HOUSE OF COMMONS

Justice Committee

Oral evidence: Disclosure of evidence in criminal cases, HC 859

Tuesday 15 May 2018

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Watch the meeting

Members present: Robert Neill (Chair); Mrs Kemi Badenoch; Ruth Cadbury; Bambos Charalambous; David Hanson; John Howell; Gavin Newlands; Victoria Prentis; Ellie Reeves; Ms Marie Rimmer.

Questions 173 – 278

Witnesses

I: Professor Peter Sommer, Digital Forensics Expert; Dr Jan Collie, Digital Forensics and Cyber Security Specialist; and Dr Gillian Tully, Forensics Regulator.

II: Jonathan Bamford, Head of Parliament and Government Affairs; The Information Commissioner's Office; Rebecca Hitchen, Rape Crisis; and Dame Vera Baird QC, Police and Crime Commissioner for Northumbria.

Examination of witnesses

Witnesses: Professor Sommer, Dr Collie and Dr Tully.

Chair: Good morning, everyone. This is the latest of our sessions on disclosure. Welcome to our witnesses. Before we start, we have to go through the formalities of declarations of interest. I am a non-practising barrister and consultant to a law firm.

Ellie Reeves: I am a non-practising barrister.

Bambos Charalambous: I am a non-practising solicitor.

Q173 **Chair:** Would our panel introduce themselves, their organisation and role? We can then get into the questions. We are grateful for the evidence you have already submitted to us, which we have seen.

Dr Collie: I am Jan Collie. My company is Discovery Forensics Ltd. I am a digital forensics specialist. I do cyber-crime and cyber-security work. I do a lot of criminal cases, so I am actively involved on a day-to-day level with the

criminal justice system and have often given evidence in court. I have a master's in information security and computer crime, and a PhD in digital forensics.

Dr Tully: I am Gillian Tully. I am the Forensic Science Regulator. I am an independent appointee of the Home Office, with responsibility for setting quality standards for forensic science.

Professor Sommer: I am Professor Peter Sommer. I am an academic, but most of my income comes from acting as an expert witness in criminal, civil and international cases. I also do a certain amount of policy work, including in this place assisting on the investigatory powers legislation, as Mr Hanson will recall.

Q174 **Chair:** Indeed, we remember that. We are talking about disclosure in the sense of material that is initially no doubt in the possession of the police or another investigating authority, and which may not form part of the prosecution's evidence but may turn out to be relevant or material in various ways. As you know, it is the adequacy or otherwise of the processes around that in which we are interested at the moment.

You have explained your roles. I think Dr Collie and Professor Sommer both sometimes act as expert witnesses in defence cases. Am I right in thinking that?

Dr Collie: That is correct.

Professor Sommer: Both prosecution and defence.

Q175 **Chair:** Are you just defence, Dr Collie?

Dr Collie: Mostly defence.

Q176 **Chair:** Fair enough. So that people understand, how might an expert be instructed in cases of that kind?

Professor Sommer: If we look at the defence side, which is probably where the issues of disclosure arise, what happens is that a defence solicitor has a client. The client does not particularly wish to plead guilty immediately, and one wants to see the evidence against them. There are two things that one does in those circumstances. The first is to check the quality of the prosecution work. Does it actually stick together? Are the inferences correctly drawn from the evidence that they adduce?

The second area is to look at what the defendant is saying, and seeing if you can stand it up and are prepared to go into the witness-box about it. What we have to recall, of course, is that the overriding duty of any witness is directly to the court and not to whoever is instructing them. If a defendant comes up with a fanciful, technical defence that you are unable to support, you do not support it.

What is critical to make it work in terms of digital evidence is access to the digital evidence. In my submission to you, I set out the general principles upon which evidence is acquired from, say, a laptop or a smartphone, or even a larger system. The whole idea is to freeze the entire scene as far as possible. The investigation is then carried out by the prosecution on the copy rather than on the original. If you examine the original, you run the risk that you are changing the nature of the original; you are contaminating the original evidence.

In order to carry out that work, the prosecution expert uses a variety of tools to electronically search through the material—keyword searches and other sorts of things. One of the features of the submissions you have had, particularly from the police side, is the general impossibility of looking at the quantity of material that is now available in digital form. In a typical search, the police may find, even in an ordinary home, seven or eight devices, each of which contains tens or hundreds of thousands of files of one sort or another.

They say, and I agree, that it is not feasible for them to examine that exhaustively. That plainly has an impact on their duty of disclosure. To overcome the problem, my proposal is that, instead of leaving that historical duty on the prosecution to disclose, you just disclose the images and it is then up to the defence, using tools very similar to those that would be used by the police, to search for the material they think is relevant. That would require a change in the protocol, but it would still preserve the general aims of disclosure, which are a fair trial and the opportunity for a defendant who wishes to defend themselves to be defended.

Q177 **Chair:** It sounds as if you are saying disclose the lot, pretty much.

Professor Sommer: In terms of paper, obviously the preference has been that the prosecution does not throw a whole forest full of paper in the general direction of the defence and say, "Here, have a look at it; we don't know whether there is anything of any interest. It's up to you to find it." There are obviously very good reasons for that. As you have heard from barristers, they are not paid to look at undisclosed material. I am suggesting that in terms of digital material you actually disclose the lot. The difference is that you can search through things using computer aids.

Q178 **Chair:** Dr Collie, what is your take on that and the issues you find?

Dr Collie: There are several difficulties. One is the sheer amount of digital evidence that the police are likely to need to look at. You have to consider not only the range of devices but things like the cloud. There is evidence everywhere now. There is also the proclivity of digital devices to copy stuff across. For instance, your browsing history—if you have done it on your phone—will appear on your laptop or on your tablet. It is all over the place, and that is very difficult to chase down.

Obviously with the cuts in funding and so forth, the police do not have the time, or indeed the people, to do all that stuff. I do not think it is feasible to be given the entirety of the evidence. In the system as it stands, the police take a view of what they have and decide they have enough to bring charges against a person. We only have time tolook at it and go, "Okay, let's look at your analysis. Can I verify and repeat your analysis?" That is the aim of digital forensics. It is like being a pathologist. I always say to people that I am the pathologist, not the GP. You do not want to come along and look at one bit of the body and be asked, "How did this person die?" You would like to see the whole thing.

However, there could be terabytes and terabytes of data. For instance, in cases where there are indecent images involved, you want to know where they were found. Where were the indecent images, and does that show that the party went looking for those things deliberately or did they just happen up on the person's computer because of some type of browsing that they were doing? In other words, did it just happen along while they were looking at other stuff that is legal, or was it a mindset that was looking for that type of material?

Q179 **Chair:** The context is important.

Dr Collie: Absolutely. One of the big problems is the lack of context. Looking over the range of my career, for instance, when I first started, a lot of police units had their own digital forensic units; the guys knew what they were on about, and they would do it and evidence things really properly. What I see now, particularly in the last 18 months, is that we are getting sketchy evidence, usually paper evidence. Paper evidence is not digital evidence. Please do not give me a screenshot of a Facebook page. That is not digital evidence. It does not prove anything to me. Nor do pictures of a phone screen. Sorry, but I want to see, verify and repeat the same tests.

Q180 **Chair:** Where is the root of the problem that you have identified in the last 18 months or so? Is it with the police, with the funding, with the protocols or what?

Dr Collie: Unfortunately, there are many aspects, but there are two things. One is funding. They simply do not have the money to fund people. They cannot even send them on courses. When they have the people, they do not have the money to send them on courses as they used to.

The other thing is that it is quite commonplace, with, for instance, mobile phones, for police stations to have a unit that they can put a mobile phone on, press a couple of buttons and, whizz, you get a report. That is a machine report; it is not an analysis. The software is very good and it picks out all sorts of stuff, and that is great, but it still is not an analysis.

Two things are happening. First, there is not enough funding for real, trained analysis. At police stations, for instance, a police officer who has probably

only been trained for about a day to use the equipment—he can click it in and press the buttons—quite commonly mishandles the evidence. They do not do it deliberately; they do it inadvertently. Quite often, I find spoiled evidence where they have inadvertently mishandled it. It is like treading on the evidence. Everybody is familiar with the Miss Marple scenes; if there is a body on the floor and some blood, you do not walk through the blood and go up to the body and take the knife out of its back. There is no difference with digital evidence. You must not touch it. You must not even breathe on it. It changes it.

Q181 **Chair:** It is the integrity of the evidence being preserved.

Dr Collie: Yes. You can change the evidence extremely quickly. The other thing is that they get the machine report from the very clever software, but they do not know how to interpret it. Quite often, one police officer will do that bit and then it will go to the officer in charge of the case. I was doing a case recently where it looked like there was some interesting browsing history that seemed to support a charge against somebody. It was literally cherry-picked. There were lots of terms—10, 11 or 12 terms; pretty disgusting words which I will not repeat here—indicative of looking at pornography of particular types. The officer chose two or three words that seemed to suit that case out of those long strings, and then in a sworn statement said, "Oh, this shows this person put these search terms in." They are not even search terms; it is just how the browser works, which I will not go into because it will bore you all to death.

A little bit of knowledge is a dangerous thing. It is not only that. Because they are cherry-picking terms, if it goes in front of a judge and jury, they are going to say, "Oh, look at that. He's a wrong'un." The interpretation of the data has been carried out by ordinary officers. I am not knocking the officers. They are being asked to do it.

Q182 **Chair:** You are saying that they are not trained properly.

Dr Collie: They are not trained to do it. Even the guys—there may be women, but mostly I come across male police officers—who get to put the things on the unit do not have very much training, but it is not their fault.

