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Advance Disclosure of the Prosecution Case

An Evaluation of Two Pilot Schemes

Vera Institute of Justice

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Advance Disclosure of the Prosecution Case

In cases tried on indictment in the Crown Court the prosecution has long been required to disclose the evidence upon which it relies to the defence. Prior to 1967 this was done largely through the personal testimony of witnesses in the committal proceeding. Since the enactment of the Criminal Justice Act 1967 disclosure has primarily been made by the service of witness statements.

In 1975 the James Committee recommended a further extension of advance disclosure, particularly to either-way cases in the magistrates' courts. Noting that some defendants elected trial by jury in order to learn the case against them, the Committee suggested that providing advance disclosure prior to the mode of trial decision would both improve fairness and reduce the number of elections for trial.

Parliament responded by adopting section 48 of the Criminal Law Act 1977. This section permits the making of rules requiring the prosecutor to provide "advance information concerning all, or any prescribed class of, the facts and matters of which the prosecutor proposes to adduce evidence". A Home Office Working Party, established to study the problems of implementing this section, recommended the creation of a pilot scheme to test the methods available for implementing section 48.

Two such pilot schemes were established. The first, established in the Newcastle Division of the Northumbria Force, sought to test the feasibility of providing advance disclosure in either-way cases by the use of a summary of the evidence. The second, established by the Metropolitan Police in East London, sought to test the feasibility of providing advance disclosure in either-way cases by the use of statements. The Vera Institute of Justice was asked to assist in planning, monitoring and evaluating the pilot schemes.

The Newcastle Pilot Scheme

The Newcastle pilot scheme began on 1 November 1982 and continued through 31 October 1983. Under the scheme legally represented defendants in either-way cases received summaries of the prosecution case upon request. As the Newcastle division already produced summaries of the prosecution evidence for internal use, it had no need to institute major new procedures for producing case summaries. It sought to prevent disclosure of the name and address of witnesses, however, by devising a new form which allowed this information to be put on the back of the summary. The division also sought to improve the thoroughness and accuracy of summaries through a special training programme.

During the scheme the Newcastle division handled over 3,700 either-way cases. Defendants in 2,600 of these cases were legally represented, and thus eligible to request disclosure of the prosecution case. Over 870 of these represented defendants did so request. Thus over 30 percent of those eligible and over 20 percent of all either-way defendants sought disclosure. Requests increased from fewer than 20 percent of those eligible in the early months of the scheme to 40 percent in the later months.

Having planned the scheme carefully at the outset, the Newcastle division encountered little difficulty in supplying the summaries requested. Disclosure requests were addressed to the divisional prosecutions department and vetted by a detective inspector. As experience was gained, the vetting was largely delegated to a constable. Whilst the police retained the authority to withhold sensitive information, they found no need to do so during the pilot scheme. Similarly there were no difficulties with witness tampering or intimidation.

In order to determine the effects of the pilot scheme disposals during the scheme were compared with those for a four-month period prior to its beginning. The most valid comparison was that for the first five months of the scheme. This comparison showed that elections for trial in the Crown Court decreased from 30 to 25 percent in either-way cases, while guilty pleas in the magistrates' courts increased from 53 to 57 percent.

Other analyses confirmed these effects. There was no change in elections for trial or guilty pleas for unrepresented defendants (who were not eligible for disclosure) whilst elections for represented defendants decreased from 42 to 36 percent and guilty pleas increased from 35 to 40 percent. Either-way cases from Gateshead, a division of the Northumbria force which was not part of the pilot scheme, also showed a sharply different pattern of disposals. Elections for trial went up in Gateshead while declining in Newcastle.

The views of the more active defence solicitors in Newcastle also suggest the same conclusion. When asked to describe the effects of the pilot scheme, they said that it had not greatly altered disposal patterns but that it had decreased the number of elections for trial and increased guilty pleas.

Taken together these analyses provide a strong indication that the decrease in elections for trial and the increase in guilty pleas was caused by the introduction of advance disclosure. The pilot scheme also appears to have had a positive effect on waiting times. Whilst the time to disposal in the magistrates' court was essentially unchanged, the decrease in the number of elections for trial resulted in a decline in overall waiting times.

