

# DISCLOSURE OF INFORMATION BETWEEN FAMILY AND CRIMINAL AGENCIES AND JURISDICTIONS: 2024 PROTOCOL

## Parties

The judiciary, local authorities, police representatives, the National Police Chiefs' Council and Crown Prosecution Service have, through joint working and consultation, developed this protocol which is to be applied from 1 March 2024 onwards.

## Scope

This protocol replaces the 2013 Protocol and Good Practice Model – Disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings (October 2013) and applies to the exchange of information and material between criminal and family agencies and jurisdictions. It relates to all private and public family law proceedings, including contemplated public law proceedings, and all material held by the police. It will be reviewed by a working group comprising the judiciary, local authorities, police and CPS based, on the experience of its implementation, in 2025.

## Contents

This protocol is in three parts:

Part A: disclosure from the police to family proceedings	page 5 to 6
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## Key commitments

This protocol introduces the following Annexes:

Annex 1: the form to be used for **applications for police material** by local authorities and solicitors, other than by litigants in person

Annex 2: guidance notes for completing Annex 1 within private law proceedings

Annex 3: guidance notes for local authorities for completing Annex 1 in contemplated and ongoing public law proceedings

Annex 4: a checklist for the judiciary when considering disclosure required from the police

Annex 5: the standard order to be sought from the court **for police material**, for litigants in person and solicitors involved in private law proceedings

Annex 6: the form to be used for **applications made by the police for material**

The parties to this protocol commit to the following, in order to meet the aims and objectives of this protocol:

- the mandatory use of the annexed forms and following of the annexed guidance
- responses to requests for information or material will be provided as soon as reasonably practicable.

Nothing in this protocol impacts upon the processes and procedures for safeguarding partners to share information for the specific purpose of safeguarding children or vulnerable adults at risk of harm. Partners must continue to follow their local arrangements and national guidance where information and material is shared for this purpose<sup>1</sup>.

## Aims and Objectives

This protocol is intended to:

- provide a consistent approach to information sharing nationally in order to safeguard and promote the welfare of children and other vulnerable adults
- promote timely, focused and proportionate requests for material and responses

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<sup>1</sup> [Working together to safeguard children - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/working-together-to-safeguard-children) and [Information sharing advice for safeguarding practitioners - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/information-sharing-advice-for-safeguarding-practitioners)

- recognise the importance to all parties of having relevant information and material in order to discharge their official functions, including the safeguarding functions of the police and local authorities as well as the fair trial disclosure obligations of the police and CPS
- reduce the need for hearings, witness summonses, urgent applications and Public Interest Immunity hearings to those which are strictly necessary.

This protocol distinguishes between requests for information (in order to inform a request for material, or for an update about a case) and requests for material to be made using Annexes 1 and 5.

## Key terms

- Safeguarding Partners: the local authority and chief officer, through their delegated officers, of the police within a local authority area.<sup>2</sup>
- Third Party: a person or organisation who is neither (a) an investigator or prosecutor nor (b) a suspect or defendant in a criminal investigation.
- Disclosure test (in criminal proceedings): material which reasonably could be considered capable of undermining the prosecution case or assisting the defence case<sup>3</sup>. A prosecutor is under a duty to consider the schedules of relevant material revealed to them by the investigator and to provide to the defence material which meets this test.
- Sensitive material (in criminal proceedings): disclosure which, if made, would give rise to a real risk of serious prejudice to an important public interest<sup>4</sup>. This material is recorded on a separate schedule for the information of the investigator and prosecutor only.
- Investigator: any police officer, civilian investigator or other police staff involved in the conduct of a criminal investigation.
- Prosecutor: the Crown Prosecutor responsible for the conduct of criminal proceedings resulting from a specific criminal investigation.

