Parliament and the Home Office, but I detect a change in terms of approach and the importance that police leadership attach to sorting the mess out. I think they recognise that there is a serious problem.

The way I look at it, Chair, is that this is pretty fundamental to confidence in our criminal justice system. It is quite fundamental to our trust in the police. We know how fragile trust is in this day and age. It is as important as that. I think they get it. You will have drawn your own conclusions from the evidence you received from Nick Ephgrave and Mike Cunningham.

They persuaded me of a number of things. The first is that there is senior leadership buy-in to a plan. That matters in the police because, as you well know, it is a very hierarchical structure. Leadership matters in all places, but it matters particularly in a police system fragmented across 43 different forces. I am satisfied from the public comments made, and from the private conversations I have had, that there is widespread recognition of the seriousness of the problem and the need for a more robust response than we have seen in the past.

You will have reached your own conclusions about the intelligence of the underlying plan, but I get a sense that it is being driven hard, that it is the right shape and that it is a sensible plan. We have to hold them to account because obviously there have been assurances in the past that have not been followed through.



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Q413 **Chair:** Promises have been made so many times that people are on top of this, but it has not happened.

Nick Hurd: No. There are people around this table with plenty of experience of the past. We know the past, which leads us to be sceptical about the future.

Q414 **Chair:** Is that your view? You are still sceptical.

Nick Hurd: I think we have to be, and I think the police respect that. The tone and demeanour of Nick and Mike coming to you shows that they understand the failings in the past and recognise that there is going to be scepticism. They realise that they have to lay themselves open to regular scrutiny; there have to be KPIs and clear outcomes. I think they recognise that.

I hope I am not being naive, but I feel that there has been a shift in terms of attitude and honesty about the underlying problem, which they describe as one of attitude, and recognition that not enough importance has been attached to it in the past. It has been seen, in their language to me, as a bit of a bureaucratic add-on, rather than fundamental to what defines good investigative work. That is the change we have to see.

Q415 **Chair:** You make a fair point. One of the key issues is making this integral to the investigation rather than a tick-box. I have sympathy with the point you are making, Minister, that the police are a hierarchical organisation. Leadership from the top is important, but our concern is how much do good intentions and genuine commitment from the top feed down to the hard-pressed and hard-working detective constable or detective sergeant who is dealing with the investigation and has to get schedules together? What assurance have you got from the police that the filtering down to the actual operational level is happening?

Nick Hurd: I have the same assurances as you have, which means that we both, in our different roles, have to keep the process under intense scrutiny and ask the right questions. We are starting with the right question: "We hear all these words, but what is this actually going to mean on the ground?" Through our different mechanisms, we have to follow that and ask the right questions to be sure that change is happening on the ground.

The college has a very important role to play in that. It is under new leadership. I think they have been honest that they were too slow in the part they played in this. That has come through in the investigations. Mike Cunningham has been very candid about it. I feel very strongly that he is a superb appointment to that leadership role, and that he is leaning into this in a very positive way. It is very valuable of course that he has the experience of being a chief himself, so he knows the ways.

Training has been highlighted as a fundamental failing and weakness in the past. There is a new process under way which you will have heard about. The early numbers seem quite encouraging, but they are very



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early. With training, I always say we should get past the numbers and try to understand impact and absorption.

Q416 **Chair:** You say we have to ask the right questions. What are the questions you are asking, as Minister?

Nick Hurd: At this stage, my questions are around the plan and trying to satisfy myself that there is senior leadership buy-in. I particularly like what they have structured in terms of practitioners and champions at the different levels of forces. If those are the right people with the right support, they can be important change agents at the working level. I can see that being potentially very valuable. Part of my role of regular scrutiny of police performance, and on my list of priorities in terms of the things I am talking to chiefs, PCCs and frontline officers about, is testing what has changed. One of the things we are introducing is a new mechanism for us, as the Government, to speak directly to frontline officers, which has not really been done before. It is called a frontline review.

Q417 **Chair:** Perhaps you would like to tell us how that works.

Nick Hurd: We have not launched it yet. We have announced it. We are working through it. Mike Cunningham, who is the chair of the college, will be chairing the process. We want to be able to speak directly to frontline officers, to ask them questions about their living experience as police officers and their feelings about how they are being led and performance managed, as well as the kind of support services that they are getting, which includes training, and their feelings about that. That will present us with an opportunity to ask questions, but it is also an opportunity for them to feed into the system their ideas on how to improve their business and how they work.

I do not think that has happened before, but it addresses your point about us needing better information about what is actually happening on the ground in policing, rather than simply the high-level conversations with the chiefs and PCCs. Those are absolutely necessary and vital, but we need to understand what is actually happening on the ground.

Q418 **David Hanson:** Just to be clear at the start, you have met Chief Constable Ephgrave and Chief Constable Cunningham to discuss disclosure specifically.

Nick Hurd: Yes, and Sara Thornton, who, as you know, is the chair of the chiefs' council.

Q419 **David Hanson:** In the national disclosure improvement plan that has been produced, some of the responsibilities obviously lie within policing. What do you see as your role in delivering those particular commitments in the plan?

Nick Hurd: I have a primary role in relation to resources and making sure that the police have the resources they need. Obviously if new



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legislative powers are needed, that is a conversation with us. I have a scrutiny and accountability role in holding them to account for delivery on the plan. Specifically on some of the challenges set out in the plan, as I am sure we will discuss, technology is a challenge and the Home Office has a central investment programme in technology, including specifically a digital policing portfolio, which I think is £17 million to date, with another £22 million this year. Within that, there is a stream of work to commission experts to review potential technology solutions in this space and to map existing capability. One of the issues is that different forces are doing different things and using different tools. That needs to be mapped.

Finally, for completeness, you are probably aware that we are also piloting, through Home Office funding, new techniques for allowing digital storage and sharing of evidence. We still have a system that is sending too much stuff around on CDs, which seems extraordinary in 2018. There is an investment piece through the digital policing portfolio.

Q420 David Hanson: I am sure that the plan will be met, but, in the event that it is not, who do we hold accountable? Is it the chief constable lead? Is it the College of Policing? Is it yourself? Is it the CPS later on? Who do we hold accountable for the delivery of the plan?

Nick Hurd: Where roles and responsibilities are clear, accountability must be to those roles and responsibilities, and that includes the Home Office and Home Office Ministers. I am not delegating responsibility, and Nick Ephgrave was very clear on this; we operate in a system where there is a very high degree of operational autonomy in the police system, as you well know. In my mind, the primary leadership role here comes from chiefs, but the college has an incredibly important role to support, not least in terms of the training, the guidance and the codes.

Q421 Chair: It sounds a bit like you are washing your hands of it, Minister.

Nick Hurd: Not at all, Chair. I have signalled to the top the importance of the issue because I think it is quite fundamental to confidence in the criminal justice system. As a Home Office Minister, I have a very high sense of responsibility to support where we can, and to hold to account where we must. In terms of what we have been talking about, on driving change on the ground and addressing the cultural and attitudinal problem, in practical human terms, that is a process that the police have to lead, and they have to convince us that the change is happening.

Q422 David Hanson: Where are PCCs in this? Chief Constable Ephgrave was very clear when we saw him that the responsibility for delivery was with chief constables, supported by the College of Policing. PCCs are accountable for chief constables in terms of operational work, and you have a role in generating the overall framework that PCCs work within. I am just wondering what measurement there is, and what role you see in terms of progressing the plan and holding to account.



Nick Hurd: You are entirely right, David, on the importance of the role of PCCs and local chief accountability to them for the performance of the force. As you would expect, I am in very regular contact with PCCs of all political colours as I move around the police system. I can assure the Committee that on that journey around the system I will be asking very regular questions, formally and informally, of both PCCs and chiefs about the performance of the force and evidence of change on the ground, coming back to our earlier point. You are quite right; they are a very important part of the map of accountability.

Q423 **David Hanson:** Let's look at the specifics, Minister. We were told two weeks ago that there are about 123,000 police officers in the UK at the moment. We were told that 6,000 had received the training on disclosure that the College of Policing had brought forward. When do you expect the 123,000 officers to have received the training?

Nick Hurd: What I would say to that is, in part, what Mike Cunningham said in response to a suggestion from John that those were small numbers. As you know, it is a new training programme that, effectively, started in April. I think they are quite encouraged by the start in terms of the interest in it.

I will personally be tracking the numbers. I will also be asking for evidence of which forces are fully engaged and which forces are lagging. If I see worrying evidence of forces not engaging with the training, I will be asking a question directly of chiefs and PCCs about why not.

I come back to the point I made before. I am not sure I have a perfect answer to this, because history tells those of us who have been Ministers that you cannot just rely on numbers. You have to try to get below the numbers to get assurance that the training is valuable.