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In order to determine the long-term effects of advance disclosure the more active defence solicitors were asked why they requested disclosure in some cases and not in others. One group of solicitors said they always requested disclosure because it was difficult to evaluate the case purely from what the accused said. Other solicitors took a much more focused approach, requesting disclosure only for cases in which they were unclear as to whether to elect a jury trial or not.

Both groups of solicitors indicated that the one-page summary provided by the police was somewhat uneven in quality and that it occasionally overstated the prosecution case. The general view, however, was that the summaries were well done and very helpful. The solicitors nonetheless indicated that if it were possible to have statements instead of summaries, they would prefer statements.

Aside from the research and evaluation costs associated with the pilot scheme, the principal costs incurred by the Newcastle division were the training at the outset of the scheme and the cost of vetting and responding to disclosure requests. The cost of vetting and responding to disclosure requests declined as the division became more familiar with disclosure and by the end of the scheme had dropped to no more than £2 per disclosure.

As the cost of a guilty plea in the Crown Court is three to four times that of a guilty plea in the magistrates' court, the scheme resulted in considerable savings to police, courts, the legal aid fund and other agencies. Police and prosecution savings alone--in reduced appearances and case preparation--were more than ten times the cost of vetting and responding to disclosure requests.

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The Metropolitan Police Pilot Scheme

The Metropolitan Police pilot scheme was designed to test the use of witness statements as a method for providing advance disclosure. Conducted on H District in East London in the area served by the Thames Magistrates' Court, the scheme began on 1 August 1983 and continued through 31 July 1984. Under the scheme defendants charged with either-way offences were given a notice indicating that disclosure would be provided upon request. In order not to discourage early guilty pleas notices were not given to defendants whose cases were disposed of at first appearance in court. Road traffic offences were also excluded because they are administered differently from crime cases. To help prevent an increase in waiting times as a result of the scheme, the period of police bail for either-way cases was reduced from 21 to 7 days. Officers were also instructed to prepare witness statements in all either-way cases going past first appearance. In addition to the disclosure to be made upon request prior to the mode of trial decision the pilot scheme provided for automatic disclosure to defendants who elected a contested summary hearing in the magistrates' court.

During the period of the scheme H Division handled approximately 3,100 either-way cases. Over 2,000 of these cases proceeded past first appearance and were thus eligible for disclosure. Disclosure was requested in 151 cases. Thus 7 percent of those eligible for disclosure and 5 percent of all either-way defendants sought disclosure. This percentage increased from 4 percent of those eligible in the early months of the scheme to 14 percent in the final month.

Police stations encountered few difficulties in providing disclosure under the scheme. The methods for doing this, however, varied from station

station and time to time. Initially two of the three H District stations directed that officers prepare statements immediately in all either-way cases, whilst the third station required preparation only for those cases going past first appearance. Initially also the detective chief inspectors reviewed each set of statements prepared so that the statements could be speedily disclosed if requested.

It soon became apparent, however, that statements were being prepared and vetted in many more cases than disclosure was being requested, and detective chief inspectors soon began to cut back on the number of reviews undertaken. Initially they cut back to reviewing only those cases going past first appearance. Later they began to review only those cases in which requests for disclosure were received. Gradually also the task of vetting the files was delegated--first to the detective inspector and later to other staff. The instruction requiring officers to prepare statements immediately was never rescinded but gradually the practice changed so that statements were generally prepared only when a request for disclosure was received. As in the Newcastle scheme the police retained the authority to withhold sensitive information but did not have to use this authority. Similarly there were no problems of witness intimidation or tampering.

In order to determine the effects of the pilot scheme disposals for two three-month periods during the scheme (September-November and January-March) were compared with those for the same two periods in the year prior to the scheme. This comparison showed that cases in which no evidence was offered increased from 3 to 8 percent during the scheme and guilty pleas from 57 to 58 percent. Summary contests declined from 14 to 10 percent while committals for trial declined from 24 to 22 percent.