Chair: I get your point, but we need to move on. It is lack of training.

Q183 **Bambos Charalambous:** On the cherry-picking point, obviously somebody might be charged because somebody has cherry-picked various aspects of digital information. That is a concern because then that person has to instruct defence lawyers and challenge those allegations. That is a training point and a resource point. Do you think that before the police charge somebody they should look at the whole picture and not just cherry-pick certain points?

Dr Collie: They certainly need to talk to somebody who knows something about digital forensics. They obviously have units in various places. Before they jump in, they need a point of reference where they can go to somebody

and say, "Look at this, Fred, George or Harry. It looks like this to me. Is that what it is?"

Q184 **Bambos Charalambous:** But it could be done differently in different police forces.

Dr Collie: Yes, it would be.

Q185 **Bambos Charalambous:** It is that anomalous nature that is of concern. Somebody might be charged in one area but not in another, with the same evidence, because of the expertise of the people dealing with the evidence.

Professor Sommer: As a bit of background on these tools, they are called triage tools when they are applied to PCs. As you have heard, they are put into rather neat little boxes called kiosks, which are used for smartphones. They are designed only to give you a preliminary indication that something is worth pursuing. I do not think they produce evidence; they produce information that is of use in an investigation.

The trouble is that, because of the pressures on police resources, far too many people think that what is actually being produced is reliable evidence. You get the phenomenon that I think all of us have seen, which is cherry-picking. That is why, if the defendant does not agree with the charges being put to them, it is important to be able to go back to the original material and carry out their own searches to see if there has been cherry-picking or misunderstanding.

It can get worse. Some of the cases I do involve financial fraud and large-scale hacking. There is a huge amount of information in chat logs on social media. We all use social media very informally and we all use various sorts of slang, but to understand what is important you have to understand the slang that might be used in the financial markets by advanced computer hackers. The opportunities for things to go wrong are significant, even in the very best of cyber-crime units.

Q186 **Chair:** How widespread do you think that cherry-picking is?

Professor Sommer: It is increasing, as Jan says, as the pressures have increased. It has always been there. The posh phrase for cherry-picking is confirmation bias, but that is what it is. It has got worse because the volumes police forces have to deal with are much greater. The tools that are available appear to deskill things, which is perceived as an advantage. As Jan said, the trouble is that, unless you know what you are looking for, the results can be very misleading. In any case, because of the rate of change of these tools, they do not actually produce evidence; they produce investigatory trends.

Q187 **John Howell:** I want to pick up on what you said about searches. It is not just the police who are involved. In the Attorney-General's guidelines, he sets out that you can use searches in cases of—I think he uses the phrase—"enormous amounts of material," which is never defined. It would be

interesting to hear a comment from you on that.Are you saying that searches should never be used? How should they be used?

Dr Collie: It is not that they should not be used. There are a few things to say about searches, but I will just mention two. One is that you can miss an awful lot, because once you define your terms you completely narrow the chosen words, or forms of words, you are going to search for. We find this in commercial cases a lot, as I am sure my colleagues do, when solicitors agree, "You can only search for this or that. We have 10 search terms. There you go; off you go." You might get some hits, but you might not. You might get some relevant ones, but you might not.

Of course, searches should be carried out, but there are different types of searches. There are the ones that use words, and there are different ones that, for instance, lookfor pictures of certain kinds or will pull out just the internet history, if that is what you are interested in. The tools are incredibly sophisticated. You can detail them to fish out more or less what you want.

Q188 **Chair:** Dr Tully, from your point of view as a regulator, do you have concerns about what you have heard? What is your experience? Are there issues with Professor Sommer's proposal to disclose more or less all the digital evidence to the defence and let them do the sifting? Does that create any regulatory issues? Is cherry-picking an issue that concerns you as a regulator?

Dr Tully: One of the things that needs to be said is that a lot of work being done now is not being done in a forensic science environment. That really echoes what my colleagues here have said. You could work out how to put controls around digital forensics units, either in policing or in the private sector, from a regulatory perspective,and have some quality assurance around what those units are doing.

Digital forensics has now pervaded almost every aspect of policing. Frontline officers are doing all sorts of different types of what we would formerly have called digital forensics, so there is an issue with how you get any form of control over something that is so pervasive throughout all of policing. In terms of Professor Sommer's proposal to release everything to the defence, I do not think that the issue is so much one of quality regulation; I would suggest that it is more from a privacy regulation perspective, which is outside my remit.

Q189 **Chair:** It is not a problem at your end.

Dr Collie: May I introduce a slightly different aspect? It is important and I suspect that the Committee does not know about it. One of the other problems, from a defence point of view, is simply getting your hands on any evidence. Withholding can be knowing and unknowing. Sometimes, people just sit on it because they feel like it, it seems to me. Sometimes, they do not even know what you are asking for.

Over and over again, I try to get in touch with the officer in charge of a case in order to get a forensically sound copy of a phone download or of a computer download. You ask them for X and Y, and they do not know what you are talking about. I had a case recently where it took four weeks and no fewer than 30 emails. I had explained exactly what I wanted in terms that a two-year-old could understand. I said, "Please ask your technical people."

That is one of the problems too. They are not even doing it on purpose; they just do not know. Here are all these officers. They have cases to do and they involve digital evidence, but they do not know what the defence is going to be looking for. They should at least be detailed, and told, "When the defence come along, they will want that, that and that, so can you make sure that it is prepared?" An amount of time goes by, and then you are really pushed because the court date is usually the next week or in two weeks' time, and suddenly you have to wave your magic wand and have a report ready in five minutes. It is not like that. I just wanted to introduce that side of things as well.

Professor Sommer: I completely agree with that. I had thought it was largely a problem of the lesser units—the provincial units—but in fact overnight I received notices of further evidence in a very complex case that is due to start at the beginning of next month, and even as we speak counsel is remonstrating in a court not very far away from here. Up to two weeks ago, the complete bundle was about 500 pages; it is now 5,000 pages. I have no idea how that happened. I am extremely disappointed,because I had thought that, as the people involved are at the top of their professions, they would know what they should be doing. It is a problem and it is getting worse.

Q190 **Chair:** You cannot rely on the MG6s at all—the disclosure forms.

Dr Collie: It seems to me that there is lack of education, and they have not been detailed. If you are in charge of a case as a police officer, nine times out of 10 there willbe digital evidence these days. Everything is digital evidence now. There is not a crime committed that does not have digital evidence. At least, in their training, somebody ought to give them a PowerPoint on just that bit.

Q191 **Chair:** It is basic stuff like that.

Dr Collie: Yes.

Q192 **Mrs Kemi Badenoch:** I have a couple of questions to clarify some of the things Dr Collie said. You talked about paper evidence not being digital evidence; you had been sent screenshots and so on. Is the issue about the fact that they could be easily tampered with?

Dr Collie: Absolutely.

Q193 **Mrs Kemi Badenoch:** Or is there something else about sending paper evidence or pictures of what has been seen?

Dr Collie: That is the basic problem. Just because you are showing me a screenshot it does not prove a darn thing. I could photoshop that.

Q194 **Mrs Kemi Badenoch:** When you request the actual digital evidence, does that not hugely increase the amount of time required for investigating? Is the reason why they are sending you paper evidence to speed things up?

Dr Collie: No. Sometimes, you get paper evidence because, honestly, the people dealing with it think that is evidence.

Q195 **Mrs Kemi Badenoch:** The examples you gave of searches—not so much the cherry-picking—seemed to be around pornography in particular. Would that be the case for messages relating to what people had said to each other in a rape case, where you are looking at consent or implied consent and things like that? I understand what you mean by pictures not necessarily showing that someone has searched for something. But it is not always pictorial evidence that you are looking for. Is that the case for just looking for what people have actually stated verbally?

Dr Collie: I am not clear exactly what you are driving at.

Q196 **Mrs Kemi Badenoch:** When you were talking about the police not knowing what they were doing, the examples you gave seemed to be mainly around looking for pornographic evidence. Would that technique be fine when looking for things that people had said, where it is just words rather than pictures and what a picture being on your computer could imply? You are looking at text messages, for example, WhatsApp and so on.

Dr Collie: Obviously searches for individual words or phrases are much more relevant if your case involves, as you say, loads and loads of emails or interchanges between people. Commonly, I get that in commercial cases more than in criminal cases.

Q197 **Mrs Kemi Badenoch:** My main questions are around investment in technology. These are for all the panel. Are the police and CPS keeping pace with the changes in technology?

Professor Sommer: That is a very broad question. I do not know whether it is particularly the CPS, but, on the whole, the high-end units understand the technology. Whether they are deploying it properly is another matter.

As you heard Jan say earlier, you are not only looking at material that is found on devices that would be in a home or an office, such as a personal computer, laptop, tablet or smartphone. You are also looking at what is out on the cloud and what people may have posted by way of messages on social media. There is general understanding that all those things exist. There is a range of tools that enable you to extract them.

Q198 **Mrs Kemi Badenoch:** Let me narrow it down. The national disclosure improvement plan says that there are more advanced technologies available. I was looking for examples of what sort of tech is out there that we are not using.

Professor Sommer: The technologies do a number of different things. One of them is simply to extract the information in a safe fashion so that you have frozen the scene. As I said earlier, you cannot examine original material because, if you do, you are altering and contaminating the data. The tools that have evolved are mostly concerned with carrying out keyword searches and looking for links between various types of message. They are also used for communications data, such as phone calls and use of IP addresses. One of the trends has been to provide environments in which all of those things from different sources can be combined.