Q424 **David Hanson:** You just said that you will be tracking or monitoring this. If I asked a parliamentary question, as a Back-Bench MP, in six months' time as to how many police officers have completed the training, would you give me the normal answer that it is the responsibility of the local forces, or would you have that information centrally?

Nick Hurd: No, because I expect our processes of scrutiny, given the importance of the issue, to be robust enough that there will be full and regular transparency on the number. Because training has been identified in the past as a failure, it will certainly be a big part of my job. I doubt the Committee will just leave it at this inquiry. It is part of our job of scrutiny to follow the numbers, but also to follow the quality.

Q425 **David Hanson:** One of the potential flaws in the mechanism at the moment is the fact that the training is not mandatory. I just wonder whether or not you are happy with that voluntary—

Nick Hurd: I sense some frustration. Sorry, I did not let you finish your sentence.



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David Hanson: Are you happy with the voluntary approach?

Nick Hurd: The lot of any policing Minister under any Government is occasionally to feel frustration about their lack of power to try to change the system, as you well know. The model we have is one of very high levels of operating autonomy. That is right, but we come back to the first point that the disclosure problem has been around for far too long. We have to be better—Parliament and Government—at holding the system to account for improvement, and transparency is a very important part of that.

If there is clear drag, and very clear evidence that the system is not leaning into this and too many forces are not responding in the right way, which I do not believe will be the case, we may have to review what guidance comes from the centre. We have a model of a high level of operating autonomy at the moment, which is right, but we need to be a lot more robust in holding the system to account. That would be my candid view.

Q426 **Alex Chalk:** I want to explore, if I may, a point you made. You have said that there were serious problems for a very long time, and you have just repeated that. Just so that we are clear, those serious problems mean injustice in our criminal justice system. Correct? It means potentially people being in custody when they should not be. Correct?

Nick Hurd: Correct.

Q427 **Alex Chalk:** It means potentially people being convicted when they should not be. Correct? That is all because of, or certainly in part because of, cultural failings and practice failings within the police. Correct?

Nick Hurd: Not just the police.

Q428 **Alex Chalk:** Partly. When did you become aware of these serious problems within the police?

Nick Hurd: I have been in the brief for a year, and it was flagged pretty early as a risk in the system and a failure that needed to be addressed. The Attorney General himself had commissioned a combined inspection in 2015-16. The system I entered was alive to the need to address a problem. The inspection regime published their report. It then became quite clear that the system was responding too sluggishly to those recommendations. With the previous Home Secretary, we wrote into the system in January to demand a more robust response, which led to the plan. That has been the broad sweep.

Q429 **Alex Chalk:** I understand it from your point of view. You were very frank in saying that it had been a mess for a very long time. What I want to know is when Government were seized of the fact that there were serious problems with the issue. It was obviously before your time. From your point of view, did Government understand this? Some might say that there had been warning signs for an awfully long time. Can you help us



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with when Government realised that there were serious problems from the police point of view?

Nick Hurd: I think a critical milestone was the Attorney General commissioning the joint inspectorate report.

Q430 **Alex Chalk:** From your point of view, not before then.

Nick Hurd: I was active in another part of Government at the time, so in terms of my personal consciousness—because I do not have any legal or police background—I only became aware of it when I became policing Minister.

Q431 **Chair:** You had not picked up any issues from your constituency casework.

Nick Hurd: No. The Attorney General, for whom I am serving as a human shield for these 40 minutes, may have better intelligence about the past. In terms of the timeline that I am looking at, I would have thought that the Attorney General's commissioning of the joint inspectorate report was an important milestone in triggering what I believe to be a substantive and serious change in attitude. The Committee will have its own view on that.

Q432 **Victoria Prentis:** Minister, you are saying all the right things to this Committee, but, if we could drill down a bit into the details, it would be helpful in particular to pick up on the strategic policing requirement. Disclosure does not feature in the strategic policing requirement, which I think was first issued in 2012, when disclosure problems were certainly well known to those of us working in the profession. In strategic policing priorities, capabilities are given as identifying threats, conducting complex investigations and conducting digital investigations. Disclosure per se does not feature in any of those, and it should. Do you agree?

Nick Hurd: We are reviewing the strategic policing requirement, and it will certainly be one of our considerations in that work. If the Committee were to recommend that, the Government would listen very carefully.

Q433 **Victoria Prentis:** That is very helpful. Where does disclosure feature on your list of priorities?

Nick Hurd: I come back to what I was saying before. I am very conscious, going back to the Peelian principles, that we police by consent and that trust in the police is absolutely fundamental. We are extraordinarily lucky that public confidence and trust in the police is still very high—

Q434 **Victoria Prentis:** In certain communities, but not in all.

Nick Hurd: It is generally around 70%, so there are high levels of trust in the police. It breaks down—

Victoria Prentis: Yes, very badly.



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Nick Hurd: Very badly, as you get into certain demographics, and we know that. We also know that we live in an age when trust is extremely fragile. Just ask the good people of Oxfam. We cannot be remotely complacent about this.

Coming back to what Alex was probing at, my constituents reading the stories about the cases in the papers would have been as appalled as I was, and genuinely concerned. I think the police get that. They realise—they have told me this privately as well as in their public statements—that they have been too slow as a system to grasp and challenge the cultural attitude problems, which they have identified, quite rightly, as the primary issue. They could have blamed lots of other things and other people, but they have a very candid expression: “We have a cultural attitude problem that we are now going to address through strong collective leadership and through this plan, which we expect to be held to account for.”

That is the priority I attach to it. It is fundamental to confidence in the police system.

Q435 **Victoria Prentis:** It is a hierarchical institution. We all accept that and, indeed, in some ways welcome it. What sort of measures are currently available to chief constables who find out that officers are not doing their duty in terms of disclosure?

Nick Hurd: You have had an opportunity to discuss this directly with an acting chief—

Victoria Prentis: Mr Ephgrave, yes.

Nick Hurd: I think he gave a flavour of how their performance standards are monitored and what happens when there is a problem. A decision is made about whether it is through lack of training or whether it is the officer’s fault or not. If there is evidence of negligence or worse, there are processes and proceedings in place.

What I would expect now, taking at face value what police leadership are saying, which is, “This is now a priority for us to address and here is our plan,” is that they will follow that through in the questions and processes they set up inside their own forces. You know the value of the signal from the top. Nick Ephgrave was talking about how he had spoken personally to all his investigators so that they were under no illusions about its importance to him. It is that sort of leadership that I would expect to see across the system.

Q436 **Victoria Prentis:** Do you monitor this? Do you know how many officers were disciplined for disclosure failings this year, for example?

Nick Hurd: There is data around misconduct. I will have to check—and, if I may, write back to you, Chair—as to the degree to which that is broken down.



Q437 **Victoria Prentis:** Is it one of the categories in misconduct?

Nick Hurd: Forgive me, I do not have that data now. If it is available, I will share it with you. If it is not available, there may certainly be a question for us as to whether it should be data we seek in the future. I still come back to the point about leadership.

Q438 **Chair:** We will come back to it. I just want to make the point that a disclosure officer signs a certificate to say that they have reviewed the material. I think most people would say that an officer who signs that certificate without properly reviewing the material is in breach of their public duty, and that ought to be a disciplinary matter.

Nick Hurd: Yes.

Chair: It really ought to be.

Q439 **Ruth Cadbury:** Minister, I want to pursue a bit more the issues of understanding and culture. Do you think the police are driven by a culture of getting the person they arrest convicted, possibly at the expense of doing justice properly?

Nick Hurd: Again, I have to be candid. I am just a politician. I have not served in the police. I have not sat in court working with the police, either for the prosecution or the defence. My lived experience leaves me particularly poorly qualified to answer that question.

I followed with interest the exchange that the Committee had with Nick Ephgrave and Mike Cunningham, one a serving chief and one a former chief. I think the message they gave you, which I have to take at face value, was that in their view the culture in the police had changed in a positive way over the last 10 years. I think that was the timetable.

I am not naive about that. I suspect intuitively that there is an underlying truth in the point you make, if not consistently across the system. Those were experienced police officers who have been in the system a long time and have fully admitted the need for change and are leading the change, but when faced with that question they push back a bit on that premise.

Q440 **Ruth Cadbury:** What you are really saying is that we are on a journey in terms of a change of culture. In your role as Minister, how do you drive that culture of change for the better?

Nick Hurd: When you are looking for change, you always hope for genuine understanding and acceptance of the problem. I am satisfied on that. The Committee will have reached its own view. The police have been very clear that they see the primary problem as attitudinal, and that not enough importance has been attached to disclosure. It is not seen as it should be, which is fundamental to the process of good investigation, but as a bit of a bureaucratic bolt-on. That has to change.