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A separate analysis of cases going past first appearance and thus eligible for disclosure indicated that virtually all the change in guilty pleas, summary contests and committals was in cases going past first appearance. Guilty pleas for this group increased from 37 to 41 percent, while summary contests decreased from 24 to 15 percent and committals from 36 to 34 percent. The increase in cases with no evidence offered, however, occurred both in cases disposed at first appearance and in cases going past first appearance.

As in the Newcastle pilot scheme the views of the defence solicitors tended to confirm the statistical findings. When asked about the effects of the pilot scheme, the more active solicitors indicated that the scheme had had no great effect on either committals or guilty pleas. Most, however, said that it had led to some decrease in committals and some increase in guilty pleas. Defence solicitors also indicated that in a few instances disclosure had led them to contest cases that they would not otherwise have contested.

As might have been expected from the small number of requests for disclosure received during the scheme, the analyses available do not indicate any large effect on case outcomes. The pilot scheme has probably resulted in some decrease in summary contests and possibly slight changes in committals and guilty pleas. It is less clear whether the pilot scheme is responsible for the increase in cases with no evidence offered. In the early months of the scheme detective chief inspectors reported a number of instances in which the additional vetting created by the pilot scheme had resulted in the withdrawal of charges. The number of such instances reported, however, was too small to account for the increase shown in the analysis.

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Waiting times in the magistrates' court increased slightly during the pilot scheme (from 57 to 64 days for committals and 33 to 35 days for other cases). Because of the time required for final disposal no reliable information is available concerning Crown Court waiting times.

As in the Newcastle scheme defence solicitors were asked why they requested disclosure in some cases and not in others. The solicitors with the most active practices in the Thames Magistrates' Court indicated that they generally requested disclosure in cases in which they were uncertain about the desirability of electing for a jury trial. A number said that because there was already a great deal of informal disclosure at the Thames Magistrates' Court there was generally no need to request formal disclosure in cases in which the defendant was planning to plead guilty in the magistrates' court. Solicitors with active criminal law practices spread over many different courts said that they had heard of the scheme but that they requested disclosure only occasionally. Solicitors on the duty solicitor rota but who rarely appeared in the Thames Magistrates' Court also said that they knew of the scheme but that they had never used it.

The principal costs incurred in the scheme were those involved in taking statements that would not otherwise have been taken and in typing, photocopying, vetting and transmitting these statements. These costs varied considerably from station to station and time to time.

It is particularly difficult to estimate the extent to which statements would have been required in the request cases in the absence of the pilot scheme. It seems likely, however, that statements would have been required in at least 60 percent of the cases going past first appearance, as 36 percent of these cases in the pre-scheme period ended in committal and 24 percent ended in a summary contest.

Based on an average of 8 pages per case the cost of preparing, typing and vetting statements can be estimated at more than £70 per case. Two thirds of this cost is incurred in entering the particulars in the officer's notebook in the first instance, however, and is a cost whether statements are prepared or not. The incremental cost of preparing statements is therefore approximately £25 per case. As statements are already prepared for other reasons in 60 percent or more of the disclosure cases, the incremental cost of disclosure can be estimated at approximately £15 per disclosure.

The principal savings from the pilot scheme come from the decrease in summary contests. As each such contest which becomes a guilty plea saves at least £100 on average, this decrease results in considerable savings to the police, the prosecution, the courts and the legal aid fund. These savings may amount to more than £70 per disclosure.

Summary and Conclusions

1. The pilot schemes indicate that it is feasible to provide advance disclosure of the prosecution case either by summaries of the evidence or witness statements without great administrative difficulty. The pilot schemes also indicate that careful planning is an important aspect of successful implementation.
2. No problems of witness intimidation or other improper use of information disclosed were reported in the pilot schemes.
3. The pilot schemes suggest that defence solicitors will request advance disclosure most frequently when the defence is in doubt as to whether the case should be heard in the Crown Court and that requests for disclosure can be expected to range from 5 to 25 percent of either-way cases. National figures will probably tend toward the higher end of this range.