## Governance

Local arrangements, overseen by local safeguarding partners, must address:

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<sup>2</sup> As defined by Section 10, 11 and 16E Children Act 2004 which requires safeguarding partners to make arrangements to work together to safeguard and promote the welfare of children in their area

<sup>3</sup> Section 3 and 7A Criminal Procedure and Investigations Act 1996 (CPIA 1996) as amended

<sup>4</sup> Code of Practice issued pursuant to CPIA 1996

- the identification of Single Points of Contact from relevant partner agencies
- the timescales for responding to requests and providing disclosure
- the method by which material is provided
- any template, if necessary, for a Part A or B Request for Information (see below)
- how local authorities notify the police, and vice-versa, at the outset of a case: both are responsible for considering at the outset of their own case whether the other might have material, but the notification process is a further check to ensure early identification
- the process for the appropriate recovery of the costs of the disclosure of information
- the process for obtaining a transcript of proceedings, and paying for it, where necessary
- oversight of the protocol, both individual cases which show best practice or from which learning should be taken, and proposals for improvement to the protocol or its annexes.

To ensure that this information is accessible these local arrangements will be collated and published.

## Part A: disclosure from the police to family proceedings

- 1.1 The parties must put in place local arrangements to use the form at Annex 1 and to follow the guidance at Annexes 2 to 5.
- 1.2 Local authorities must first review any police information and material already in their possession<sup>5</sup> as standard practice **before** making any requests to the police for information and material.
- 1.3 At the outset of contemplated public law proceedings, where the local authority representative believes that there will be police material relevant to the central issues in the case, they must notify the police of the existence of contemplated proceedings/ongoing proceedings and seek relevant material by submitting the form at Annex 1 to the police. It is essential that the police are informed of relevant dates and timetables at this stage using the form and, if there are material updates, subsequently.
- 1.4 Because of the safeguarding urgency of public law proceedings, in these cases, the police will respond by providing disclosure as a general rule within 20 business days, unless an alternative timescale is negotiated and approved by the court.
- 1.5 If it becomes apparent that the police are unable to provide the requested material within 20 business days, they shall notify the applicant as soon as practicable and confirm the realistic and likely timescales for disclosure of the material. This may be further addressed by local arrangements.
- 1.6 In private law proceedings, representatives must complete the Annex 1 when instructed to do so by the court. All Annex 1 applications must be submitted to police with a copy of the Annex 5. Without this, applications for disclosure will be rejected. The police will respond by providing disclosure as soon as reasonably practicable.
- 1.7 A request for information from a criminal court about a case, including information contained in materials kept by the court officer for the purposes of the case, may be made pursuant to Criminal Procedure Rule 5.8 and is governed by [Rule 5](#) in general.

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<sup>5</sup> For example, Police incident referrals / MERLIN reports, Domestic Abuse History Reports, Child Protection Case Conference (CPCC) or Multi Agency Risk Assessment Conference (MARAC) report

1.8 Information about an investigation or, once charged, a prosecution may be sought in writing from the police or CPS respectively: the police should provide information about the investigation, the CPS about charge and prosecution. This is called a “Part A Request for Information”. The police or CPS must provide all such information as they are able to provide, promptly. There is no prescribed form because the information sought, and the information the requestor is able to provide, varies. A Part A Request is outside the scope of Annex 1. Information provided in response to a Part A Request may, however, inform a request made pursuant to Annex 1. Examples of a Part A Request might be a request for the date when the police intend to interview a witness, the date of a hearing or the dates of other procedural steps in a prosecution. However, it remains imperative that any Part A Request for Information is focussed and is limited to information that is relevant. A formal response to a Part A Request for Information can assist the local authority or court to understand progress with the investigation, avoiding unnecessary attendance at court by an officer given the formal provision of information by this route.