Knowing a bit about how the police work, and generally about the importance of leadership, I start with the quality and robustness of the



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leadership. At the moment, I am satisfied by that, but the point I was labouring to a fault is that we have to hold that leadership to account in quite a systematic way and not get blown off this, which may have been part of the problem in the past. I am sure that in the past people who have been before us have said, "Yes, there is a problem and it needs fixing," and assurances were given, but possibly there was not enough follow-up on the accountability. It is our responsibility, in our different roles, to make sure that we play our full part in holding both the police and the CPS to account for driving the change that they have agreed is necessary, and for which they have a plan.

I also have a sense, and I hope I am not being too naive, that the police and the CPS are working together now in ways that possibly they have not in the past. That seems fundamental to success as well.

Q441 Ruth Cadbury: The departmental plan for the Home Office is about giving police freedom to fight crime and cutting bureaucracy and waste. Don't you think that the narrative about getting rid of red tape and admin, so the police can get on with fighting crime, could contribute to the idea that documenting and disclosing evidence are not important police jobs?

Nick Hurd: No. I come back to priorities. Continued failure in this space takes great risk with public confidence in the criminal justice system. Therefore, for me, the Home Office and, I believe, for police leadership, it is seen as a priority. There are lots of challenges looking forward.

We are talking about documentation. We have not really talked about the technology challenge, but there are very big challenges going forward about how police manage, and build capability around, the handling of digital evidence. We want to support them in that, so that some of the anecdotal evidence about police officers wading through mountains of printed paper is in the past and not in the future. We always have to balance priorities, but I think everyone is agreed that real progress on disclosure is absolutely essential at this point.

Q442 Ruth Cadbury: We have heard a lot about the police being instructed that they should believe the victim. What impact do you think that has had for justice being done properly?

Nick Hurd: From what I observe, from what people are telling me and from what the data on recorded crime suggest, in certain areas that have been called hidden crime—I am thinking of sexual assault and domestic abuse—more people are coming forward when they have not felt the confidence to do so before. That obviously puts greater pressure on the police. It takes them into areas of greater complexity and demand in terms of how they safeguard the vulnerable and manage people. I am sure we all welcome that, given what we know about the past and people's lack of confidence in coming forward in those areas.



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What it means is that it places even more importance on getting disclosure and the handling of those cases right. The last thing we want is for people to lose confidence and go back to where we were, when victims of hidden crime were not coming forward because they did not have enough trust in the system.

Q443 Ruth Cadbury: How are you going to do that so that complainants and defendants have confidence in the system?

Nick Hurd: The police have made, to my eyes, significant progress in recent years in safeguarding the vulnerable and how they manage these kinds of cases. You will still hear horrendous stories of wrong attitudes and bad attitudes. I was listening to a case yesterday on that. We have asked them to place greater importance on vulnerability and managing vulnerability, and they have made considerable improvement. Tom Winsor and his independent inspectorate point out that progress is still not fast enough. There are still a large number of forces that have not made good enough progress in that area. We have a process of scrutiny and independent inspection to check progress.

I come back to the point that we have to tackle the failure around disclosure in order to reinforce and build confidence around the criminal justice system in these very sensitive cases.

Q444 Chair: The obligation on treating any complaint seriously and treating complainants with respect cannot override the duty of police officers to act objectively at the end of the day.

Nick Hurd: Absolutely.

Q445 Chair: And therefore to probe and to challenge, if necessary.

Nick Hurd: Absolutely.

Q446 Chair: The key thing is how you do it. It is not the same as taking everything at face value and not probing thereafter.

Nick Hurd: Yes. In some of the most highly publicised cases, such as the Liam Allan one, it is just application of the basic expectation of police work.

Q447 Chair: The Metropolitan Police Commissioner has adopted a formulation that a lot of people think is perhaps a more realistic assessment of the balance. Would you tend to agree with that?

Nick Hurd: On most things I tend to agree with the Metropolitan Police Commissioner.

Q448 John Howell: I want to ask you some questions about resourcing and police numbers. There has been quite a reduction in police numbers—some 45,000 since March 2010. How has that impacted on proper investigation and disclosure?



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Nick Hurd: Let me make three points in response to that. First, there is the point Nick Ephgrave made, where he could have taken every opportunity in answer to that question to say that this is all a problem about police resources. He did not. What he actually said to the Committee was that there are challenges around resources—I will come back to that—but the primary issue was not resources, because problems around disclosure predate austerity. He was very clear and on record in front of you as saying that the primary issue is attitudinal and cultural. That is the priority.

The second point around resources is this. I think I have proved by my actions that I absolutely recognise the need for more resources in the police system. One of the first things I did as police Minister was to make sure I spoke to, or visited, every single police force in England and Wales, to update my understanding of the demand pressures on them. I came through that process with a very clear picture in my mind that demand on the police had increased and there had been a significant shift to complexity, which meant that the demands on the system were growing fast and taking them into areas that were stretching them very far, not just in terms of resource but in terms of capability.

With the previous Home Secretary I made, and won, an argument for more resources to go into policing. There will be an additional £460 million going in this year, and as a country we will be spending £1 billion more on our police system than we were three years ago. Most PCCs have used the additional funds to recruit additional staff, so there has been a change and recognition that demand on the system has grown and got more complex and we have to respond to that change.

The third point, briefly, is that the independent inspectorate made it very clear that collectively we have to manage a very significant capability gap around detectives. In fact, they put a number on it. On the basis of their independent inspection, we have a deficit of around 5,000 detectives, which is obviously a big number. They have made it very clear, John, that that is not just an issue of resources. Some forces have an appropriate number of detectives but others have not. The point they were making is that it is also an issue of workforce planning, and they are going to hold the police to account on that.

The police have responded. Matt Jukes is the lead on it. There is a national plan being developed and a lot of work is going on to look at how we fill that capability gap. We have made a recent contribution to it by seeding an innovative scheme from Police Now, which we think will lead to 1,000 additional detectives over the next few years.

The police were very clear that the primary issue was not resource in relation to the disclosure challenge. There is a resource challenge, which we are responding to, and within the resource challenge there is a specialist capability challenge, which both we and the police are responding to as well.



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Q449 **John Howell:** Let me put to you the scenario of an officer who has been working for 14 hours on duty. How do you go about encouraging him to produce a detailed schedule of disclosure? Is he not doing that because he is overstretched and resources are thin? Is he not doing that because of the burden of bureaucracy, or is he not doing it for some other reason? How are you getting round the difficulty of encouraging that officer to produce the detailed schedule that we all expect?

Nick Hurd: Are there overstretched police officers? Yes. I have been very clear about that and have responded. I come back to what Nick Ephgrave told you in his considered opinion, which Mike Cunningham seemed to share. Their view is that the primary issue is a cultural and attitudinal one: insufficient importance has been attached over many years to disclosure and it has not been seen as it should be, which is fundamental to the process of good, ethical investigation, but too often as a bureaucratic bolt-on.

That is not my judgment and those are not my words. As I said before, I do not have the experience to form a judgment on it, but if that is what the police are saying, given the candour of it, I am going to respect it.

Q450 **John Howell:** You would expect an officer who had been working those sorts of hours to produce a fully detailed schedule.

Nick Hurd: No, I am very sensitive to the pressures that frontline officers are under. Whenever I visit a force, I insist on meeting frontline officers, with the boss out of the room, to talk to them. The most consistent theme from those meetings is how stretched and pressured they are, and how frustrated they are at the feeling they are not able to do the job properly. It is partly in response to that message that I have taken the actions I have taken on resources.

I am not going to second-guess the judgment of those who are leading and managing this day to day, having looked at the problem from inside the system. Their judgment is that the primary issue is an attitudinal and cultural one. There is also an issue of training. That is what is at the core of the plan, and I respect that viewpoint.

Q451 **John Howell:** Let me move to a different subject—the growth of digital technology. A lot of the evidence is coming up in digital form. What are you doing to make officers aware of that, trained in that and able to deliver a good disclosure set of information, when all the information is in digital form?

Nick Hurd: There have been quite justified criticisms made before about the inadequacy of training in that respect. The college has responded to that with a new training programme, and the digital part is core to that. There has been a response on the training side, which Mike Cunningham was clear that he is going to keep under very persistent review in the feedback mechanisms. The college leads on the training.



There is a technology challenge that will only grow. We are not just talking about the obvious point of increasing volumes of data or the growing proportion of digital data. We face challenges going forward in relation to encryption and the cloud—all of those things. In terms of the technology challenge we have to address collectively, there is a challenge around extracting data. That seems quite manageable at the moment. There is a challenge around getting to the key information and assessing it. That is part of the technology challenge but also a capability and training challenge. Then there is a challenge around storage and sharing of evidence in a digital age.