One of the difficulties for an investigator is that somebody might be developing a plan of action or communicating with others by email or social media. They may be carrying out inquiries on the web, all of which will paint a picture of their plans and intentions, and build a useful picture for the court.

Your question is whether the prosecution and CPS understand that the tools exist. They definitely do. Whether they understand how they should be used and whether they are deploying them correctly is a different matter. One of the other problems of the development of the new tools is that the speed with which the tools are being produced—they are being produced in response to real-life activities by suspected criminals—and the speed with which they need to change is faster than the ability to test them for reliability. That is a problem.

It comes back to the earlier point I was making. A lot of the tools are good as investigatory tools, but they are not terribly good for producing thoroughly reliable evidence. That is why disclosure and testing by defence experts who would look for alternative hypotheses is so important, and why disclosure that does not happen—the main focus for this Committee's inquiry—is so important to making things work, particularly in the digital domain.

Q199 **Mrs Kemi Badenoch:** There are 43 different police forces. Are they all doing the same thing, or is there any differentiation, with some doing digital forensics better than others?

Professor Sommer: There are a lot of schemes. There is training by the College of Policing. It runs all sorts of training schemes. One of the trends has been for high-tech crime units in various regions to work together. When you see charts and go along to police events, there are all sorts of magnificent arrangements and it all looks absolutely fantastic, until you face the reality of the paperwork that comes your way as a defence expert.

Dr Tully: There is a fair amount of variability between forces, although there is work to try to move that together now. There are a couple of initiatives. One is that the NPCC—the police—has a digital forensics portfolio. That portfolio does not standardise through having the same structures in every force, because that does not work structurally between different

forces, but it at least standardises around adopting the same quality standards and the same approaches generally.

One of the big issues that I see, with respect to some of the issues we have talked about this morning, is that the digital forensics units are quite good at keeping up to date with technology for extracting data and making copies, but they then pass the copies, largely uninterpreted, to police officers, who are not experts and who are not digital forensics people. General policing investigators do not necessarily have the tools to search that information effectively and understand it.

Q200 **Mrs Kemi Badenoch:** Are there any good practice examples, perhaps from the Serious Fraud Office, who go through huge volumes of information? Is there anyone who is doing this well and that we should be emulating?

Professor Sommer: There is certainly good practice in preserving the evidence, as Gill says. It is very difficult to describe good practice in interpretation and analysis. That comes down to experience and skill. The only good practice is "Do it well." There are no step-by-step processes that you carry out.

One of the things we need to do relates to one of the points that Jan was making. Sometimes, in analysis, people confuse the print-out or the copy of a piece of evidence with the actual evidence. One of the things one always has to do is go back and say, "Where did this come from? How did this particular item arrive on a device or on the cloud, and can you attribute it to somebody who is being accused?" That is an investigatory skill and I do not think it lends itself to, "Here's a nice book on good practice."

Q201 **Mrs Kemi Badenoch:** All of you have touched on the skill that is required to carry out the analysis. A few weeks ago, the Criminal Bar Association said that some material will always need a human being to go through it. What is the balance between investing in technology and investing in people? Is it a technology investment case, or is something more fundamental going on that we should be looking at and talking about?

Professor Sommer: That is impossible to answer. One just does not know. You need both. There is no point in having the technology if people do not understand what the technology is delivering. One of the difficulties about the triage or kiosk-type tools is that they look absolutely fantastic and you get the illusion that you are looking at the whole of the case, but you may not be, because you do not know what questions to ask.

Dr Tully: There is quite a lot of work going on to improve that situation. I have seen some good practice, coming out of Staffordshire police but being disseminated more widely, where the forensics department is trying to put together a package that sets out more clearly for investigators what they are receiving; how complete it is likely to be; what the limitations are; and what other material is held by the forensic department. That is the start of

some very good practice that will assist with knowing what the limitations are and making sure that they are passed on to the investigator. Of course, the investigator still has to understand that.

Professor Sommer: One of the problems, particularly when there is outsourcing, which we may come on to a bit later, is that there is significant geographic separation between the digital forensics experts and the investigators, and they do not talk to each other. My own experience over and over again is that, unless something is incredibly simple, those two entities need to sit together and work out what they are trying to do. They can educate each other. Under outsourcing, you might have a not terribly well trained but very keen police officer in south London dealing with someone in Nuneaton or in Stratford-upon-Avon, and neither of them has the funding even to talk to each other.

Q202 **Mrs Kemi Badenoch:** I am very conscious of time, but I have three short questions to further understand some of the evidence you have given today. In terms of the speed cases are dealt with, is the delay purely in processing huge volumes of data or is the delay really just getting the data? In terms of getting justice done quickly, where is the balance?

Dr Collie: From a defence expert point of view, the police have already done their analysis by the time we get called on to it. They have the evidence. The delay is getting the evidence.

Q203 **Mrs Kemi Badenoch:** With the cloud, passwords, encryption, and so on, how hard is it to get data when people have additional forms of authentication to keep it away? Is it something you are able to get through court orders, or is it particularly difficult?

Dr Collie: It can be very difficult. You need court orders for the vast majority of it. You also have to remember that some of these services are run from the United States. I will be honest about it. You can get an English court order to produce stuff from Facebook or Hotmail, but they just go, "Well, it is not the US."

Q204 **Mrs Kemi Badenoch:** They do not do it.

Dr Collie: Not unless you know exactly who to write to. I have been on cases where if you know the exact person to write to, maybe they will get round to it.

Q205 **Mrs Kemi Badenoch:** My last question is about the huge volumes of data. We talked about keyword searches. What about time sampling of data, where you know there isa broad range of time within which you are looking for the evidence? How possible is that?

Dr Collie: That is very possible. The forensic tools are really sophisticated. If you suspect that something happened between, say, July and September in a particular year,you can filter it on those dates.

Q206 **Mrs Kemi Badenoch:** You do not always have to look at every single thing.

Dr Collie: You do not have to look at every single bit, but, of course, that is dangerous because, again, you may be missing some context. What you really need to do is focus on the supporting things for the charge, or what they say the charge is based on. Why we need to see all of it rather than just bits of it is that you cannot just take it out of context like that. An analyst will say, "Okay, I can see that, that and that, but I wonder what happened before that, or if they did that as well." You need all the data to be able to analyse a part of it. That is one of the troubles of just chopping off one bit and letting you have that.

Q207 **Gavin Newlands:** Professor and Dr Collie, you have alluded to various problems, including screenshots versus access to original digital files. Are you given access to enough of the right material to enable you to advise defence teams, and also to make a thorough representation in court yourself?

Dr Collie: If you get enough time to sit on enough people's heads, yes. One of the things that has been happening very recently, which is a real problem, is that they have been doing what I call sketchy or perfunctory stuff. They say, "There you are; there is your evidence." It is a bit of browsing history and a couple of pictures, but they do not evidence it properly. Let us say there are half a dozen horrible pictures. They say, "There you go," and hope that the defendant will plead.

I say, "Hang on a minute, where did you find these? Where exactly were they on the disc?" What they are not doing in a lot of cases is giving you what we call the file path to where the evidence was. They are just going, "Look, there was this, this and this." In the past—I am sure it was the experience of my colleagues, too—when it was done by the digital forensics units and they knew what they were at, if they were going to say, "There is that, that and that evidence," they would give you the spreadsheet with all the file paths. They would actually evidence it properly. Now what you are getting is cheap and cheerful.

Professor Sommer: It is the philosophy behind streamlined forensic reporting. The basic idea is to see, from the police point of view, if you can get an early plea. You produce the sort of outline that Jan is talking about, and the hope is that the defence solicitor talks to the defendant and the defendant says, "Okay, it's a fair cop and I will plead." If that happens, everyone wins.

The streamlined forensic report was never designed to do anything other than give a brief overview, so a difficulty arises if the defendant decides that he wants to challenge it, either absolutely or in some detail. At that point, you want the full report and all the evidence. That is what ought to happen, but in my experience, and I gather in Jan's experience, all too frequently it does not happen. There is often delay in telling the prosecution, "That is what we need and that is what you need to do," which they rather resent because they are hoping for the early plea. That is where a lot of the delay arises.

Q208 **Gavin Newlands:** You said that you thought the situation was getting worse. Why do you think that is?

Professor Sommer: I have been doing this job for a long time. I helped to develop the first master's course that was available at Shrivenham. I have been fairly active. I do not want to sound too full of myself, but I am reasonably well known, and, if I ask for something, I probably find it easier than many others to get hold of it. The anecdotal evidence I have is much more on the lines that Jan has been talking to you. It is ignorance; it is bureaucratic confusion.

One of the other irritations is that you get the paper evidence and it is all jumbled up, because somebody in the CPS has economised and not asked a clerk, or whoever, to put the papers into a decent order. The public are still paying for it. The CPS is presumably going back to the Treasury and saying, "Look, we have been able to make all these savings you have been demanding," but then, rather more expensively, either counsel or the likes of us have to sort out the paperwork. The public are paying for that.

Q209 **Gavin Newlands:** You said that there are limitations with the system as it is. Do you think the SFR itself helps lawyers to do their job, advising clients and preparing cases, and so on? Do you think that lawyers fully understand what they are being given?

Professor Sommer: The SFR is designed to get an early plea. It will help a lawyer to the extent that he can say to his client, "This is what they have, so what do you say?" I fully acknowledge that lots of clients will say, "Yes, they've got me and I accept it," and it is never challenged. That is a benefit for everybody. The problem is, as I was saying, that, once somebody challenges it, you do not get the follow-up of a full report and the material that is necessary to test whether the defendant actually has a defence.

