

Annex 4 - Checklist for the judiciary

When parties seek an order for police disclosure, please ask the following questions:

1. HAVE THE PARTIES CONSIDERED RECORDS HELD BY THEM AND SOUGHT PERMISSION FROM THE POLICE TO DISCLOSE THOSE DOCUMENTS TO THE PARTIES AND THE COURT? *PUBLIC LAW MATTERS ONLY

Note: If a Child Protection Case Conference (CPCC)/Multi Agency Risk Assessment Conference (MARAC) has been convened in respect of the child(ren), the local authority will have been provided a report from the police containing information dating back 5 years from the initial meeting. This document is not to be shared unless the police have provided permission via the protocol route.

2. HAVE THE PARTIES SUBMITTED AN ANNEX 1 REQUEST FOR DISCLOSURE TO THE POLICE? IF SO, WHEN WAS THE REQUEST SUBMITTED? *PUBLIC LAW MATTERS ONLY

If the protocol has been invoked, the police must be allowed the relevant time period in which to respond and provide disclosure (that being up to 20 business days) unless in cases of exceptional circumstances.

If parties have not submitted a request, they must be instructed to do so using the Application for disclosure of Police Information (Annex 1).

In private law matters, represented parties must be instructed to submit an Annex 1 and this must be recorded on the Annex 5.

For litigants in person the request should be made to the Court preferably by C2 application and recorded on the Annex 5.

3. WHAT INFORMATION HAS BEEN REQUESTED FROM THE POLICE?

Parties must ensure that they use the application proportionately having regard to what is reasonable, directly relevant, and necessary when seeking disclosure.

The Court must document the request on the Annex 5 if this is done after proceedings have commenced in private law cases.

Section 4: PNC records

Section 5: summary report (cases where the parties are not aware of the subject's criminal history)

Section 6: investigation reports only. The parties should initially request the relevant investigation report(s) and once reviewed, should submit a redefined request for specific documents.

Section 7: additional information about specific incidents.

Section 8: permission to share police information held by their client.

*Public law matters only

4. WHAT RESPONSE HAS BEEN RECEIVED FROM THE POLICE?

Sample directions

Failure to comply with the application for disclosure

The [police] shall disclose to [NAME] by [X DATE] the information requested as part of the Application for disclosure of Police Information (Annex 1). There is leave to the [police] to apply to the court to vary this order upon notice to the parties, by [X DATE].

Digital evidence belonging to the parties

The [police] shall disclose to [NAME] by [X DATE] the [detail nature of digital evidence] of [NAME] for the relevant time period of [X DATE – X DATE] in an unredacted format, the court being satisfied that this information is necessary

evidence required to be before the court. There is leave to the [police] to apply to the court to vary this order upon notice to the parties, by [X DATE].

Digital evidence belonging to third parties

The [police] shall disclose to [NAME] by [X DATE] the [detail nature of digital evidence] of [NAME] for the relevant time period of [X DATE – X DATE], the court being satisfied that this information is necessary evidence required to be before the court. The Police shall serve [Third party NAME] with notice of this direction by [X DATE], and there is leave to [Third party NAME] to make an application to vary this order upon notice to all parties. Should [Third party NAME] intend to make an application to vary this order, [s]he shall do so by [X DATE].

Ongoing disclosure

Upon receipt of written confirmation from the local authority that updating disclosure is required, the [police] are hereby directed to provide updated disclosure including [insert what is required] on [insert specific dates, up to the listed fact-finding or final hearing].

Note:

Post charge matters

Any directions the court considers necessary for disclosure must be made against the Crown Prosecution Service and police.

Indecent images

In the course of an investigation, the police may seize material including actual or alleged indecent images of children (under 18). If relevant and necessary, a request should seek the police description of those images to be provided, or a further and better description, not the images themselves. Access to such images will not be granted without an order of a Family Court judge. A judge who is being asked to consider an order facilitating access to the images

themselves should be addressed on the provisions of s.160 of the Criminal Justice Act 1988 and ss.1 to 7 of the Protection of Children Act 1978, in particular the offence of “making an indecent photograph of a child” and the statutory defences and exceptions, and should only be asked to consider ordering police-facilitated, controlled access (including access which permits a party to have confidential discussion with their legal representatives). The same considerations apply to any other images where dissemination is prohibited.