I come back to the point I was making in answer to David Hanson. At the Home Office, we are investing in what is called the digital policing portfolio. It is part of one of the fundamental challenges facing modern policing, which is how modern policing takes full advantage of the digital opportunity. Candidly, the police are very honest in saying that they are not where they need to be in that context.

Specifically in relation to the disclosure challenge, we are funding a process that is looking at technology solutions that are on the shelf and could be applied. We are looking at mapping the capabilities across the system, because different forces are doing different things and we need a clearer picture on that and a drive towards greater consistency. We are investing in pilots that are looking at modern ways of effectively storing and sharing evidence in the digital age. Taxpayers' money is being put behind that.

Chair: You have been very full in your responses, Minister.

Nick Hurd: Too full, clearly.

Chair: I need to move you on because in due course I would like to get the Attorney General in.

Q452 **John Howell:** Disclosure is a core part of the job. Are the efforts you are making to improve the technology aspects sufficient and fast enough to be able to do it? We have a major problem that we need to solve. It seems to me that there is an argument that what you are doing is too little, too late.

Nick Hurd: There is a strong argument that everything we are doing is too late because it should have been done before. I accept that. I do not accept the "too little" at this point because I see a plan. I see senior leadership buy-in to that plan. I see partnership work between the police and the CPS that I do not think we have seen before. I see action on training. I see action on cultural attitude issues. I see action on early engagement with prosecution and defence, and I see action on technology by the police and the Home Office.

As you know as well as anyone, we operate in an age of accelerated change in terms of what technology makes possible. The state will always struggle to keep up with that. In the process of extracting information,



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getting to the right information, assessing the information and then sharing it in a modern way, there are technology tools being used at the moment. Arguably, one of the biggest challenges is about human capability for interpreting data.

Q453 **Chair:** The state struggling to catch up is not much consolation to the person who is wrongly convicted and imprisoned.

Nick Hurd: We have been around and we know it is an underlying risk, yes.

Q454 **Ruth Cadbury:** Technology and efficiency can certainly address some of the problems of the growth in digital material, but ultimately a whole lot of material has to be read, not only by the police but by prosecution teams and defence teams. There is a resource implication in the justice system for that. What is your comment on that?

Nick Hurd: I have addressed the resource issue in relation to policing. I am not qualified to talk to the resource issue on the CPS, which tees up the Attorney General nicely.

Q455 **Victoria Prentis:** There has been a lot of reporting about disclosure problems in the papers. Are you concerned that it might put off young women in particular from coming forward to say that they have been the victim of a sexual offence? They are worried that their phone will be taken off them to be interrogated, for example. What are you doing to dispel that wrong notion?

Nick Hurd: Yes, I am worried. I come back to what I said before. We have made significant and hugely welcome progress in lifting the stones of society and encouraging people who have been victims of hidden crime, which can have a devastating impact on human beings, to come forward and show more trust in the system because they feel the system engages them better. That is partly why it is so important for us to fix this problem.

Specifically to your question, yes, I think there needs to be public reassurance to people on this. I also think there needs to be a more consistent approach taken by police forces. With 43 in the system, there is always a danger of 43 different ways of doing it, and I am not sure that is right.

Chair: I think that point is made. Minister, thank you very much. Thank you for volunteering to come back to us with further information. There may be one or two other matters that we will follow up in writing on the same basis. I am very grateful for your time; it is very much appreciated.

Examination of witness

Witness: Rt Hon Jeremy Wright QC MP.

Chair: Mr Attorney, you have been very patient.



Jeremy Wright: Not at all. Good morning.

Q456 **Chair:** Thank you for coming. Richard Horwell said back in 2017 that disclosure failures were a blight. Sir Brian Leveson picked up problems in 2015. You and I know from our experience at the Bar that it has been endemic all the time we have been in practice. What is going to get a grip of it now?

Jeremy Wright: All that you say is right, and of course it goes back a lot further than that. I started practising and was called to the Bar in 1996. That was the year in which the Criminal Procedure and Investigations Act 1996 was passed. It was passed because disclosure was already a serious problem in the criminal system. Since then, we have had reports by members of the judiciary identifying problems, in 2011 and 2012, and as you say, everything that happened after that. This is, as others have confirmed to you, a long-standing problem.

We need to identify what the elements of the problem are. It seems to me that there are two. One is the issue of culture, which has been clearly exposed to you by various witnesses. That is a matter not just of getting disclosure right but doing it early enough in the process that it is meaningful and can assist the criminal process in resolving cases properly at the earliest possible point.

The second big issue is one that has arisen more recently and is the point you were dealing with just now with Nick Hurd. Large amounts of digital material now have to be processed in order for a proper assessment of the case to be made by a court. That is a systemic problem that has arisen more than anything else in the last five years or so. It is growing in scale and is extending through the caseload from the very complex fraud cases, where we already had large amounts of digital material, into the much wider range of cases that it now affects, including, of course, the cases that have come to prominence in the last six months or so. They are predominantly sexual violence cases, where what is special about them is that there is very rarely confirmatory evidence from anyone other than the two parties who really knew what happened, so what passed between those two, both on the occasion of the incident and previously, becomes very important.

We have to do something about those two elements. We are making progress. I agree with Nick Hurd on this. The national disclosure improvement plan is a good thing, and there is a grasp of the issue among senior police officers and the leadership of the CPS that perhaps has not been there before. It should have been there before but it undoubtedly is now. I am interested, in the review I am carrying out, in being as practical as possible in assisting police officers and prosecutors to do what the 1996 Act requires of them.

It is of course a requirement; it is not optional. It is a legal obligation on investigators and prosecutors to follow the rubric of the 1996 Act and its code of practice. It seems to me that, if they do that, disclosure will be



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done properly, even in the digital age. If they do not do it properly, it won't.

Q457 **Alex Chalk:** Thank you very much for coming to give evidence. You are here in your capacity as Attorney General, so I hope you will understand if I ask a few questions about your roles and responsibilities in this.

The first thing to note is that as Attorney General you superintend the Crown Prosecution Service, do you not?

Jeremy Wright: I do.

Q458 **Alex Chalk:** Therefore, if disclosure is not taking place as it should, it is a matter of grave concern to the Attorney General's office. Correct?

Jeremy Wright: Correct, and it has been.

Q459 **Alex Chalk:** Back in 2013, it was the Attorney General who published the manual, the foreword of which said, "Proper disclosure of unused material... remains a crucial part of a fair trial, and essential to avoiding miscarriages of justice." Yes?

Jeremy Wright: Yes.

Q460 **Alex Chalk:** Attorneys General need to be absolutely clear that disclosure is being carried out as it should. Right?

Jeremy Wright: Right.

Q461 **Alex Chalk:** I want to look for a second at whether there were warning signs on the dashboard about this. You mentioned Lord Justice Gross's view back in 2011, which made it clear even back then that the growth of digital material presented real risks and challenges. Correct?

Jeremy Wright: Yes.

Q462 **Alex Chalk:** Then in November 2012, Lord Justice Treacy, a respected Court of Appeal judge, in paragraph 62 of his document "Further review of disclosure in criminal proceedings," said that "it has been notable in our consultations that we have heard significant complaints and concerns about prosecution disclosure failures; disclosure exercises being inadequately resourced, and without an individual taking responsibility for the case to ensure that the disclosure duties are fulfilled. Overwhelmingly the concerns voiced to us in conducting this review have been concerning prosecution failures, not failures of the defence." That was a damning indictment, was it not?

Jeremy Wright: Yes, it was. Of course, what happened after that was that the Attorney General's guidelines were issued in 2013, which you made mention of. Attached to those guidelines was a protocol dealing specifically with cases where there were large amounts of digital material to be disclosed. That was because it was recognised, at that time, that it was an emerging problem and something that prosecutors and investigators needed to focus on.



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What is clear, subsequent to that, is that it has not solved the problem. That iteration of the Attorney General's guidelines, and indeed the recommendations made by Lord Justice Gross and others, did not immediately resolve the issue of failures in the disclosure process. I agree with you entirely that predominantly they are failures on the prosecution side. I would say—we may be able to come back to this—that it is important to recognise in the 1996 Act rubric that the defence have responsibilities too, but I agree with you that it is predominantly a prosecution problem, at least initially.

Q463 **Alex Chalk:** There was a very serious alarm bell in November 2012. When we get to 2015, Lord Justice Leveson's review of efficiency says: "One of the major issues was the present failure of the police and the CPS to meet deadlines for disclosure." That is another warning bell. At that point surely, in the Attorney General's office, you are sitting there thinking, "Hold on a minute, we had big problems alerted to us in 2012 and these have not been solved."

Jeremy Wright: Yes.

Q464 **Alex Chalk:** We know that in 2015-16, the CCRC annual report stated: "In the past twelve months this Commission has continued to see a steady stream of miscarriages. The single most frequent cause continues to be failure to disclose to the defence information which could have assisted the accused." Again, a damning indictment. Would you agree?