Dr Tully: What should happen is that if they do not agree the streamlined forensic report the defence should raise the issue, which goes back to the forensic department to produce a report that deals with the issues that have been raised. In practice, unfortunately, that does not always work smoothly.

In theory, it is a very good system and the issues are dealt with. The real issues in the case should be dealt with in the second stage, but unfortunately there are often delays and poor understanding of the system among the legal community, and particularly defendants. By the time it gets to the stage when it is very close to court, as Jan says, there is often little time left. When you add the time delays for defence solicitors applying for legal aid funding and so on, it creates a problem. In theory, it is a sensible staged approach. There are some practical implementation difficulties.

Professor Sommer: Your reference to legal aid funding is an important one. None of us who do defence work is going to start until we have funding, and there can be delay. Obviously, the legal aid authority is carefully looking after public funds, but they do not necessarily understand what we do. You

put in an application and it comes back because they have not understood. You have then lost two, three or four weeks, or even more on various occasions. I expect you have been through that as well, Jan.

Dr Collie: Absolutely. Situations can arise where, for instance, the police have the evidence and they want you to provide them with a hard disc. You say, "What size hard disc do you want?" Now they are coming for bigger and bigger hard discs. I have a case where they wanted three six-terabyte hard discs. That is a lot of money. That is a £500 investment of mine, but I have to pay and it will probably take nine months before I see it.

You then go, "Okay, here is my estimate," and that goes to the CPS. I have had it happen that it comes back with, "Why do you need this?" "Well, because the Met asked for it, and it is in the email. Would you like to read the email?" The solicitor has sent that and I have sent the email. I have also photographed a picture of a disc on the screen off some website saying, "It will cost £X." You put that in and you still get the thing back, saying, "Why do you need this?" Please, guys. It is exactly as you say, Peter. There is another two weeks while you are sitting there.

Q210 **Chair:** That is the Legal Aid Agency.

Dr Collie: Yes. Quite often, they are nit-picking to the point of you saying, "I am just trying to do my job. I am not trying to rob you of 50 quid for a hard disc."

Q211 **Gavin Newlands:** If you had a blank canvas, what changes would you make to the system and the way in which forensic analysis is reported?

Dr Collie: It is very easy to say that I would go back to the old days, because we all want to do that. I just want to see it properly evidenced. If they say there is X evidence, I want to see the supporting data for that evidence. That is an absolute basic. Without that, I am going to keep going back saying, "No, I want to see this; no, I need to see that." That all takes time. It is also going to cost more money, because we are run so close to the wire with court cases that solicitors then have to ask for an adjournment. The poor old judge gets cheesed off because that is their schedule all over the place. There is another six months before they can get the case back on, all of which is costing public money. It would just help to speed things up.

Q212 **David Hanson:** Given what you have already said, what are the funding mechanism changes you would want to see to ensure that we do not have barriers to forensic experts being used?

Dr Collie: That is huge.

Q213 **David Hanson:** You and Professor Sommer both mentioned that funding mechanisms are a problem, and that funding is a challenge. What changes should there be?

Dr Collie: It is the number of hoops you have to jump through. Solicitors have to jump through loads of hoops, and so do we. I understand that they are trying to protect public money and watch the pennies and so forth, but it can just be too bureaucratic, don't you think?

Professor Sommer: I am sure we are all reasonably alive to the very large number of institutions that are going around saying they are poorly funded, but you are looking at disclosure, so let us look at the particular problems. You are looking for people both on the police side and on the defence side who have rather high specialist skills. There is a marketplace for them. The marketplace is not only the criminal justice system; it is the civil justice system and broader cyber-security.

What has been happening over the last few years is that people who have been doing criminal work are simply ceasing to do it because the funding is uncompetitive. Why would you be doing criminal work in particular at £72 an hour, when you can be doing civil work of one sort or another at £250 or £300 an hour, without any client saying, "Oh gosh, that's a little bit steep"? Bear in mind that, if you are doing some forms of criminal defence, quite a lot of the work involves looking at pictures of children being sexually abused and not all of us particularly enjoy doing that, even if we have a professional skill.

On the police side, there is a retention problem. I was having a word with somebody at the National Cyber Crime Unit about two or three weeks ago. I was asking about it and he said, "Oh yes, we call it the 'departure lounge' because of the high turnover." One of the recommendations I make to you, Chair, is that you might like to send out a few letters asking about levels of employee retention and turnover.

One other thing I ought to point out is that companies in the forensic field fail financially. There is one called Key Forensic Services, which failed at great expense. A specialist cyber-security company called IntaForensics has gone into a CVA recently, which may be an indication that they are not terribly healthy.

Q214 **David Hanson:** Professor Sommer, you are the Government; what do you do about the issue?

Professor Sommer: What do you do as the Government?

Q215 **David Hanson:** At the moment, for this purpose, you are making recommendations to this Committee. If you were the Government, what changes would you make to improve retention, given the circumstances we are in? We can identify the problem. I want to know what the solution is.

Professor Sommer: The answer is more funding for people who are doing the frontline work, and, implied in that, more training. You can probably guess that. The reason why you should give it priority is simply the importance of the justice system and the role of digital evidence in the current justice system. That would be your justification. Yes, I know that the

NHS is screaming for funds. I know that the education system is screaming for funds. I know that the military are screaming for funds. That is basically what you do, and how Governments make up their mind about priorities. They have to answer to the electorate on that, don't they?

Dr Tully: I agree with Professor Sommer that more funding is needed for frontline digital forensics. There is little or no room for personal development. There is little or no room for technology development and quality improvements. Lack of resources is often used as an argument for not implementing quality standards. We have to move away from thinking of quality standards as an optional add-on, and think of it as integral to the way to deliver quality forensic science. There cannot be a choice betweendoing operational work and delivering quality standards. It has to be funded properly.

When it comes to legal aid funding, at the minute it is largely awarded on the basis of the lowest quote, which is very rarely helpful to getting the best quality in place.

Q216 **David Hanson:** As the regulator, have you made recommendations to that effect to the Government?

Dr Tully: Yes, I have; both to the Legal Aid Agency and in my annual report, where I have called for substantially more funding.

Q217 **Chair:** Thank you very much. That may be a very convenient note on which to end the evidence session for this panel. I am very grateful to you. Of course, you are doing your review on some of the London cases, Dr Tully. Do we know when that is likely to be complete?

Dr Tully: It will take a little longer. I do not have a precise time at the minute.

Chair: Understood. We look forward to that. Ladies and gentleman, thank you very much for your evidence and for coming today.

Examination of witnesses

Witnesses: Jonathan Bamford, Rebecca Hitchen and Dame Vera Baird.

Q218 **Chair:** Good morning, everybody. Thank you very much for coming to give evidence. It is not the first time, for at least one of you, but welcome to all of you. Could I ask you to introduce yourselves very quickly for the record and then we can move into the questioning? You and your organisations have very helpfully submitted evidence to us on a number of topics.

Rebecca Hitchen: I am Rebecca Hitchen. I am the policy officer at Rape Crisis England and Wales. We are the umbrella organisation that represents 45 autonomous member centres in 57 locations across England and Wales.

Dame Vera Baird: I am Vera Baird. I am the police and crime commissioner for Northumbria. I am also the portfolio lead for supporting

victims and reducing harm for the Association of Police and Crime Commissioners, which covers 42 police and crime commissioners and deputy mayors.

Jonathan Bamford: I am Jonathan Bamford. I am the Head of Parliament and Government Affairs at the Information Commissioner's Office. My responsibilities there include our policy and engagement work on the police, justice and surveillance issues.

Chair: Thank you.

Q219 **Ms Marie Rimmer:** I will direct my first question to Dame Vera and Ms Hitchen. You have heard the evidence this morning given by the previous panel on the challenges created by the growth of mobile phones and information technology. I know you have made submissions from your organisations, but can you start by giving us a very quick overview on what you think the key issues are when it comes to the disclosure process as it currently works? I understand that there are some pretty serious concerns.

Rebecca Hitchen: We have some very serious concerns. There are two points to make. There is the issue of disclosure and practice, and there is also the issue of perception of disclosure and the perception of the criminal justice system and the changes that have happened with recent high-profile media cases.

In terms of how the criminal justice system works for survivors, because that is what I would really like to bring to this inquiry, and survivors' experience, we support a huge number of survivors. They speak to us of how they feel unable to report in many cases. We know that sexual violence is hugely prevalent in our society. The 2013 stats say that 85,000 women and 12,000 men are raped annually. The Government estimate that only 15% of those victims and survivors choose to report to the police.

Recent crime survey stats say that one in five women over 16 experience sexual assault. We also see that less than 6% of reported cases result in conviction. A huge justice gap exists. It is really important to bear that in mind before we start talking about the actual issues around disclosure.

Currently, disclosure practice is extremely wide-ranging. Even without the invasion of privacy that occurs because of it, survivors face the impacts of post-traumatic stress disorder and myriad other impacts, which are often wide-ranging and severe, on their long-term psychological health and wellbeing. They report to the police, and the investigation typically lasts about a year. In that year, they will sign a form that says that the police can access a multitude of their records. That will include their phone being seized. They will also have their medical records, their counselling notes, their social services records, school records and potentially other forms of records disclosed as well. That huge wealth of data is taken by the police during the year's investigation.

That data is then shared with the CPS. I know that there are lots of issues in terms of sharing and disclosure. The CPS decision can take pretty much up to a year. If there is a charging decision, there is a nine-month delay until a trial occurs. There are two and a half or three years-plus of anxiety and stress while a survivor is waiting for atrial to take place, if indeed it even does. They have that going on, but they also have a huge sense of invasion in their personal life. With young people especially, all of their life is held on their phone. It is their lifeline. When that phone is taken away, and every single record held on it is taken and shared with the police and various outsourced forensic companies, the prosecution and then potentially the defence and the defendant, that is huge and the levels of distress that it creates cannot be understated.