4. As projected by the James Committee, the pilot schemes appear to have had practical benefits in the operation of the criminal justice system. They appear to have increased guilty pleas and decreased elections for trial. They may also have reduced the number of contested hearings in the magistrates' courts and encouraged the early analysis of the evidence available for the prosecution.
5. The out-of-pocket cost of providing disclosure in the pilot schemes was £2 per disclosure by summary and £15 per disclosure by witness statements. Disclosure costs have tended to decrease as the police have become more familiar with the disclosure procedure.
6. As the cost of proceedings in the Crown Court far exceeds that in the magistrates' courts and as the cost of contested hearings in the magistrates' courts exceeds that for guilty pleas, the pilot schemes have also produced savings in police, prosecution, court and legal aid costs. Taken together these savings exceed the out-of-pocket costs of providing disclosure. Taken by themselves police and prosecution savings alone also appear to exceed the out-of-pocket costs of providing disclosure.
7. The method and cost of providing disclosure may be affected by other developments such as the creation of an independent prosecution service and tape recording. If the creation of an independent prosecution service results in the preparation of a full file of statements in more cases, disclosure by witness statements will obviously be easier and cheaper than at present. As statements relating to interrogation of the defendant now make up a substantial part of statements that are disclosed, tape recording can also be expected to affect the method and cost of disclosure.

Disclosure of the Prosecution Case

Pilot Schemes

	<u>Northumbria Police</u>	<u>Metropolitan Police</u>
Area affected	Newcastle Division	H District (Thames Magistrates' Court)
Method of disclosure	Summary	Statements
Offences covered	Either-Way arrest cases	Either-Way arrest cases except motoring
Suspects covered	Adults	Adults and juveniles charged with adults
Stage of proceedings	Applies to all	Applies only to cases going beyond first appearance
Prerresentation required	Yes	No
Request required	Yes	Yes, but disclosure is automatic for summary contest cases
Exceptions to disclosure	Witness names and at discretion of officer other information	Attorney General' Guidelines paragraph 6; other cases considered unsuitable by supervising officer
Date of scheme	1/11/82 - 31/10/83	1/8/83 - 31/7/84
Percent disclosures requested	23% of all either-way cases 32% of represented cases	5% of all either-way cases 7% of cases going past first appearance
Effect on:		
Elections for trial	6% decrease*	2% decrease*
Guilty pleas	5% increase*	4% increase*
Contested Hearings	No change*	7% decrease*

* Based on cases eligible for disclosure

T A B L E 1

Requests for Disclosure - By Month

Adult Either-Way Cases

Newcastle Pilot Disclosure Scheme

	<u>Number of Cases</u>	<u>Percent of Represented Either-Way Cases</u>	<u>Percent of All Either- Cases</u>
November	49	18	14
December	40	20	13
January	59	26	18
February	51	24	17
March	63	26	18
April	89	44	32
May	91	39	28
June	102	45	34
July	110	44	34
August	76	38	30
September	82	39	30
October	68	34	25
Total	880	32	23
Number of cases	(880)	(282)	(202)

T A B L E 2

Method of Disposal in Magistrates' Court

Adult Either-Way Cases

Newcastle Pilot Disclosure Scheme

(In percent of disposals)

<u>Method of Disposal</u>	<u>Pre-Scheme</u> (Defendants arrested between 1 July and 31 October 1982)	<u>Scheme</u> (Defendants arrested between 1 Nov. 1982 and 31 March 1983)
Evidence withdrawn	4%	4%
Guilty plea	53%	57%
Contested summary trial		
- Acquitted	1%	3%
- Convicted	3%	3%
Elect jury trial	30%	25%
Prosecution/court committal	10%	9%
Total	100%	100%
Number	(1320)	(1646)

T A B L E 3

Newcastle Pilot Disclosure Scheme
Method of Disposal in Magistrates' Court
Adult Either-Way Cases
(In percent of disposals)