Jeremy Wright: I do. It is worth adding to your timeline what else was going on. As you know, because you have heard from the joint inspectors, there were joint inspectorate reports into disclosure. That really had an important effect because—

Q465 **Alex Chalk:** Forgive me, I am sorry to interrupt you, but that was later. The joint inspectorate report was much later. Can you focus your answers? In 2015, there was another big alarm bell ringing. At that point, are you not thinking, "Hold on, we have a massive problem here"?

Jeremy Wright: Yes, which is why I raised the inspectorate. At the beginning of 2015, as part of the process that the inspectorate routinely go through to determine what their next programme of work will look like, they consult a number of Ministers, including the Law Officers, and ask us what we think it is important for them to look at. At the beginning of 2015—I arrived in this job in the middle of 2014—one of the things I suggested that the joint inspectorate might profitably look at was disclosure.

They then, of course, had to go through the process of determining what that workload would look like for them. Then, as we know, they conducted their joint inspection report over 2016 and into 2017. That in itself produced some recommendations, which I am sure the Committee would agree were all sensible and I would agree have not yet been properly implemented. There is an inspectorate process as well.



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The reason I think that is an important part of the picture is that, if we are to resolve disclosure, we cannot have the police and the prosecutors pointing fingers at each other, saying, "What I am doing is fine, but you lot aren't doing what you should be." That is why a joint inspectorate approach—one normally looking at the CPS and one normally looking at the police—is profitable and why, if I may say so, it is very encouraging, in my view, that the response to the most recent set of cases that have caused huge concern has not been a series of mutual finger pointings but instead an acceptance that, if this is to be resolved, it must be done jointly. The national disclosure improvement plan is a joint document.

- Q466 **Alex Chalk:** I understand that, but the fact is that serious alarm bells were ringing in January 2015. Is it sufficient in response to that to have said to the joint inspectorate, "Okay, go off and do that"? In the intervening period, these problems have not gone away. We have heard about the Liam Allan case. Cases have burst into the public domain. People have been in custody when they should not have been in custody.

Jeremy Wright: Yes.

- Q467 **Alex Chalk:** Was enough done, given the scale of the problem that was evident back in 2015, and was it done speedily enough to properly address what was a serious risk to the administration of justice?

Jeremy Wright: The clear answer to that, as we sit here today, must be no. All the things that have happened should not have happened. Had the recommendations of all those processes been followed through, far fewer of them would have happened. I hesitate to say to this Committee that we would ever be able to conceive of, or implement, a perfect system of justice where mistakes are never made. It would be wrong for me to suggest that, even if everything had been done as it should have been, there would never be a disclosure failing or a potential miscarriage of justice as a result. But undoubtedly there would have been fewer of them.

As far as I am concerned, I came to this position when my predecessor had very recently issued, in the year before, an Attorney General's set of guidelines that, in my view, are very sensible. What they say is undoubtedly right. When they say that a thinking approach should be taken to disclosure, few of us would disagree.

- Q468 **Alex Chalk:** The principles were fine. The problem is that they were not translating into justice.

Jeremy Wright: I agree, but it was reasonable for me to say, having only recently issued such guidance, that it was right to see whether the issuing of that guidance was going to make a material difference to practice.

As soon as it became apparent to me that it was not making a material difference, and the problems were continuing, it was right to do the next thing. The next thing was to say that the joint inspectorate should look at



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it, because it is a joint problem. As we have seen that even that did not work, it was important for me to take the next step, which is to look at the more practical measures that I hope my review will conclude are necessary. My review began, I hasten to point out, before Liam Allan's case came to prominence. This is not simply a response to the most recent batch of cases. It is a much more long-standing problem.

Q469 **Alex Chalk:** This is my last point. As I understand it, your evidence is, "Look, I became aware of this and commissioned these guys to go and do a report." That's fine. We have been told in evidence by Nick Hurd that there were serious problems for a very long time. Others say, "This happened when I was at the Bar back in practice." It way predates 2015. Was it really enough for the AG's office to say back in 2013, "Don't worry folks, we will just restate the principles," which we all agree are perfectly sensible? Everyone knew back then that there were problems. Isn't the position, with the benefit of hindsight, that no one, whether the AG, the DPP or Nick Hurd or whoever, gripped this early enough? Isn't that the truth?

Jeremy Wright: As I have said to you already, it is clear from what has happened in the last few years that not enough has been done to ensure that the rubric of the 1996 Act, the codes of practice that go with it and all the recommendations that were designed to bolster that have been followed up as they should have been; otherwise, we would not be in the position we are in now, but it is worth not throwing the baby out with the bathwater. It seems to me that the 1996 Act is a good place for us to begin.

Q470 **Alex Chalk:** We all agree with that.

Jeremy Wright: None of your witnesses has disagreed with that. Nobody is suggesting that we need new legislation. Actually, what I said, during the time of Liam Allan and those other cases, is that it is right for me to say that in some cases people have not done their jobs properly. Under the 1996 Act, there are requirements upon them. Some police officers and some prosecutors—both—have not done what they should have done, which is either to disclose material that was evidently disclosable or, if it was not disclosed by a police officer, for a prosecutor to test why it had not been. No question.

Q471 **Alex Chalk:** But the AG's office is ultimately responsible for disclosure, and I have to put that to you. You understand why.

Jeremy Wright: I do, and I absolutely accept the responsibility. That is why we are doing what we are doing now. It is also worth saying that it does not matter how good the guidelines are, and it does not matter how robustly you follow up on the recommendations; we will not be able to exclude the possibility of either police officers or prosecutors not doing their jobs properly.

What we can do, however, and this is where we must now move, is to tighten the recommendations that are given to police officers and



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prosecutors about how to fulfil their duties under the 1996 Act, so that there can be no doubt about what they have to do and when they have to do it. We can also look at the way the system operates, so that all disclosure issues are resolved earlier in the process. I return to the point that it is not just getting disclosure right; it is getting it right early that will make a significant difference.

Q472 Victoria Prentis: You have accepted that it is your problem. Why aren't people doing their jobs properly? Is it lack of resource? Is it ignorance? Is it wilful desire to see innocent people in prison?

Jeremy Wright: It is very rarely the latter. It is not my experience either of prosecutors or of police officers that they are trying to do this in an inappropriate way. They are doing their best to do it correctly. What is apparent is that disclosure has been seen as an afterthought, an irritation and an extra bit of the process you have to do at the end. When you run out of time, which routinely you do because you are busy, you don't do it in the way it should be done.

The answer to that is, first of all, to make the cultural change. I do not think anyone pretends that cultural change is easy or quick. It takes a long time to turn that supertanker around, but you have to change the culture that disclosure does not matter. You need to change that so that people think disclosure is a key part of the investigation. You also need to say very clearly that disclosure happens throughout. As soon as you are determining the evidence in a case, you start to think about disclosure. You do not collect all your evidence together and then have a look and decide what disclosure means. You do it in parallel. If that happens, we have a decent chance of having disclosure decisions made as early as they need to be.

Q473 Victoria Prentis: Do you feel that the level of disclosure failings is recognised in the official CPS data at the moment?

Jeremy Wright: No, I do not. I think you explored that profitably, if I may say so, with the Director of Public Prosecutions. What is apparent now—I do not think we appreciated it before, to be frank—is that, because of the way prosecutors have to record the reason a case has failed, they only really have one box to fill in one reason. What that means is that, if disclosure has contributed to the problems with a case but has not, in the view of the prosecutor, been the primary reason for its failure, disclosure does not make an appearance on the form.

Perhaps I am taking far too simplistic a view, but it seems to me that there is a fairly straightforward solution, which is to make the form bigger so that you fill in all subjects that apply.

Q474 Victoria Prentis: Have you done that?

Jeremy Wright: That is exactly what I have suggested to the Director of Public Prosecutions that she does, and I think she is seriously considering it.



Victoria Prentis: Do you think—

Jeremy Wright: Let me just finish the point, because your question is very pertinent. It is about why we do not have clearer visibility of the extent of the problems with disclosure, certainly from the CPS point of view. It is partly because the way we have invited prosecutors to record reasons for case failure is not wide enough to allow them to do that.

Disclosure is clearly a big problem and it clearly affects a lot of cases. What we should not say—because it will have a bearing on the questions you were asking earlier about those who will feel inhibited from coming forward if they feel that disclosure is a mess—is that every case is falling to bits because of disclosure. We should have a sense of perspective. There is not a problem in every case with disclosure. There is a problem in far too many cases with disclosure, but it is not in every case. We will never be able to satisfy people on that point unless we have a proper method of data collection that enables us to display clearly what is and is not going on in every case. Clearly we do not have that. The method of recording information needs to be better.