Dame Vera Baird: There are two sides to this inquiry, if I may say so. On behalf of the association, I support the concerns that have been expressed about what we could call the explosive cases that have shown that there are deficiencies in disclosure to the defence.

If I may say so, it is very important to focus here on a number of things that appear to be very widespread across all kinds of case. The data that you have had in submission from the CPS and the NPCC showed, for instance, that in 2016-17 one homicide was discontinued because of poor disclosure; as were 266 offences against the person, 19 sexual offences, 25 burglaries, and 109 theft and handling, 32 fraud and forgery, 23 criminal damage and 41 drugs offences. It seems to be widespread.

If I may respectfully suggest it, you are probably contending with whether it is just culturally impossible for the police to set themselves away from the pursuit of their investigation. The last panel talked about something called unconscious bias that comes in. If that is the irretrievable position as you find it to be, what happens instead? Any independent agency scrutiny—I have seen advocacy on that in the papers supplied to you—or Crown Prosecution Service scrutiny is always going to depend on thepolice investigation that started it off. That seems to be quite difficult to resolve.

Is that actually the position? I was cheered to see that few people think that it is deliberate. Many people cite resources as a key point, but it is not a new issue, as you are very well aware, Mr Neill, and as are all of us who have history with the criminal justice system. If it is the case that it is not so clear that there is an inevitable unconscious bias that is insuperable, and simply that this can be rectified by better, stronger and clearer procedural mechanisms, that may be what you look at.

I think of it in this way. The police are starting to build a case against Mr X who is their suspect in burglary Y, and they are making a jigsaw. From time to time, a piece does not fit, so they set it aside. When they finally get the jigsaw—if they do—and it is complete, they go back and say, "Oh, what about those four pieces? We'll have to do something about those." If, in fact, what they did instead was to assemble the two jigsaws side by side, as

it were, they would be able to say to the defence, "This is what we say, but this is your jigsaw and have a look at all of that."

I must say that I, with a bit of a long history in the criminal justice system, have never seen the police and the CPS working so well together and so galvanised by the recent cases. They have the intention to have a disclosure management statement, and the intention to do what the chief Crown prosecutor in Northumbria said last Friday. He personally trained his own RASSO staff. They are training all their staff and our detectives. He said you need to get a grip on it from the beginning and you need to be absolutely transparent from the beginning: "What is in this pile? What is in that pile?" If you do not know, you put it in the disclosure pile.

You have that very broad issue to look at, which we are all extremely concerned about. It is about faith in justice. Then, if I may say so, you have a quite separate issue specific to rape and sexual offence cases, in which completely different considerations appear to apply to disclosure than apply in any other kind of case.

As Ms Hitchen said, a person who makes a report of rape will have to sign what is called a "Stafford statement." That is named after a case that in fact re-emphasised the article 8 right to confidentiality of private material and private life as a very real right for any complainant and witness, which is of particularly high importance in rape and sex cases, where the information is likely to be linked to very intimate matters indeed. Ironically, what happens is that you sign those rights away at the outset of making a complaint, so that you do not feature as a person with article 8 rights thereafter. Mr Neill, I think you have seen that not only the APCC but some individual police and crime commissioners, and certainly the deputy mayor for London and the Essex PCC, have cited Stafford statements. Certainly the NPCC person has. My understanding from the Association of Police Lawyers is that it is nationwide.

What it says is this, in real brevity: "I am the complainant/witness/parent in this case. I have been informed that as part of this investigation the police/prosecution will request access to the following material, where applicable: material held by the local authorities for areas where I have resided; school/education records; medical and psychiatric records held by names of hospitals and practices; any counselling records held by any agencies; prison or probation records. I have been told that the purpose of this access is to identify anything that might have a bearing upon the prosecution and any trial that might follow in the event that somebody is charged. I do/do not object to the prosecution being given access to the material. I understand that, if I refuse permission for the prosecution to consider and disclose such material as is appropriate, the defence representatives will have to be advised of that refusal, and a judge may order disclosure after hearing and considering any objections by me or my representative, as appropriate. I do/do not object to the material identified as relevant being disclosed to those who represent the defendant,

and I confirm that I have been told that the defence will have access only to such parts as are needed to ensure that a trial is fair." It goes on to acknowledge that a review is continuing, so there may be more.

At the bottom it says, "During the process of recovering third-party material that I have already highlighted, I have been informed that other agencies and their records may be identified. I do/do not object to the prosecution being given access to the material. These agencies, if relevant, are Barnardo's, SARC, NPCC, YOT, CAMHS, Northumbria Tyne & Wear Trust." There are 30 organisations who may, or may not, have given some support to that individual.

May I come back to what happens next?

Q220 **Chair:** Do you have a problem with the Stafford statement?

Dame Vera Baird: Yes.

Q221 **Chair:** Why?

Dame Vera Baird: What happens is that the individual is told that, if they do not sign it, the case will go no further and there will be no consideration of charging at all.

Q222 **Chair:** How would you balance that with the need to ensure that there is proper disclosure to a defendant, who may have been wrongly accused?

Dame Vera Baird: Of course we do, but—

Q223 **Chair:** If you do not have a Stafford statement, how do you ensure that there is a system of protection for the defendant, who has the weight of the state against them?

Dame Vera Baird: The state has a very high obligation because it has all the power, and the individual has very little power to collect material. Yes, there is a huge objection to the Stafford statement because what happens is that someone has to sign there and then to say that any material that is thought right to be disclosed to the defence will be disclosed, and they will not come back to the individual to look at it, to talk about it, to know about it or to be consulted about it. The next time they will know about material that has been treated in that way will be when they are cross-examined about it in the trial.

For instance, there was a trial in Newcastle recently where a woman of 23 had it put to her that she had written a letter to her school and forged her mother's signature saying she did not want to go swimming that day because she had a heavy period. That was put to her as an example of dishonesty at a time when she was a young person, which was carried all the way through.

Surely the problem about a Stafford statement that is couched in such wide terms is that it removes entirely the article 8 right. You have to choose: "Are

you going to report this rape or not, because, if you do, you have to disclose all of this, first to the prosecution and then, if they think so, and they will be thinking so without your input, onwards to the defence?"

The CPS says it would want to do it in a more nuanced way, but this very day—not surprisingly, because I was coming here—the police solicitor told me of a case in which an individual man who is one of several complainants in a sex case said that he does not want all of his medical records disclosed because there is something that he does not want people to know about 20 years away from the complaint he is making now. What you would hope for is a different approach, but what has happened is that he has just been dropped off. The other complainants will go forward but he will not. He has signed away his article 8 rights at the start.

You asked what should happen differently. What one needs to look at is the same process that goes on in other cases. If I make a complaint of rape, all of this follows. If I make a complaint of burglary, none of it follows.

Q224 **Ms Marie Rimmer:** Thank you. I want to turn to the Information Commissioner. In your submission to us, you cite a number of cases where you have fined police forces for disclosure of private information. What sort of information is collected in criminal cases that would fall under the Data Protection Act, and how should it be handled?

Jonathan Bamford: Any information that relates to an identifiable individual is personal data within the scope of the Data Protection Act. That means the provisions of the law have to be followed in terms of how that information is collected, how it is handled and the appropriate security around it. One of the difficulties we have found is the extent of the information being collected in the first place, which appears to have little bearing on the case.

For the sake of argument, one of the cases where we took action involved an individual whose partner was a police officer. That individual was subject to some domestic abuse, which included criminal damage and assault to her. She had some images on her mobile phone of things that were pertinent to that, but when she handed it over to the police they took copies of the 13,000 files on that phone, including matters relating to her divorce, intimate photographs and all sorts of things. Rebecca made reference to the minutiae of our daily lives being on our phones. All that information was made available. It ended up being a disciplinary matter, but in the course of proceedings the whole content of that phone was revealed to the defence and the defendant. That clearly goes to a breach of procedure.

The point that Dame Vera made about what is said on the Stafford statement is that it is only to be disclosed to the defence as necessary. I do not think people are living up to the requirement to disclose only information that is necessary. We have often had cases where, for the sake of argument, victim address details get disclosed that should not be disclosed. Those can be quite sensitive in particular cases. We have had situations

where people have then been contacted by the defendants and intimidated as a result of the disclosure.

Q225 **Ms Marie Rimmer:** Who is responsible at each stage, and how well prepared do you believe they are to execute that responsibility?

Jonathan Bamford: The responsibility in data protection terms, without using the gobbledegook of the law, falls—

Q226 **Ms Marie Rimmer:** Is it the CPS? Is it the solicitors? Can you just tell us who it is at each stage?

Jonathan Bamford: The person who controls the information determines the purposes and the means by which it is processed. Basically, to put it simply, that responsibility can flow with the data through the process. It may well start off with the police who are gaining the evidence. When they make a disclosure to the CPS, the CPS becomes responsible for that information as well. When information is passed on to the defence, the defence may be responsible as well and have obligations under data protection law. Each of those parties at each stage may have responsibilities.

Q227 **Ms Marie Rimmer:** And you are clear which is responsible for which.

Jonathan Bamford: Yes.

Q228 **Ms Marie Rimmer:** Can you talk about the implications of the recent changes to the Data Protection Act? Do you think the various agencies in the justice system, including defence teams, are prepared for those changes?