1.9 Any request for police disclosure in Family Proceedings by litigants in person should be made through the Family Procedure Rules Form C2 procedure. The applicant must ask the court to make an order, setting out what is sought using the template at Annex 5 as a basis. Requests for disclosure must be specific to the issues the Court needs to determine. Requests must be focused and explain clearly what is sought and why. Wide and unfocused requests are likely to be challenged and/or rejected by the police. Such requests will require an applicant to undertake to pay the reasonable costs of the police in providing disclosure and that material disclosed will be used for the purposes of the Family Court proceedings only, and will be held securely at all times. Once made, an order must be promptly served on the relevant police disclosure unit accompanied by: details of the parties/court for service of disclosure; details of the party responsible for paying police costs; an undertaking signed by any party who is to be given access to audio/digital evidence.

## Part B: disclosure sought by an investigator

- 2.1 The parties must put in place local arrangements to use the form at Annex 6. Frequently Asked Questions guidance, for officers and for individuals, is available in support of the use of Annex 6.
- 2.2 Nothing in this section impacts upon the separate processes and procedures for sharing information, and restrictions on its dissemination, for the purpose of child protection.
- 2.3 An investigator may seek information about family proceedings from a local authority in writing. This is called a “Part B Request for Information”. The local authority must provide all such information as it is able to provide, promptly. There is no prescribed form because the information sought, and the information the requestor is able to provide, varies. A Part B Request is outside the scope of Annex 6. Information provided in response to a Part B Request may, however, inform a request made pursuant to Annex 6. Examples of a Part B Request might be a request to understand whether the local authority intends to obtain certain material, the date of a hearing or the dates of other procedural steps in family proceedings. However, it remains imperative that any Part B Request for Information is focussed and is limited to information that is relevant. A local authority may use a Part B Request for Information to ensure they understand how material which has been provided has been used at the current stage the criminal investigation or prosecution has reached.
- 2.4 The responsibilities of an investigator in respect of material which may be held by a third party are set out in the [Attorney General’s Guidelines on Disclosure 2022](#)<sup>6</sup>. An investigator will seek material from a third party if it is relevant to an issue in the case, constitutes a reasonable line of enquiry to obtain it, and it is necessary and proportionate to do so, and make the request in accordance with the 2022 Guidelines. The request must be made prior to the decision to charge so that the product of any such request will form part of the material submitted for the charging decision. The charging decision must be taken only when all outstanding reasonable lines of inquiry have been pursued<sup>7</sup>. Occasionally the existence of relevant material comes to light after a charging decision has been made, or an urgent

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<sup>6</sup> See in particular paragraphs 42 to 45, 28 to 34 and 11 to 13

<sup>7</sup> Paragraph 4.3 Code for Crown Prosecutors – unless the prosecutor is satisfied the further material is unlikely to affect the charging decision – in the context of this Protocol, that is likely to be rare

charging decision is required. The investigator, with assistance where appropriate from the prosecutor, will still seek the material following the same principles<sup>8</sup>.

2.5 The investigator's responsibility to follow all reasonable lines of enquiry, including seeking material from a third party, is a key factor in securing the defendant's right to a fair trial. The investigator will first reveal the existence of relevant material to the prosecutor on a schedule of relevant non-sensitive material or, if the material is sensitive (see above for definition), on a schedule of relevant sensitive material. The schedule of relevant non-sensitive material is provided to the defence; the schedule of relevant sensitive material (by its nature) is not. The prosecutor must decide what material, if any, meets the disclosure test (see above for definition) and provide that material to the defendant. When seeking material from a third party, the investigator will therefore expect to reveal its existence if relevant to the prosecutor and defendant, unless in relation to the latter it is sensitive. The investigator must not be put in a position where they are unable to reveal the existence of, or provide, relevant material to the CPS. Nor should the investigator be put in a position of being unable to reveal the existence of material to the defence unless it is, in fact, sensitive.