There is always a balance. If we ask police officers and prosecutors to do nothing but record information, they will not have time to do the job we expect them to do, which is to investigate and prosecute crime. I think we have the balance wrong at the moment, and there needs to be better collection of information on disclosure, if for no other reason than that we will want to measure the effect of the national disclosure improvement plan and all the other measures that have sensibly been taken. We can only do that if we know how much better disclosure is getting in the future.

Q475 **Victoria Prentis:** Does it keep you awake at night that innocent people are probably in prison today because of failures in the system?

Jeremy Wright: Yes, and it should.

Q476 **Victoria Prentis:** To what extent can we now sort out our systems so that at least you have the data to know how many such people there are? You did the RASSO review earlier this year; 47 cases were stopped immediately, probably quite rightly, and only 11% of those had been recorded as having a disclosure problem.

Jeremy Wright: Yes.

Q477 **Victoria Prentis:** Do you think the scale of the problem is much bigger than you have any idea about, if that is replicated across the system?

Jeremy Wright: First of all, we do not know whether it is replicated across the system.

Q478 **Victoria Prentis:** We have no way of knowing.

Jeremy Wright: We do not, and there is something peculiar, as I mentioned earlier, about the particular cases dealing with so-called



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acquaintance rape or sexual violence where there are only two parties involved, and all the other problems that are associated with those cases.

The exercise that was carried out was a far more in-depth exercise than had previously been carried out in looking at unused material in relation to those cases. It demonstrated that there were 47 cases with disclosure problems attached to them. As you say, five of them were identified as having been stopped because of disclosure. That was the point I was making earlier about the recording system, which is, frankly, flawed in that respect.

Of course, for the rest of the 47, beyond the five, there were other problems associated with the case. It may well have been that, even if disclosure was carried out perfectly in those other cases, the case would still have come to a shuddering halt because there was another problem with it. The difficulty we have in looking at disclosure is that we do not know, if we only get presented to us a figure of five and not a figure of 47, the extent of the problems with disclosure. That is why recording has to be better.

Q479 Victoria Prentis: What have you done as Attorney General between the RASSO review, when presumably you worked that out, and now to ensure that you get given more realistic figures?

Jeremy Wright: As I said, there is a very practical and obvious thing we can do, which is to change the nature of the form that prosecutors are expected to fill in. If, as a prosecutor, when a case fails, you are expected to set out on the form all the reasons for which failure occurred—not just your favourite or the top or the most prevalent, but all of them—we will be able to determine in how many cases failures of disclosure played a part.

That is a crucial part of evidence collection, but it is not just about evidence collection. It is about how you change the system to ensure that police officers and prosecutors, because both are important, understand their responsibilities and carry them out. I will not of course, as Attorney General, be able to sit on the shoulder of every police officer and every prosecutor to ensure that they are doing their job properly.

Q480 Victoria Prentis: No, but you have to have faith in the system.

Jeremy Wright: I do have to have faith in the system.

Q481 Victoria Prentis: Do you have faith in the head of the CPS to do what you are asking her to do?

Jeremy Wright: The Director of Public Prosecutions, who has given evidence to you on this, has taken very seriously the process that the national disclosure improvement plan, and the measures that surround it, begins.

Q482 Victoria Prentis: Has she made her boxes bigger?



Jeremy Wright: She will be making her boxes bigger, of that I am confident. I am oversimplifying the issue, of course. It is important that she takes some external challenge, not just from me but from others. She will, for example, be talking to the inspectorate about better ways of evidence collection. To be frank, and this is something the Committee has considered before and will consider again, the issue of what management information is available to those who supervise parts of the criminal justice system is a huge question. We do not collect information on everything that is captured.

Q483 **Alex Chalk:** You superintend the CPS. When it became clear that this was being completely under-reported and was a very serious matter, did you pick up the phone to the Director of Public Prosecutions to say to her, "What are you now doing to fix the reporting system?" Have you had that conversation with her?

Jeremy Wright: Yes. It has not been on the phone; it has been face to face. We have had a number of discussions since that point, and the RASSO review in January, about what is deficient. It is not just about the broader questions of management of disclosure, which we have also discussed, but specifically questions of information capture. As I say, if we are to get any improvement, and we must get improvement, we must have a way of measuring that improvement so that we know whether or not it has happened. Unless we know the extent to which disclosure is going well or badly in each case, we will not be able to do that.

Q484 **Victoria Prentis:** Do you actually think you are getting better figures today in June than you were in January?

Jeremy Wright: The current figures are still based on what we all perceive to be flawed methodology. Until the system changes, we will not start getting better information; hence the reason why we want, as swiftly as possible, a change in the way management information is recorded.

Q485 **Victoria Prentis:** Is it top of your list of priorities?

Jeremy Wright: Disclosure is very high. It is very high for the reasons you were discussing earlier with Nick Hurd. It is a fundamental question of the fairness of criminal proceedings. You cannot have a fair trial if disclosure is not carried out properly. That is something that every participant in the criminal justice system needs to have firmly at the front of their mind. When I say every participant, I mean police officers, prosecutors and those in the defence community, and the judiciary, where it seems to me that there is also a role.

The judicial protocol was produced alongside the Attorney General's guidelines in 2013. Everything that Lord Justice Gross said, both in 2011 and as recently as last night to the Criminal Bar Association, demonstrates that he, and most of the judiciary, accept that there is a role for judges to grip these problems, but they can only do that if there



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is full discussion of disclosure at an early stage. That is the reason why frontloading the process is hugely important.

- Q486 **Victoria Prentis:** I completely agree with everything you have just said, but in other areas of the justice system—for example, in serious fraud and in some of the Iraq litigation that I conducted on behalf of the Government—this problem was grasped. The right digital systems were brought in to help us. The right sort of judges were employed to help us through the disclosure process. The right directions were given. Why on earth has it taken another 15 years for that to permeate the criminal justice system, where innocent people are being sent to prison?

Jeremy Wright: Yes, I think that is right. Equally, within the field of civil justice, many of these tools have been in place for a long time. Commercial prosecutors are well used to using computers to filter out information from huge volumes. That is absolutely true.

The reason it has taken a longer time in crime is that the nature of criminal cases in the generality has not involved very large quantities of digital material in the past.

- Q487 **Victoria Prentis:** Phones and sex are intimately connected.

Jeremy Wright: That is exactly what I was going to say. Now it is no longer true. I suspect that criminal practitioners have been too slow to catch up with this. As you say, because increasing amounts of relevant evidence in what we might call bulk-volume criminal cases are stored on digital devices, we have no option but to wrestle with these challenges. My favourite statistic this week is that, if you take the averagely used mobile phone and download its contents and print them out, you are talking about 5 million pages of A4 paper.

We will no doubt talk about resources, but I could spend the entire budget of the Home Office, the Ministry of Justice and the Attorney General's office—that makes up a very small proportion, by the way—on providing extra resources to read through 5 million pieces of paper every time a phone is involved, and we would still not get through it. There has to be a smarter way of analysing the evidence than simply asking police officers in a room to go through pages and pages of print-out.

That requires two things. It requires good-quality technology. I agree with you that there are already models that we can adapt and develop to provide that. I am afraid it still requires good old-fashioned police work, too. In the end, the quantity of material means you need to search it effectively, and the search terms matter as much as the efficiency of the robot doing the searching.

- Q488 **Victoria Prentis:** I am very familiar with those, having used them for many years in other systems. Do you accept that we are well behind the curve on this?



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Jeremy Wright: Yes, and that is why we have to speed up and catch up. Nick Hurd was talking to you about the technological investment that the Home Office needs to make. Predominantly, although this is not in any way passing the buck, it is at the investigative stage that the technology needs to be provided. The CPS needs to understand it, and it needs to make what use of it it can; it certainly needs to challenge its product more effectively than has always been done. In the end, the investment needs to go in at the investigative stage so that we filter material in the way we need to.

I would not deny, as he did not, that there is a resource component to getting this right in the future. I do not think it is the case that we are in the mess we are on disclosure because the CPS and the police have been starved of funds. I do not think that is the way to look at it. I think that is the tone of the evidence you have heard. It would be foolish to deny, if we are to do this in a smarter way in the future, that some investment will be required.

Of course, it is right that, having made that investment, we will make savings in the future on cases that start and then grind to a halt at a late stage because disclosure was got wrong. It is not the case that this is not smart investment. It would be very smart investment, but investment it will need to be.

Q489 **Chair:** That is the business case you make.

Jeremy Wright: And I may make it again, Mr Chairman, to other audiences.

Chair: I hope you will. You would have a lot of support for it.

Q490 **David Hanson:** We have talked about cases that fail. Do you know how many convictions have been overturned on your watch as a result of failures of disclosure?