Jonathan Bamford: We have substantial changes to our data protection laws going through at the moment. The general data protection regulation takes effect on 25 May. We also have domestic data protection legislation—the Data Protection Bill—going through its final stages in Parliament at the moment.

The law enforcement processing elements are covered by the Data Protection Bill. They are not covered by the GDPR, which people often refer to. They are covered in our Data Protection Bill that gives effect to a law enforcement directive, a separate piece of legislation. That has similar sorts of provisions to the GDPR, and ups the game for organisations in terms of how they have to look after our personal information.

Of course, it is a challenge for any organisation when they are as busy as they are to deal with changes in the law. We have worked closely with the police and others to try to make sure that they have guidance on their new responsibilities. We published guidance on the law enforcement processing provisions in the Bill. Obviously, when there is a piece of legislation that has not quite hit the statute book yet, and things are going to take effect very quickly, it would be unwise of me to say that everybody is 100% prepared. A lot of organisations have made good steps in those sorts of areas,

but there are no massive step changes in key areas of those laws. There are still requirements to keep information secure.

Q229 **Ms Marie Rimmer:** It is about knowledge of them and the understanding to be able to implement them.

Jonathan Bamford: Yes. What is happening is that perhaps some of the sanctions for non-compliance—if you look at security—are going up potentially from £500,000 under UK domestic law. There are two levels of penalty; €10 million or €20 million. There are things to do with worldwide turnover, which will not really affect the police or anything like that. There are also requirements to make security breach notifications to us on a mandatory basis, so that we find more of the incidents where things have gone wrong.

Q230 **Ms Marie Rimmer:** You talked about one case earlier, and you stated in your submission that you fined Kent police £80,000 when they gave the content of a phone to a defence solicitor and it ended up with the suspect. Can you explain why the police were at fault and not the defence solicitor?

Jonathan Bamford: Basically, in the first instance the duty was on the police force to look after the information it had—to make sure that it did not get disclosed in an unintended way and that it did not fall into the wrong hands. The way the case unfolded was that there was a criminal prosecution to start with, and then it turned into a disciplinary matter because it was a serving police officer. It was at that stage that the police disclosed the full information from the mobile phone. That was contrary to the procedures they would normally have for a criminal case. It was dealt with in a slightly strange way. The police basically did not follow the procedures that they needed to do to make sure that the information was not disclosed.

You are right that there could be subsequent liabilities further down the line, but the defence solicitors were no doubt looking at all the information to make sure whetherthere was anything relevant. The situation was that it should not have been in their possession in the first place.

Q231 **Ms Marie Rimmer:** Do you think that highlights a particular issue with litigants in person?

Jonathan Bamford: You raise a really interesting point. I have explained the web of data protection law and what it covers. It does not cover private individuals going about their own business. There are no requirements on that. Any of us who acts in a private capacity does not have to comply with data protection law. If you are a litigant in person, when you receive the information, you are not bound by the same levels of data protection law as a firm of solicitors, a police force or the CPS would be. It is a different situation.

For me, it stresses the point about making sure that only the right information gets disclosed, and they only see the things that they really need to see, rather than just absolutely everything.

Q232 **Chair:** Coming back to Stafford statements, I am interested, Dame Vera, in how widely they are used in practice.

Dame Vera Baird: My understanding is that they are used all over the country. Ms Hitchen will know as they have 40-odd branches. Certainly they are used in Northumbria. They are definitely used in the Met, and in four or five other areas where I have talked to colleague police and crime commissioners, they are aware that they are used. I think it is universal.

Q233 **Chair:** I imagine that it is done by the officer in the case, with the complainant going through it. It is probably at much the same stage as they do the witness statements.

Dame Vera Baird: That is exactly what it seems to be. We will supply you with a copy if you would find it helpful. On the back it says, "I have been told about the victim personal statement scheme," and "I agree to this, I agree to that." I think it is taken straight after a statement or an ABE has been taken.

Chair: Yes, that is what you would expect.

Dame Vera Baird: There is a bit of a worry about that, frankly. I think somebody who is confronted with this when they have just reported a rape or a piece of sexual abuse is probably not in a good position to be making a decision.

Q234 **Chair:** Would you expect the lawyers involved in a case to see the Stafford statement?

Dame Vera Baird: The lawyers on either side?

Chair: Yes.

Dame Vera Baird: Do you mean whether they know it exists?

Q235 **Chair:** Would they actually see it? We are advised that experienced barristers virtually never see a Stafford statement.

Dame Vera Baird: That may be the case.

Q236 **Chair:** Maybe it is an internal document for the investigation.

Dame Vera Baird: I am not sure what point it would serve.

Q237 **Chair:** It may not add anything. I was just interested.

Dame Vera Baird: It just lists this, this and this; tick, tick, tick. "Sign here or else we're not going any further." You have to question whether that is a valid consent in the first place, especially if it is done straight after the offence.

Q238 **Chair:** Are you aware that cases have proceeded when complainants have declined to make some of the material available? Have applications been made to the court and cases still proceeded? It may be a minority but it is possible for that to happen, isn't it?

Dame Vera Baird: I am sure that is correct, but it is much more common for the position to be as I have said; the officer will say to me and the complainant, "If you don't give us this, the CPS won't go forward." There are innumerable cases that the police in Northumbria have talked to me about where they have said to the CPS, "We don'tsee the relevance of this," and they have said, "Deliver this, this and this, because, if you don't, inevitably the defence will ask for all of this list and the judge will order it,because that is the default position." Remember that, if a statement has been signed, article 8 does not enter into it. You do not have your rights from the Stafford case because you have just signed them away.

Although this happens in every sexual assault and rape case that we are aware of, it does not happen in any other kind of case. If I was a male on my own and was attacked by another male in a back street at night, and I overcame him and reported to the police, and he said, "No, Baird attacked me," you would not find that I had to sign a Stafford statement, even though the case would depend entirely on my testimony, which is the usual reason that is given for requiring disclosure of all the material. Nobody will be asking me to sign a Stafford statement to allow the potential disclosure of all of that.

In rape cases where there is abundant supporting evidence—the kind of dream case that is rarely there—all the documents are still required to be disclosed. There is norationale that I have seen as to why there should be that dramatic distinction between the standards that are applied to my burglary and my assault as opposed to those applied to a sexual assault case. Shouldn't they be exactly the same? They should proceed to investigate.

Q239 **Chair:** Can I put it the other way round, Dame Vera? If you are a defence solicitor, or a barrister instructed on behalf of the defence, surely you have the same obligation to pursue any relevant line of inquiry, and make any relevant application for disclosure of unused material that may be of assistance to your client, given your instructions, regardless of the nature of the allegation.

Dame Vera Baird: Yes.

Q240 **Chair:** The duty to pursue potential disclosure does not change, whether it is an allegation of violence, dishonesty or sexual assault.

Dame Vera Baird: It does not. That word "relevant" is a very difficult one indeed. But, of course, the defence will pursue it.

Q241 **Chair:** And it is proper for them to do so.

Dame Vera Baird: For them to proceed to look for anything that is relevant; of course, it is proper for them to do so, in all kinds of case. But the man I have spoken of today will not get justice even if his application is correct. He has obviously been denied procedural justice.

What about the discouraging potential effect? I do not know it so well. Ms Hitchen will tell you whether it is a discouraging factor to know that that is the case. The privacy that should attach to medical records, so that you feel quite free to talk to your doctor, is another problem. Then there is the right to be protected from people who do sexual assaults, who tend to be serial offenders. Those are all hugely important public interest points, which seem to be getting lost.

Can we consider it like any other case, and go back and investigate all reasonable lines of inquiry? If they disclose, they need to look for pointers that may have been raised by the defendant in interview, which point to the need to look at something—the complainant's background, or whatever it is. Then approach the complainant, having not asked for a Stafford statement, explain what is needed and see whether it can be voluntarily disclosed.

Of course, you can go to court and ask for it to be ordered to be disclosed. Then the individual has an opportunity to be heard, if they want, if they can find a way of doing it, and the whole process is done in a way that reflects not only the defence right to have everything relevant that might help them or undermine the prosecution; it also reflects the need to protect article 8 rights and important public interests broader than article 8 rights. That seems to me a very important point about this whole territory.

I thank you for broadening the terms of reference of your inquiry to encompass that. There is a danger that, because there have been some failures of Crown disclosure, people will just say that we should throw the whole lot in, which would have a very deleterious effect.

Q242 **Chair:** But you agree that those failures could have resulted in grave injustice.

Dame Vera Baird: I do, indeed. I was for 25 years a defence lawyer, Mr Neill, as I think you were yourself. We are very well aware, I am afraid, that non-disclosure is quite frequent. But this is another sector, quite separately done, with wholly different standards. In Rook and Ward, the sexual offences textbook, Her Honour Judge Johannah Cutts says that you do not give away your article 8 rights when you complain of crime.

Q243 **Chair:** I am sure, Ms Hitchen, that you will accept that there will be some cases, although not all, where the credibility of the complainant is the key issue in the case, and it is therefore legitimate to investigate matters that may go to the complainant's credibility.

Rebecca Hitchen: First, I should like to speak to the reference to grave injustices happening. They are happening every day in courts across the country, with the conviction rate as it is for sexual offences. We need to

recognise that there is an epidemic of sexual offending, and that rapists and sexual offenders are able to perpetrate crimes with near impunity.

Q244 **Chair:** Forgive me, but it sounds as though you are saying that two wrongs make a right.

Rebecca Hitchen: No, I just wanted to flag that. Two of the issues are proportionality and relevance. The levels of disclosure are wholly disproportionate, particularly when we know that perpetrators, or suspects accused, are not having to even give up their phones.