2.6 A third party may give handling instructions on the form at Annex 6. Material provided by third parties will not automatically be deemed to be sensitive for the reasons set out above. The investigator and prosecutor will abide by the handling instructions. It will only be in the most exceptional circumstances, and where there is an urgent and compelling reason to do so<sup>9</sup>, that material will be disclosed other than in accordance with the handling instructions. The handling instructions may address, for example, why the material should not be disseminated beyond the CPS with the reasons as to why it is sensitive material, or whether (further) redaction is needed in the event of disclosure.

2.7 Where a third party asserts that material which is being sought is sensitive, the following is important:

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<sup>8</sup> Post-charge the level of involvement of the CPS may be greater, e.g. the last resort of the Criminal Procedure (Attendance of Witnesses) Act 1965, but the role of the investigator remains the same. The investigator leads on obtaining unused material. The CPS lead on making disclosure.

<sup>9</sup> As this concerns the disclosure test, the reason is likely to be an urgent and affect the right to a fair trial



- the investigator, and prosecutor, may need to establish (a) why the assertion of sensitivity is made and (b) whether the material is itself sensitive, and whether any steps can be taken to allay those concerns – sometimes material is said to be sensitive when on further analysis it is not (or need not be)
- only material which meets the disclosure test must be provided to the defence – the prosecutor must carefully apply this test to all material
- it may be possible to make disclosure of material which meets this test without compromising its sensitivity – for instance, by redacting the document where the redacted sections do not constitute disclosable material, or providing a form of words which conveys what is disclosable about the document without providing the document itself
- in circumstances where (i) the material is genuinely sensitive, (ii) the disclosure test is met and (iii) disclosure cannot be made without compromising its sensitivity, the prosecution may either decide not to proceed with the case, or to seek a public interest immunity ruling. This includes where the disclosure of the material would be contrary to the handling instructions in the response to the request for disclosure. [Rule 15.3](#) of the Criminal Procedure Rules 2020 set out the relevant procedure, including service on those affected by disclosure of the material, where a prosecutor seeks such a ruling. Rigorous and careful application of the tests for sensitivity and for disclosing material to the defence mean that such applications ought only to be required in very rare cases.

## **Police access to family proceedings information and material**

2.8 [Practice Direction 12G](#) Family Procedure Rules makes provision for a party to proceedings to provide to the police and the CPS the text or a summary of the whole or part of a judgment given in the proceedings, for the purpose of a criminal investigation and to enable the CPS to discharge its functions under any enactment respectively. In order to make a focused and proportionate request for material, the police may seek from a local authority or other party to proceedings the written judgment, if prepared by the judge, a note of the judgment taken by a party at court (with their permission and approved by the judge), or a transcript if this has been ordered. A local authority must provide one or more of these upon request, having determined what is available and what can be provided. Local arrangements must address how this is obtained and who will pay.

- 2.9 A Family Court judge who gives a judgment which they consider should be brought to the attention of the police may make directions for their written judgment, or an agreed note prepared by the advocates, to be sent to the police. This may be for the purposes of criminal investigation (under the Practice Direction) or for safeguarding or both.
- 2.10 Where a local authority is a party to proceedings, it must also provide a list (e.g. by providing a copy of redacted court index) of material within the family proceedings papers to the police, without describing the specific content. The local authority must where possible and on the basis of the information provided by the police highlight the documents on the index which are likely to be relevant to the criminal proceedings and for which an application for disclosure might be made.
- 2.11 If, following receipt of a Family Court judgment (in whatever form) and/or the list of material, the police seek further information or material they will do so by completing the request form at Annex 6, to explain what is sought, and why. Where proceedings are live a local authority must assist by establishing or assisting the police to establish whether the parties consent to the provision of the material. Form C2 must then be completed by the police. The local authority must assist by providing the police with the information needed to complete form C2 (such as the court hearing the case, the case number, allocated judge and details of the parties including representatives where relevant). The police will avoid duplication by providing the bulk of the application in Annex 6 and with sufficient additional information in form C2. If the material can be provided with the consent of the parties, a hearing may be unnecessary and a consent order can be uploaded with form C2. The local authority must upload the application forms for the police to the Portal, or enable access for the police to be able to do so. The Family Court material is provided to the police for further dissemination, as permitted by law, to the CPS, defence and court and the court order should make this clear.
- 2.12 As a matter of routine, in appropriate cases where there is a linked criminal investigation or prosecution, the police must with sufficient notice be provided by the local authority with dates for hearings and appropriate Orders made by the Family Court, suitably redacted, as necessary.