Jeremy Wright: I cannot give you a statistic off the top of my head. Of course, one of the issues we have already discussed is that we will know about cases where disclosure is mentioned as the primary reason for failure rather than one of the reasons for failure. The question will always be answered inadequately, whatever answer I give you.

What we also know is that within the system there are safeguards and safety nets to make sure that where there have been miscarriages of justice they are put right. The Criminal Cases Review Commission will be able to say how many cases they process are referred to the Court of Appeal, and where the Court of Appeal has agreed that the conviction was wrong, based on disclosure. I do not have that figure in front of me but I will try to get it for you, if I can.

Q491 **David Hanson:** My understanding is that the CPS, for example, does not collect that information anyway.

Jeremy Wright: No.



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Q492 **David Hanson:** The question, given where we are now, is not just about failure but about when failure leads to wrongful conviction. Should we not have a record of that, and should there not be a backtracking on CPS cases to find out who was responsible and why, and whether there are lessons to be learned?

Jeremy Wright: There are two different points. I entirely agree with you on measurement. As I was saying earlier to Mrs Prentis, it is important that we have a method of monitoring cases where disclosure plays a part when it has gone wrong, even if it is not the primary reason for failure. I think that can be done. It seems to me that it is not beyond the wit of man to find a way of doing that.

There is then the question as to whether or not the right use of the CPS's time is to look back at all of their caseload and determine whether there is any case where disclosure played a bigger part in failure than they currently think it did. That is a huge undertaking. It seems to me that something we should be proud of among all this failure is that, even if things are got wrong by some components of the criminal justice system, in general terms other parts of the criminal justice system are able to step in and pick up the mistake.

If you will forgive me a somewhat biased perspective, to take the case of Liam Allan as a good example, the reason Liam Allan did not end up being convicted and sentenced to prison when he should not have been is that another part of the system—in that case an independent prosecuting barrister—was able to pick up what had gone wrong and put it right before it was too late. Of course, he should not have had to do so, but it is important to look at the criminal justice system, which will never be perfect, along the lines of not just what the CPS should do better but what other safeguards the system provides to make sure that mistakes are caught before they become very serious.

Q493 **David Hanson:** Are you confident there is recording when disclosure is a major feature in wrongful conviction?

Jeremy Wright: Not yet. The reason why I am not is that, if you track the process back to the reasons why cases are failing, in my view we do not have a good enough measurement mechanism. That is exactly what I hope and expect the DPP will now be looking at. We do not have all the visibility we should have.

One of the difficulties with these cases is that disclosure may be part of a number of issues for which the case suffered difficulty. We will need to try to isolate, where we can, disclosure from other things. There will be occasions when disclosure is simply a feature of a broader set of problems, and the case has not failed predominantly because of disclosure; it has failed for lots of other reasons and, as I said, even if disclosure was done perfectly, you would still find the case failing.

Q494 **David Hanson:** I was concerned not about the cases that fail. I was



concerned about cases that succeed, but on wrongful grounds.

Jeremy Wright: In those circumstances, the CPS, and I think the police too, have an ongoing responsibility to disclose anything that comes to their attention, even post-conviction, which undermines that conviction. This goes back to the 1996 Act rubric, which seems to me, the more I look at it, to be the right way to do this. That makes it very clear that you have an obligation to disclose any material as unused that either undermines your case or assists the defence case. That obligation continues for the Crown Prosecution Service post conviction. If it becomes aware of that sort of material, its obligation is to pass it on ultimately to the CCRC, and it does that. It does not happen in a large number of cases, but it does happen. One of the things I have asked is how often it happens and what the process for that is.

Q495 **David Hanson:** That is a key question for me. Is there a record of the number of times it happens?

Jeremy Wright: Yes, there is because, as I say, it does not happen very often. We can certainly give you that figure, but it is a function of disclosure being taken seriously, and a much broader question as to whether prosecutors and police officers understand their ongoing duty to reveal the truth—because that is what it is—even after conviction has happened. Their job is not necessarily done at the point at which a conviction is returned. If, subsequent to that point, they find material that demonstrates that conviction was wrongly based, it is their obligation to disclose it and to enable the CCRC or others to look at it again.

Q496 **Chair:** That is seared in my memory because I prosecuted exactly such a case at the Bar, and the person who, frankly, was wrongly convicted served a seven-year sentence. I upheld that conviction on appeal and I thought it was a strong case. It was just after the 1996 Act came in, so I am glad to hear you say that, Mr Attorney. Do you think it is seared into the minds of all investigators, because frankly it has been seared into my mind ever since?

Jeremy Wright: Ms Cadbury fairly raised with Nick Hurd the question of whether or not police officers are still of the mindset, “I’m going to get my man and that is my mission, not necessarily to get to the truth.” I am sounding like a broken record, but it is important to fall back on the 1996 Act and the codes of practice that attend it. That makes it very clear that your job is to follow the evidence, whether it leads towards your suspect or away from your suspect. It really does not matter which. Your obligation is to follow the evidence where it leads. That seems to me a very good principle, and one that I would like to think all prosecutors and all investigators fully understand. We do whatever we can to reinforce it from the point of view of those who issue guidelines and the like.

Q497 **Ruth Cadbury:** Attorney General, the CPS has had a cut in funding of 27% since 2009-10 and a headcount cut of 11% since 2014, not



including previous headcount reductions. What has been the impact of the budget cuts in the last five years on disclosure processes in the CPS?

Jeremy Wright: It is worth looking at the whole picture. What you say is right. There has certainly been a reduction in both funding and headcount for the CPS over that period. What has also happened over the same period is a reduction in the workload for the CPS. The caseload for the CPS in the Crown court dropped by about 25% by volume of cases. In the magistrates court, it dropped by about 40% over that period.

However, it is important to say that what is left is more complicated than what has gone. The reduction has predominantly been in simpler cases, and what is left over are increasingly very complex cases. I would not want to oversimplify this by saying, "Well, yes, the money has come down, but the caseload has come down by just as much." It is not quite that simple, but it is an important part of the picture.

The other thing is what you have heard repeated a number of times. It seems to me, and it seems to most of your witnesses, that this is more about culture than it is about cash. It is much more about the way in which people approach the process of disclosure than the resources they have available to do it. It is worth saying that in the cases where we found particular attention and concern, which are sexual violence cases, where disclosure is more of a problem for the reasons we have discussed, there are more specialist prosecutors doing work in that field than there were. The increase over the period 2015-17, for example, is about 40% in the number of specialist prosecutors. It is not right to say that there is a direct line to be drawn between lower resource and bigger disclosure problems. It is much more complicated than that.

As I said earlier, it is right to concede that if we are to get disclosure right in the future, in the age of greater technological material, some investment will have to be made. There will be a resource component in what we need to do next.

Q498 Ruth Cadbury: How much extra cash do you think the CPS needs to get disclosure right?

Jeremy Wright: In order to work out how much to spend on better technological solutions, a lot more work needs to be done, and is clearly being done by the Home Office, on what those technological solutions might look like. I rather agree with what Mrs Prentis was saying earlier. It is not starting from zero; there are already models we can seek to adapt, but there will be a cost to having a system that will give us real benefit in the context of criminal cases. I do not yet know what that cost will be.

It is worth saying that in the management of disclosure generally at the last spending round, as the DPP said to you, both she and I spent some time discussing with the Treasury whether money should be taken out of the CPS budget. We both made the case that that would be unwise, and



those representations were accepted, so the CPS had a decent settlement last time.

We will argue the case again when we come to the next spending round, but there is an additional question beyond management of ordinary business. It is around the real change that has happened over huge volumes of, mostly computerised, evidence on digital devices, phones and the like. That simply changes the nature of how disclosure needs to be carried out. I struggle to see how we do that without some investment in a 21st-century solution to what is a 21st-century problem.

Q499 Ruth Cadbury: The NAO reported that “in 2014-15 the CPS spent £21.5 million preparing cases that were not heard in court.” How much should be invested in getting disclosure right to prevent the cost of it going wrong?

Jeremy Wright: You have to recognise that the business of prosecuting a case is not scientific. Things arise in the course of prosecuting a case that mean you choose quite properly, in the interests of justice, not to carry on with that case to completion. If evidence becomes apparent in the course of the process of the prosecution that demonstrates that the prosecution is not well founded, we would all want the CPS to stop at that point. Ironically, of course, if disclosure is done right, that decision will be made at an earlier stage, and that is the best thing for all parties involved.

I do not think the fact that the CPS begins a prosecution but does not end it is an indication of failure by the CPS. It might be an indication that the CPS has made a proper judgment about the evidence that becomes apparent to it in the course of the process.

Q500 Ruth Cadbury: Finally, mention has been made of the digital crater—the sheer volume of material. How will that be dealt with, given the budgetary constraints?

Jeremy Wright: As I said, two things need to be done. First of all, you have to have the kit. There has to be a system that enables you to filter that kind of information. That is exactly the work that the Home Office is doing at the moment.