Q245 **Chair:** Because everybody is an accused person, aren't they, until they are convicted?

Rebecca Hitchen: Yes.

Q246 **Chair:** It is very important to get that language right, isn't it?

Rebecca Hitchen: Yes. I suppose it depends on the position you hold.

Q247 **Chair:** But the justice system has to be neutral, doesn't it?

Rebecca Hitchen: The justice system does, yes.

Q248 **Chair:** It is not a campaigning organisation.

Rebecca Hitchen: It is not, absolutely. However, my position is as a representative of Rape Crisis.

My issue around proportionality is that the phones of the accused are often not taken, and, if they are taken, the accused will often forget their PIN. There is a huge wealth of highly personal and highly sensitive data information disclosed, with nothing coming from the defence team. It is really important to flag that, because it further emphasises the sensation of survivors that they are the ones being put on trial.

When it comes to relevance, arguably anything could be made to be relevant, particularly if you are talking about credibility. The justice system and barristers for the defence are hugely reliant on rape myths, and the basic rape myth is that women lie about rape. There are various forms in which that can manifest: women survivors are "asking for it," or they have consensual sex, which they then regret and decide to call rape. There are all those multiple myths, and, when you are using those myths,anything can be relevant and can speak to someone's credibility.

An example I can bring in is that the fact that a complainant of rape had several dildos in her possession was deemed relevant and used as a linchpin for the defence.

Q249 **Chair:** That would have been deemed irrelevant after a hearing by the judge, I imagine.

Rebecca Hitchen: Pardon?

Chair: I assume that there was an application to the court around that, or not?

Rebecca Hitchen: There is an additional issue around section 41 applications and the use of them.

Q250 **Chair:** Yes, it is supposed to be a safeguard, isn't it?

Rebecca Hitchen: It is supposed to be. Dame Vera could probably speak to how it works out, because there was a study of it.

Q251 **Chair:** You don't think it works in practice.

Rebecca Hitchen: Exactly. When anything can be deemed relevant, it opens up everything.

Q252 **Chair:** We are trying to get a balancing act, aren't we?

Dame Vera Baird: Yes, absolutely. I saw the Criminal Bar Association—I have great respect for Angela Rafferty in particular—saying that people should not worry that their private matters will go automatically into court, because there are protections. Of course there is section 41, if it is as specific as that, and section 100, which is about bad character, isn't it?

Chair: Yes, that's right.

Dame Vera Baird: A very great deal can go in without you getting near section 100, and it does. The difficulty is that these cases do not get that far.

Q253 **Chair:** You are thinking about the discontinuance stage, earlier on. That is your bigger worry.

Dame Vera Baird: It is a huge worry, if material is disclosed. We are told by the Crown Prosecution Service too, and I guess it is almost inevitable, that the default position for a judge will be disclosure if there is nobody saying, "Here's a good reason why you shouldn't. It's my article 8 and my medical notes, and I do not see the relevance of it." If that is not represented, there is no barrier, because the judge knows that the complainant has agreed. If there is an absence of any representation to be heard in the whole discussion that follows, it is better just to reconcile sexual cases to ordinary cases and proceed where the investigation takes you, complying with the CPIA.

Q254 **Chair:** It is the Stafford statement point again.

Dame Vera Baird: That's it.

Q255 **Chair:** Ms Hitchen, do you worry that the attempt at a more nuanced approach runs the risk of prolonging the investigation? You make the fair point that people's phones have been taken away and it can be months, and it is very stressful and harrowing for them. Would it be easier for a forensic copy, as we heard about from the previous panel, to be taken and

retained, and then perhaps it could be returned? I do not know. Are there technical things that could take the stress and pressure off a complainant in such cases?

Dame Vera Baird: There is technology for that. We have only a small unit in Northumbria, but we have a sort of cubicle arrangement, where you can take someone's mobile. I cannot remember what they are called.

Jonathan Bamford: I think they call them kiosks.

Dame Vera Baird: Some sort of kiosk, yes. I have seen it in action. You can take a mobile phone and download it quite quickly, so you can return it. It is a very bad idea to remove a mobile phone from somebody who has just suffered, or says that they have suffered, a sexual attack.

Q256 **Chair:** I see that. There could be a technological solution, which would seem fair from your point of view, Ms Hitchen.

Rebecca Hitchen: Yes.

Q257 **Chair:** Never mind the issue of what is then disclosed.

Dame Vera Baird: It seems really important that there should be investment in this territory, albeit there was a very interesting question earlier about whether the investment should be in technology or people. With the technology at the moment, if a force does not have any of those kiosks or only has one, it is a very much bigger problem.

Chair: Sure, I understand that.

Rebecca Hitchen: The criminal justice system is perceived by many women, many complainants, as an extremely hostile institution. That plays out in people who decide to report withdrawing because it takes too long and is too intrusive. Any practices that can be improved, whereby people feel able to remain engaged in an extremely long system, would be an improvement.

Q258 **Bambos Charalambous:** To go back to the point you just touched on, is it your experience that some women are not coming forward at all to report rape, because they fear that their phones will be taken away from them, and people will read their text messages and look at all their images?

Rebecca Hitchen: Absolutely, particularly in the light of the high media profile that has been afforded this issue recently, and definitely historically. The disclosure issue has occurred historically. When survivors or complainants learn of the extreme level of intrusiveness into their lives, they decide that it is not worth it and it is not in their interests to remain in the system.

Q259 **Bambos Charalambous:** That deters them from coming forward to report in the first place, and, when they do report, they have the whole experience with the Stafford statement disclosing their whole life history, in essence.

Rebecca Hitchen: Absolutely, yes.

Q260 **Bambos Charalambous:** A few weeks ago, we heard from the Criminal Law Solicitors' Association, who said that the police had identified a new category of material that they "describe as sensitive, which is not sensitive but might be personal or embarrassing." How can a balance be struck there, because it is a question of degree?

Dame Vera Baird: Obviously, that is that gentleman's experience, but I did not recognise it as one that I am familiar with, although I give it full credit. I think he was saying that it is embarrassing, so they say to the complainant, "We're going to have to tell your ex about this," and she says, "Oh no, don't," and that is how it gets stopped. If you sign a Stafford statement, nobody ever asks you whether they should disclose it to your ex or not. You are not consulted at all about any of it thereafter. Since Stafford statements are pretty well endemic, I am not sure where that has come in.

Q261 **Bambos Charalambous:** Do you think it has an impact on getting a fair trial?

Dame Vera Baird: In what way?

Q262 **Bambos Charalambous:** Having to disclose all your material and having to decide what will be released—what is sensitive and what is not sensitive.

Dame Vera Baird: It has to be done in a proportionate way, in accordance with the law. The Criminal Procedure and Investigations Act sets out a very clear test, and the guidance under it sets out very clearly how it should be organised. The requirements on the police are to pursue a proportionate investigation, which points towards—andaway from, if it does—the defendant. In pursuit of that investigation, if material is found that may undermine the prosecution or assist the defence, it should be scheduled and considered by the CPS for disclosure. I do not think the association thought that there was any real need to change that framework. It is how it is being operated that is the problem, from both points of view.

Q263 **Bambos Charalambous:** But from what Ms Hitchen was saying, it is as if the victim or survivor of the rape or sexual assault is on trial as a result of the Stafford statement, and having all their information being laid bare before them.

Rebecca Hitchen: It is not solely due to the Stafford statement. The Stafford statement acts as a conduit to enable huge, wide-ranging disclosure. The sensation of being put on trial is due to the fact that survivors are aware that all their data will be combed over by multiple people and potentially raised in court. The police are unable to provide reassurance to complainants about what might or might not be used. If someone has evidence on their phone of drug use or very low-time offending, there is no reassurance that they will not be investigated on that basis. Similarly, women who may be involved in sex work will not be given

that reassurance; it is quite difficult to get reassurance that that will not be disclosed, and it typically would be.

There are incredibly high rates of withdrawal where, as stated by Dame Vera, there are specific points in people's history that they do not want revealed. For example, say there was someone who earlier in their life, while in care, had an abortion; they do not want that one piece of information disclosed in open court, but the police cannot give them any reassurance that it will not be, so they withdraw.

Dame Vera Baird: I take this as a forensic point. If there were an application to put in previous bad character of the complainant, which is a long way from what often happens anyway, the response might be, "Well, put his in as well." But we will not know whether he has forged his mum's signature on a letter to the school, because we do not look at any of it, so the complainant thinks, "There's an enormous amount of my private material here, and absolutely nothing about him." From a lay point of view, that is not a good way to enter a system that is intended to be balanced.

Rebecca Hitchen: It feels as if it is her or his credibility that is under investigation, rather than whether the offence was committed.

Bambos Charalambous: And that would be the main line of attack for the defence, because the defence would say, "This is not a credible witness. She made it up and you shouldn't believe her because of her past history."

Chair: I understand that. Do you have any other questions, Mr Charalambous?

Q264 **Bambos Charalambous:** What do you think can be done to improve the situation in relation to the police or the CPS? Are there are any other issues that might help to improve the situation?

Rebecca Hitchen: Dame Vera can speak more about resourcing and the structures and systems within the police and CPS.

It is crucial to fund the support services that exist for survivors, such as the independent sexual violence advocates who support them through the criminal justice system, and the provision of counselling and other forms of support. That is crucial. Rape Crisis services and other specialist services are experiencing chronic underfunding, and are unable to meet the current level of unprecedented demand.

Dame Vera Baird: Some research is about to be published by Professor Marianne Hester and her team in Bristol, which will show that, if an ISVA is allocated to a case, a complaint is far more likely to be sustained. Of course, absent a Stafford statement, you have a potential advocate who can at least talk to the Crown Prosecution Service. That kind of resourcing seems key.