## Police access to local authority information and material

### Voluntary Disclosure by a third party to the police

- 2.13 If the police believe that a third party holds material that may be relevant to the investigation, that third party must be told of the investigation as soon as possible and alerted to the need to preserve relevant material. There is no legal obligation on the third party to do so but this protocol affirms this is best practice. When requesting material using the Annex 6 form it is critical that full information about the dates and urgency are provided. A local authority must communicate with the police if the timescales are unlikely to be met. Local authorities may refuse to provide disclosure where the Annex 6 form is not completed properly and with sufficient detail. If a local authority refuses to accept a request form, it must set out clearly in writing what additional information it requires to be able to accept the request.
- 2.14 The police must inform local authorities as soon as possible of any decision to take no further action in a case where a request for material has already been made. This is to avoid public resources being used to consider material which is no longer required.
- 2.15 **Consent is not required by law for disclosure to be made.** The local authority must consider the appropriate lawful basis and conditions for sharing material with the police on the circumstances and merit of each individual request in line with the UK GDPR and Data Protection Act 2018 (including redaction where necessary). The form nonetheless includes the views of the individual concerned, unless there is a justified reason not to ascertain the individuals' views (for example to do so would prejudice the police investigation or place others at risk of harm). Any views expressed must be taken into account but are not binding.
- 2.16 A local authority will not provide material which has been requested in Annex 6 but which relates to proceedings involving children under the inherent jurisdiction of the High Court, Children Act 1989, Adoption and Children Act 2002 or which otherwise wholly or mainly relate to the maintenance and upbringing of children<sup>10</sup> unless expressly permitted by

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<sup>10</sup> Section 12 Administration of Justice Act 1960. Further guidance on the parameters of the prohibition can be found in paragraph 112 of [A v Ward \[2010\] EWHC 16](#) and para 82 of [Re B \(A Child\) \(Disclosure\) \[2004\] EWHC 411 \(Fam\)](#)

the relevant court or permitted by way of the Family Procedure Rules 2010<sup>11</sup>.

2.17 This means that a local authority cannot automatically disclose to the police documents prepared specifically for the above proceedings or information (whether written or orally) which has emerged during the course of the proceedings once they have begun. The local authority can however disclose documents which were in existence prior to the proceedings beginning, even if they were then filed as evidence within the proceedings at a later date (for example child protection minutes and reports). If there is any uncertainty about whether it can or cannot share a document or information the local authority should liaise with its legal department before making any disclosure.

2.18 The local authority must also not provide the police with material from other third parties which it may have in its possession without the agreement of the other third party and data controller of that material. However, the local authority must tell the police where there is further material which relates to the request being made and what that material is, as well as the name and contact details of the author/medical practice/authority so the police can seek release of the material by approaching the third party directly. The local authority will also assist in identifying any relevant school for the police to seek information or request material directly.

### Witness Summonses

2.19 Disputes over providing material will be rare as the parties to this protocol approach it in the spirit of cooperation. If witness summonses are to be sought, the provisions of section 97 of the Magistrates' Court Act 1980 or the Criminal Procedure (Attendance of Witnesses) Act 1965 must be met together and Part 17 Criminal Procedure Rules followed, noting in particular the provisions protecting the interests of those against whom witness summonses are being made, or otherwise affect.

