

**Disclosure of medical records and counselling notes: a review of CPS compliance with rules and guidance in relation to disclosure of complainants' medical records and counselling notes in rape and sexual offence cases**

A report by Her Majesty's Crown Prosecution Service Inspectorate has identified gaps in the CPS's handling of disclosure material involving rape and sexual offence cases.

In particular, this report found that prosecutors:

- Do not actively consider whether or not a complainant's consent has been obtained to disclose medical records and/or counselling notes to the defence
- Do not always consider properly whether or not there is a need to disclose everything in a medical record or in counselling notes
- Can find it difficult to ascertain whether the police have properly obtained the complainant's consent to disclosure of medical records and/or counselling notes

The report therefore highlights a number of compliance issues for prosecutors, including:

- Consideration of whether medical records and counselling notes need to be disclosed
- Ensuring the complainant's consent has been obtained before any documents are disclosed

The report also suggests that:

- The CPS explore with the police the option of implementing a national police form for seeking a complainant's consent to disclosure

**Chief Inspector of HM Crown Prosecution Service, Michael Fuller, said:**

*"During recent inspections we found that the CPS needed to improve its handling of disclosure of unused material in general. The issue has also been raised by the Attorney General, Dominic Grieve about CPS handling of disclosure in rape and sexual offence cases, in particular in relation to whether or not complainants' medical records and counselling notes are disclosed appropriately and, crucially, whether their consent is obtained"*

**Background:**

The issue has been raised of whether prosecutors fail to obtain a complainant's consent to disclosure of medical records and/or counselling notes to the defence, and whether or not prosecutors properly consider if all of the material needs to be disclosed under the Criminal Procedure and Investigations Act 1996 (CPIA) and the Code of Practice to the CPIA (issued under section 23 of CPIA).

The suggestion has been made that the CPS sometimes adopt an approach whereby these documents are disclosed as a matter of course, even where they do not fall to be disclosed under CPIA.

The prosecutor must disclose to the defence any prosecution material which has not previously been disclosed and which might reasonably be considered capable of undermining the case for the prosecution or of assisting the case for the accused (unless the court orders that it is not in the public interest to do so).

The file sample consisted of 58 cases involving allegations of rape and sexual offences, where the unused material included complainants' medical records and/or counselling notes, from ten of the 13 CPS Areas.

Inspectors found that it was appropriate to disclose some of the material in every case where medical records and/or counselling notes were disclosed. However, in seven out of 32 cases more material was disclosed than should have been: this was a breach of CPIA. The over disclosure did not have an adverse impact on the case itself but was an apparent breach of the complainant's right of privacy under Article 8 of the European Convention of Human Rights (ECHR).

CPS Guidance in relation to disclosure in relation to rape and sexual offences makes it clear that a complainant's consent should be obtained before medical records and/or counselling notes are disclosed to the defence. However, there is nothing in that guidance to explain what a prosecutor should do if consent is refused. The CPS has plans to amend the guidance by the addition of the steps that must be taken, drawing on existing guidance in relation to victims and witnesses with mental health issues and/or learning difficulties.

## **Notes to Editors**

1. A copy of the full report, Disclosure of medical records and counselling notes: a review of CPS compliance with rules and guidance in relation to disclosure of complainants' medical records and counselling notes in rape and sexual offence cases, is available at: [www.hmcpsi.gov.uk](http://www.hmcpsi.gov.uk)
2. Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) is the independent inspectorate for the Crown Prosecution Service (CPS). Its purpose is to enhance the quality of justice through independent inspection and assessment of prosecution services, and in so doing improve their effectiveness and efficiency. HMCPSI's Chief Inspector reports directly to the Attorney General.
3. For further information, HMCPSI's press office can be contacted during office hours from 8:30am – 6:00pm Monday – Friday on 0207 271 2440. Michael Fuller, Chief Inspector HMCPSI will be available for interviews (to be arranged through HMCPSI's press office).
4. HMCPSI's out-of-hours press office line for urgent media enquiries is 07623 946316.