Jonathan Bamford: From our perspective, trying to understand how all this works in practice, there is so much documentation that people have to understand and act on, ranging from the disclosure guidelines that are produced to the CPIA codes, the Attorney-General's guidelines and the police's guidelines. You can find elements there that refer to the need to be concerned about the privacy of an individual or things like that, but you have to look very hard to find those references, and it must be very hard to keep them in mind all the time when trying to act on them.

It strikes me that, in an ideal world, there would be a very clear set of guidance that brought all the various things together in one place and provided that. We should makesure that people were trained how to use it in an effective manner, and that there were effective audits to ensure that people were living up to the standards that had been set.

Q265 **Chair:** Do you think the police understand about sensitive material in this context?

Jonathan Bamford: Sometimes, when we look at these cases, we can see that they have clearly acted very quickly and done certain things that indicate to me that they have not used the discretions that are available. Whether or not they have understood them, or whether it is happenstance from being under pressure, I do not really know.

Chair: But whatever it is, it is a failing on their part.

Q266 **Mrs Kemi Badenoch:** We have heard that there is a risk of the police not investigating all lines of inquiry. Does anyone on the panel think that, to have a fair trial, the police should hand all the material they collect to the defence?

Dame Vera Baird: It may be self-evident that I do not think so. No, because that would mean giving away details about my ulcer and whatever was wrong with me when I was 21. That clearly does not work in rape cases. I have seen the proposal; it is called the keys to the warehouse proposal. In a fraud case, it might make sense, but it certainly does not in a case where that material is available. I do not think that anybody is seriously suggesting that it is appropriate in cases where there are countervailing interests.

Q267 **Mrs Kemi Badenoch:** What about in other cases?

Dame Vera Baird: To be honest, I have not thought through whether it is appropriate in other cases, but I think it has been tried in fraud. You will be familiar with Rook and Ward, which is a good book about sexual offence cases, and in which it is expressed that doing that has not contributed a great deal, but has required a huge amount of expense while not one set of people but two go through an enormous amount of material to find not a great deal of difference between them. Of course, you could say that sometimes that difference is key, but, in many cases, it has not been key.

Is there not a complaint from defence solicitors that they are not paid to look at all this material? Certainly, the police are not. Let's make no mistake about the cuts that there have been to the police. We have lost £137 million in the last five years and have lost 1,000 police officers and nearly 1,000 staff, yet at the same time there is this explosion of technological material that needs to be tackled. The police are not being funded to do that, but the defence are not either. Their legal aid stuff has not changed for many years.

Q268 **Mrs Kemi Badenoch:** Do you feel that the balance is right as it is? There are complaints and the police are not investigating all lines of inquiry, but they could not possibly do everything and cover everything to give to the defence. Are we fine where we are now?

Dame Vera Baird: Are you talking about the general case?

Q269 **Mrs Kemi Badenoch:** Any case. Just looking at disclosure and the evidence that we have heard, where some things are not being provided as evidence, where should the balance be?

Dame Vera Baird: A balance has to be struck in each case.

Q270 **Mrs Kemi Badenoch:** It is on a case-by-case basis.

Dame Vera Baird: No, because there is a framework that ought to be implemented. It is in the CPIA, in the guidance and in the plethora of protocols—a sort of infestation of protocols—which set down what should be happening. I am afraid that it is not happening, and it clearly has not happened across a whole gamut of personal injury cases,and not even in homicides and criminal damages, as I read out. It has not been happening in a proper way there, and in this quite different way it has not been happening appropriately either. There are twin mischiefs confronting us as a consequence.

Jonathan Bamford: From our point of view, we are concerned that the police in many instances turn too readily to downloading mobile phone contents, whatever the matter under investigation. Once you have that rich information, it increases the likely risk that it might be disclosed in an inappropriate manner or there might be a security breach. One of the principles around data protection is always data minimisation; if you haven't got it, you can't lose it.

Clearly, when we are talking about the right to a fair trial and investigating criminal offences, people need to make sure that they are doing a proper job. But there is now such readiness to look at mobile phone downloads to provide things, even though they might not be germane to an inquiry, that that creates its own risk.

Q271 **Mrs Kemi Badenoch:** Does anyone believe that miscarriages of justice result from the police being told, "You must believe the victim"?

Dame Vera Baird: I do not think that that is as it is being depicted in the press at all. "Believe" has a number of meanings: "I believe in Father

Christmas against all the evidence." I don't, actually, but you see what I mean. That is how belief is used, and that is not what police are asked to do.

Just as they would in my burglary, they are intended to accept and take seriously that it is correct and then investigate it. The notion that, when all common sense, rationality and their own intelligence tells them that in a burglary or a rape case this did not happen, they are being driven by a diktat from the top that says, "You believe it, you believe it, you believe it," is not real, in any sense at all.

Q272 **Mrs Kemi Badenoch:** It is not true that there is a diktat. Is that what you are saying? I am sorry; I did not quite get your last statement.

Dame Vera Baird: I said that it is not right that the police are being driven against their better judgment, their intelligence or what the investigation has shown them to say, "Whatever I've seen here, which is black, I'm being told that it's white and I've got to believe that it's white." That just does not happen.

Q273 **Mrs Kemi Badenoch:** What changes, if any, do you think should be made to ensure that complaints are taken seriously, but also that investigations do not appear prejudiced by an assumption that a complainant is telling the truth? We have seen cases where that has happened.

Dame Vera Baird: I am not sure which cases you are referring to.

Q274 **Mrs Kemi Badenoch:** The historical sex crimes one, which fell apart completely, was because of that.

Dame Vera Baird: That was where it hit the heights, but I do not think that there is any evidence that it was driven by an irrational belief in the individual who was at the root of it. There were a lot of things going on.

What has led to the use of the word "believe" in this context is the habitual practice of the police, historically, not to believe complainants in sex cases, and to doubt them. In Northumbria, only three years ago, HMIC found that one third of cases that had been no-crimed for rape had been no-crimed inappropriately. They are supposed to be no-crimed only if there is alternative, verifiable information that it is not a crime, and such material as, "He denies it and says it was consent," was used as alternative, verifiable information to discontinue cases in particular categories, where particular myths and stereotypes about rape complainants were playing on the police, as they do on all members of the public, as long as they survive.

I guess you know, as Mr Neill certainly does, that judges now have a body of directions in the judicial manual that are an attempt systematically to dispel the myths and stereotypes that are known to pervade trials against rape complainants.

Q275 **Mrs Kemi Badenoch:** Why do you call them myths? There are instances where they occur. My definition of a myth is something that does not exist in

reality at all, but the examples that Ms Hitchen gave when she talked about rape myths are things that are rare but have been known to happen. Why are they called myths?

Dame Vera Baird: What was said?

Q276 **Mrs Kemi Badenoch:** When Ms Hitchen was giving evidence earlier she talked about rape myths—for instance, when a woman says that something happened that did not happen or she withdrew consent. Those are cases and instances that have occurred, so why do we call them myths? Or is there something I am missing, which has never occurred and which is still being used as a stereotype? The definition of myth is something that does not exist, rather than something that is rare or unlikely.

Dame Vera Baird: The range of myths and stereotypes was identified; you can see them online. The process was to ask the medical director of Saint Mary's, the SARC in Manchester, Dr Fiona Mason, and three researchers who research juries in ersatz rape trials, to identify all the rape myths that played on juries, as far as they were concerned, in rape cases. Treasury counsel were then asked to draft directions for the judiciary that would dispel those.

The kind of myth is that if you have been raped you will report it straightaway; you will run straight to the nearest person and say, "This awful thing has just happened to me." Actually, the courts have known for many years that that is not what happens at all. Now the judge will say, quite rightly: "It has been put before you that she did not complain about this for 12 days, and the defendant is saying that it is for some secret reason, that it was consent and something happened to make her want to pretend that it was not. You can look at that, and you must, but these courts know that frequently women, because of guilt or shame or because they just cannot talk about it, do not report for a period of time—it is the same with men—so you should consider those two things in a balanced way."

Those are the kinds of directions that are capable of redressing the balance and excluding the assumption that, because she has not complained straightaway, it must be a lie. That is the kind of material that is in the rape manual.

Q277 **Chair:** There is a lot of training for prosecutors and advocates now around this topic.

Dame Vera Baird: Yes, there seems to be a lot of that kind of thing.

Chair: It has certainly changed since my time.

Q278 **Ruth Cadbury:** I have a question picking up from some of the evidence you gave earlier about whose decision it was, or where the decision lies, on whether information about a victim is used in court—effectively, who the gatekeeper is. Should it be a judicial decision, or should it be left up to the CPS or even the police?

Dame Vera Baird: It depends on whether there is an issue. On many occasions, if the process is gone through, and there is a reasonable investigation and it points to the need for something to be disclosed either to help the defence or to displace some proposition, it may be that you can talk very straightforwardly to the complainant and say that it is only fair that it is disclosed, and they may well agree. In that case, there is no need. In the end, if there were no agreement, the judge would have to decide whether it was disclosed or not.

Jonathan Bamford: It is very much about how much weight you put on other factors, in terms of the privacy of the individual, the value of the information and those sorts of things, so that wherever it is occurring in that flow or process, people are putting the right weight on it at the right time, to think about it and have the right information to help them make the right judgments.

Chair: Thank you very much, everyone. You have given some very full evidence on a difficult topic, as I think everybody agrees, where getting the balance right is peculiarly hard sometimes, and finding improvements to the system is not easy. I am grateful to you.