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<sup>11</sup> Rules 12.74-75 and PD12G

## Part C: Linked Directions Hearings

- 3.1 This part of the protocol applies in any case where the local authority, CPS or a Judge in either the criminal court or Family Court considers that a linked directions hearing in criminal and care proceedings may be appropriate.
- 3.2 Whenever the possibility of a linked directions hearing is raised in either criminal or family proceedings, the allocated criminal or family Judge shall, in the first instance, make enquiries of the other court through their Resident Judge or Designated Family Judge if that is necessary in order to identify who is allocated to the case in that other court and when forthcoming hearings are.
- 3.3 Once identified, the allocated Family and Criminal Judges will liaise in order to enable the linked directions hearing to take place, remotely or otherwise.
- 3.4 The criminal case shall be listed before the judge at the Crown Court in public with the linked directions appointment in the care proceedings listed for hearing in private immediately thereafter. Subject to any specific objections raised by the parties, the advocates appearing in the criminal case may be invited to remain during the directions appointment in the care proceedings.
- 3.5 In every case involving a linked directions hearing the local authority's legal representative, **by no later than 4.00pm not less than 5 working days prior to the linked directions hearing**, shall with the permission of the family court prepare and serve on the CPS and the Crown Court a case summary setting out the basis of the local authority's application, its contentions in respect of findings sought in relation to the "threshold criteria" (local authority's "threshold document"), the current position in respect of the child, details of the proposed assessments and/or expert(s) assessments being undertaken and the timescales for the same and the timetable (if any) set for the proceedings within the Family Court.
- 3.6 The local authority's legal representative and the CPS shall agree a schedule of issues identifying those matters which are likely to be considered at the linked directions hearing. The local authority shall circulate the Schedule to the solicitors for the other parties in the criminal

and care proceedings **by no later than 4.00pm not less than 2 working days prior to the linked directions hearing.**

- 3.7 On the day of the linked directions hearing the advocates in the criminal and care proceedings shall meet **no later than one hour prior to the time fixed for the hearing** to discuss the schedule of issues with a view to identifying what directions may be required with particular reference to the trial timetable, disclosure and expert evidence and such other matters as may be identified by this protocol.
- 3.8 The respective court files in the criminal and care proceedings shall be cross referenced and shall be clearly marked as “linked” cases.
- 3.9 The directions hearing will be linked but not wholly combined because of the different parties and different procedural rules which apply. The judge shall determine whether it is appropriate for some or all of the directions to be issued at a joint hearing or separately and the order of any directions to be issued.
- 3.10 At the conclusion of the hearing in the criminal case, prosecution counsel should prepare a draft order, agreed with the other advocates, to be submitted to the judge on the same day for their approval. This approved order will be provided to the parties in the care proceedings by the CPS.
- 3.11 With the permission of the family court, the order made in the care proceedings will be provided by the local authority to the CPS and defence lawyers in the criminal proceedings.
- 3.12 The allocated Family Judge, even if appropriately ticketed, shall not preside over the trial in the criminal proceedings, or pass sentence if there is a guilty plea, nor shall the judge give a “Goodyear indication”.
- 3.13 The judge in the criminal trial or who passes sentence if there is a guilty plea shall notify the Family Judge of the outcome.

**Example agenda items: matters to be considered at the linked directions hearing**

- Timetabling: the appropriate order of trials and ensuring expedition
- Disclosure: provision of material between the proceedings

- Expert evidence: identification, availability to provide opinion and attend court, their role in the criminal and care hearings
- Section 28 Youth Justice and Criminal Evidence Act 1999 recordings
- Witness summons
- Public interest immunity hearings
- Arrangements for the interviewing of children in care for the purpose of the criminal proceedings and any arrangements for the child to give evidence at any criminal or family hearing
- Transcripts: to ensure transcripts from earlier proceedings are available to subsequent ones
- Assessment or therapeutic input required by any child involved in the proceedings.
- Reporting restrictions
- The existence of any material relating to “bad character” (reprehensible conduct by any person)
- Other legal or social work-related steps in the Family Court proceedings.