<u>Method of Disposal</u>	<u>Pre-Scheme</u> (Defendants arrested between 1 July and 31 October 1982)		<u>Scheme</u> (Defendants arrested between 1 Nov. 1982 and 31 March 1983)	
	<u>Unrepresented</u>	<u>Represented</u>	<u>Unrepresented</u>	<u>Represented</u>
Evidence withdrawn	2%	5%	2%	5%
Guilty plea	93%	35%	94%	40%
Contested summary trial				
- Acquitted	.3%	2%	.2%	2%
- Convicted	1%	4%	1%	4%
Elect jury trial	2%	42%	2%	36%
Prosecution/court committal	2%	13%	1%	13%
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Total	100%	100%	100%	100%
Number	(399)	(921)	(516)	(1129)

T A B L E 4

Method of Disposal in Gateshead Magistrates' Court

Adult Either-Way Cases

(In percent of disposals)

<u>Method of Disposal</u>	<u>Pre-Scheme</u> (Defendants arrested between 1 July and 31 October 1982)	<u>Scheme</u> (Defendants arrested between 1 Nov. 1982 and 31 March 1983)
Evidence withdrawn	6%	6%
Guilty plea	56%	62%
Contested summary trial		
- Acquitted	4%	1%
- Convicted	8%	5%
Elect jury trial	18%	19%
Prosecution/court committal	9%	7%
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Total	100%	100%
Number	(438)	(424)

T A B L E 5

Method of Disposal in Gateshead Magistrates' Court

Adult Either-Way Cases
(In percent of disposals)

<u>Method of Disposal</u>	<u>Pre-Scheme</u> (Defendants arrested between 1 July and 31 October 1982)		<u>Scheme</u> (Defendants arrested between 1 Nov. 1982 and 31 March 1983)	
	<u>Unrepresented</u>	<u>Represented</u>	<u>Unrepresented</u>	<u>Represented</u>
Evidence withdrawn	3%	7%	5%	7%
Guilty plea	95%	40%	90%	51%
Contested summary trial				
- Acquitted	-	5%	1%	2%
- Convicted	-	11%	1%	6%
Elect jury trial	1%	24%	3%	26%
Prosecution/court committal	2%	12%	-	9%
	100%	100%	100%	100%
Total	100%	100%	100%	100%
Number	(127)	(311)	(120)	(304)

T A B L E 6

Disposals in Crown Court
Committed Adult Either-Way Cases
Newcastle Pilot Disclosure Scheme
(In percent of disposals)

<u>Method of Disposal</u>	<u>Pre-Scheme</u>	<u>Scheme</u>
Evidence withdrawn	.4	.3
Guilty plea	88	90
Trial		
- Acquittal	5	3
- Conviction	5	4
To lie on file	2	2
Other	.2	-
Total	100	100
Number	(518)	(336)

T A B L E 7

Results of Disclosure in Magistrate's Court

Represented Adult Either-Way Cases

Newcastle Pilot Disclosure Scheme

(In percent of disposals)

<u>Method of Disposal</u>	<u>Disclosure Requested</u>	<u>No Formal Disclosure</u>	<u>All Represented Cases</u>
Evidence withdrawn	6%	5	5
Guilty plea	37%	41	40
Contested summary trial			
- Acquitted	2%	2	2
- Convicted	5%	4	4
Elect jury trial	40%	35	36
Prosecution/court committal	10%	13	13
Total	100%	100	100
Number	(260)	(869)	(1129)

T A B L E 8

Waiting Periods

Newcastle Pilot Disclosure Scheme

<u>Type of Case</u>	<u>Pre-Scheme</u>	<u>Scheme</u>
<u>Disposal in Magistrate's Court</u> (Including Committals)		
Median number of appearances	3	3
Median time to disposal	46-60 days	46-60 days
 <u>Disposal in Crown Court</u>		
Median number of appearances	4	4
First appearance to disposal	136-150 days	106-120 days
Committal to disposal	91-105 days	91-105 days

T A B L E 9

Offence Profile

Newcastle Pilot Disclosure Scheme

(In percent of disposals)