Secondly, I do not think you discount thereby the need to carry on doing good old-fashioned police work. In the end, police officers and prosecutors have to carry on using their common sense and professional judgment to say what they are looking for. What do the needles look like in the haystack? In a rape allegation involving two people in their 20s, the first thing is that you should expect there to be social media material and information on telephones. You should expect that. If you are not seeing it on a disclosure schedule, you should be asking why not.

You should be putting into the machine the sort of information you think will likely derive the evidence you are looking for. The reason I mentioned the role of the defence earlier is that it is important in this process that



the prosecution do their bit and look for anything they think will meet the test, but then of course, having done that initially, the defence have the opportunity to say, "Well, actually you are looking in the wrong place. We think there is material on this phone or that phone that will help you reach a more accurate view of what has happened on this occasion."

I do not think that is always happening in the way it should. We should be putting the appropriate pressure on the defence community to say, "You need to do your bit too." Disclosure management documents are a good thing, and in my view they are the way we should look at disclosure in the future. That is a process whereby the prosecution do not just produce a schedule, which they should, but also say, "This is the way I have approached the disclosure exercise; this is how I have gone about looking at the phone, and these are the places I have looked." That gives the defence the perfect opportunity, if they think they are looking in the wrong places, to say so, and then the prosecution should look again. It is a combination of good technology with good old-fashioned police work and prosecutorial judgment.

Q501 Ruth Cadbury: And possibly not just people in their 20s.

Jeremy Wright: No. I gave that example because if we are talking about good old-fashioned police work and common sense, in a case involving two people in their 20s, as an example, we can be fairly confident that they each have a phone and that quite a lot of their lives are conducted on those phones. Therefore it is a sensible place to look for evidence. That is my point. You are right that there is a lot more to it than that.

Q502 Ruth Cadbury: Those of us who are a lot older than that also live our lives through phones.

Jeremy Wright: You are absolutely right.

Q503 Chair: You make your point about the obligations on the defence community. It is of course not your responsibility ministerially, Attorney, but it implies that the defence community have to be properly resourced and paid for looking at material that generates those disclosure management problems.

Jeremy Wright: It does imply that, and it also implies that they are paid at the right point in the process. One of the reasons why talking about frontloading the exercise is helpful is that we could think about the right way to design the legal aid system. If you are running a legal aid system—as I fear we rather too much are—where the bulk of the money comes at the end rather than at the beginning, you cannot expect anything other than the bulk of the work to be done at the end rather than at the beginning. We need to start to change behaviour, not least through all the tools we have, which includes the legal aid system.

One of the conversations that I and others need to have with the Ministry of Justice is about ways in which, if we cannot increase the overall amount—that is a different conversation, which I know you are engaged



in as a Committee—at the very least in the shorter term we should think about how we might change the emphasis of when fees are paid, to encourage work to be done early on disclosure by prosecution and by defence.

Q504 Alex Chalk: Attorney General, you have been very frank in your evidence. You have accepted the description “a mess,” as indeed did Nick Hurd. You accepted that we are well behind the curve on this. Nick Hurd accepted that something should have been done before, that there had been serious problems for a very long time and that the problems predate austerity, and so on.

Danny Kay was wrongly imprisoned for four years. Liam Allan was wrongly imprisoned. Others affected are Isaac Itiary, Petruta-Cristina Bosoanca, Oliver Mears and Samson Makele. Who has responsibility for that, and what is your message to individuals who have been charged and/or incarcerated when they ought not to have been?

Jeremy Wright: First of all, if I may say so, Mr Chalk, you have brought out very powerfully in previous hearings the point that this is not simply about those who are convicted. It is about those who are incarcerated on remand too, and of course those who are not incarcerated at all, but sit patiently waiting to find out whether their life will be unalterably changed by a criminal conviction or not, in many cases when they know perfectly well that they have done nothing wrong. It is a hugely significant issue.

Q505 Alex Chalk: But who is going to carry the can? Who is going to take responsibility?

Jeremy Wright: I am coming to that. It is wrong to suggest that any single part of the criminal justice system bears sole responsibility for this. There has to be a joint approach, and we all have to share the responsibility for getting it right. The reason, in part, that things have not changed in the way they should is that there has been too much reliance on simply saying that the police have not done their bit, or the prosecution—

Q506 Alex Chalk: But the Government have overall responsibility.

Jeremy Wright: You are right.

Q507 Alex Chalk: The Government have the final responsibility. We have to be absolutely clear. When it comes to police failings, that has to be Government. When it comes to prosecutorial failings, again that has to be Government.

Jeremy Wright: And in terms of setting the structures within which prosecutors and police officers operate, there is a very clear political responsibility. What there is not, of course, is either a responsibility or a capability for either I or Nick Hurd to tell police officers who to investigate, or to tell prosecutors who to prosecute, for reasons that you, I and everyone on this Committee fully understand.



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There is a limit to the guarantee that I can give to all the people that you set out that this will never, ever happen again. Much as I would like to, it would be wrong to say that, because it is, I am afraid, a necessary function of any criminal justice system constructed by and involving the judgment of human beings that it will sometimes make mistakes. It needs mechanisms within it to correct those mistakes when they are made, and it needs an approach to things like disclosure that minimises to the greatest extent possible the making of those mistakes in the first place.

Some of the things we have talked about, and some of the things that I hope my review will cover, will, I hope, achieve that, but it is a big job to address the first of the big challenges I mentioned at the beginning, which is a cultural one, to get every police officer and every prosecutor who has been seeing disclosure too much as an afterthought and an irritating adjunct to what they otherwise have to get on with, instead of as an integral part of the criminal justice process. That is a big job. It is one that many have tried to achieve, and clearly they have not succeeded.

We now have an opportunity, because of the willingness of those at the top of the police and the CPS to grip it properly, to get it right.

Q508 Alex Chalk: Do you have a message to those individuals? They have been victims of miscarriages of justice because of prosecution disclosure failures, for which ultimately you are responsible. Do you have a message for them?

Jeremy Wright: The message to them is that this should not have happened. At the time, I was as clear as I could be that these were appalling failures in the exercise of their responsibilities by both investigators and prosecutors, for which I take my share of responsibility. The best thing we can all now do is to make sure that the system, as I say, minimises mistakes at the beginning and has safety nets at the end. We accept that some things will get through, even though we are trying desperately hard for them not to. But there can never be an acceptable reason for not disclosing material that will enable a fair trial to take place. That can never be true.

There can never be a reason why we do not give over information that will make a trial a fair process, whether it is desperation to catch someone you think is guilty or any other reason. It is always your obligation to hand over the material that will make a fair trial possible. That is what your legal obligation under the 1996 Act says. Rather in accordance with the questions being asked earlier on, if you are not doing it as a result of negligence, there should be consequences. If you are deliberately not doing it, there could be criminal consequences.

The message has to be that the system needs to change to make sure that disclosure is more central, and earlier than it has previously been. I am not promising you that this time next year there will not be any



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disclosure failures—it would be unwise to do so—but there are some very practical measures we can take to make it better and to ensure that all parts of the criminal justice system work together to improve it.

Q509 **Chair:** You have been very frank with us, Mr Attorney. You are going to be appointing fairly soon the next Director of Public Prosecutions.

Jeremy Wright: Yes.

Q510 **Chair:** Are you going to be as blunt and as frank with them?

Jeremy Wright: Yes, and I will be as clear on my expectations of them. As the new Director of Public Prosecutions comes in, they have an opportunity to address these questions directly and differently, if they choose to do so, and to follow up on the work that Alison has been doing—we all agree too late—finally to get to grips at a senior level with the tone to be set about how disclosure has to be dealt with.

This is a good opportunity for the CPS to take another look at how they do disclosure, to follow on with the work of the national disclosure improvement partnership and to say to the incoming DPP, whoever that is, that this is one of their primary responsibilities. If we do not get this right, we are not conducting fair trials. There is nothing more important to the criminal justice system than that principle.

If I may finally say, Mr Chairman, the Committee has been very generous in saying that it will enable its conclusions on your current inquiry to feed into my review. That is very welcome, and I look forward very much to what you have to say.

Q511 **Chair:** I am very grateful to you for that, Mr Attorney. That is helpful. You are right that failures to disclose taint the whole system. I accept what you say about that. We look forward to working with you on that. Do you have a timeframe?

Jeremy Wright: I hope very much to reveal the conclusions of my review before the summer recess. We have about a month and a bit before that happens. I am conscious of how much extra work it will create, and I do not want to push you into doing anything you do not want to do, but it would be helpful to at least have some preliminary thoughts before that.

Chair: It will not be the first time some of us have had to work to deadlines. I am grateful for that offer; it is very much appreciated. Thank you for your evidence today.