<u>Offence</u>	<u>Pre-Scheme</u>	<u>Scheme</u>
Assault	9	8
Burglary	18	15
Shoplifting	24	29
Theft from vehicle	5	5
Taking and Driving Away	9	9
Other theft	14	15
Handling	4	3
Fraud, forgery	5	5
Criminal damage	6	7
Sexual offences	1	1
Other	<u>6</u>	<u>3</u>
Total	100	100
Number of cases	(1319)	(1645)

T A B L E 10

Requests for Disclosure

Adult Either-Way Cases

Metropolitan Police Pilot Disclosure Scheme

<u>Time Period</u>	<u>By Station</u>				<u>Total</u>
	<u>Bethnal Green</u>	<u>Leman Street</u>	<u>Limehouse</u>	<u>Solicitors Branch</u>	
20 September	3	2	2	-	7
20 November	2	9	11	-	22
19 January	3	17	4	3	27
20 March	7	5	18	4	34
30 June	13	8	7	10	38
31 July	7	5	7	4	23
Total	35	46	49	21	151

Requests as Percentage of Either-Way Cases

<u>Time Period</u>	<u>All Either-Way Cases</u>	<u>Either-Way Cases Going Past First Appearance</u>
20 September	2%	3%
20 November	4%	6%
19 January	5%	11%
20 March	7%	10%
30 June	4%	6%
31 July	9%	14%
Overall	5%	7%
Number of cases	(3,100)	(2,066)

T A B L E 11

Method of Disposal in Magistrates' Court

Adult Either-Way Cases

Metropolitan Police Pilot Disclosure Scheme

(In percent of disposals)

<u>Method of Disposal</u>	<u>Pre-Scheme</u> (Defendants charged during Sept.-Nov.1982 and Jan.-March 1983)	<u>Scheme</u> (Defendants charged during Sept.-Nov.1983 and Jan.-March 1984)
Evidence withdrawn	3%	8%
Guilty plea	57%	58%
Contested summary trial		
- Acquitted	5%	4%
- Convicted	9%	6%
Committal	24%	22%
Other	2%	1%
Total	100%	100%
Number	(1380)	(1468)
Failure to appear	(107)	(91)
Total number	(1487)	(1559)

T A B L E 12

Metropolitan Police Pilot Disclosure Scheme

Method of Disposal in Magistrates' Court

Adult Either-Way Cases

(In percent of disposals)

<u>Method of Disposal</u>	<u>Pre-Scheme</u> (Defendants charged during Sept.-Nov.1982 and Jan.-March 1983)		<u>Scheme</u> (Defendants charged During Sept.-Nov.1983 and Jan.-March 1984)	
	<u>First Appearance</u>	<u>Later Appearances</u>	<u>First Appearance</u>	<u>Later Appearance</u>
Evidence withdrawn	2%	4%	5%	10%
Guilty plea	94%	37%	92%	41%
Contested summary trial				
- Acquitted	1%	7%	-	6%
- Convicted	-	15%	-	9%
Committals	-	36%	-	34%
Other	3%	1%	4%	03%
Total	100%	100%	100%	100%
Number	(467)	(928)	(501)	(965)
Failure to appear	(45)	(62)	(25)	(66)
Total number	(512)	(990)	(526)	(1031)

T A B L E 13

Waiting Periods

Metropolitan Police Pilot Disclosure Scheme

<u>Type of Case</u>	<u>Pre-Scheme</u>	<u>Scheme</u>
<u>Disposal in Magistrates' Court</u>		
Average number of appearances	2.0	2.1
First appearance to disposition	33 days	35 days
<u>Disposal in Crown Court</u>		
Average number of appearances	3.3	3.6
First appearance to committal	57 days	64 days
Committal to disposal	207 days	Not available

T A B L E 14

Offence Profile

Metropolitan Police Pilot Disclosure Scheme

(In percent of disposals)

<u>Offence</u>	<u>Pre-Scheme</u>	<u>Scheme</u>
Assault	11%	8%
Sexual offences	1%	-
Burglary	13%	15%
Auto theft	13%	11%
Other theft	36%	38%
Offensive weapon	6%	6%
Criminal Damage	10%	10%
Drugs	8%	10%
Other	2%	2%
Total	100%	100%
Number	(1468)	(1550)