Disclosure of information between family and criminal agencies and jurisdictions: 2024 Protocol

Frequently Asked Questions

This protocol was introduced on 1 March 2024. This document is in response to feedback sought by the Family and Criminal Interface Committee.

Protocol Introduction

Q: What is the difference between public and private family law proceedings?

The main difference is in the involvement of the state and the nature of the cases.

Public Family Law Proceedings are generally issued by local authority children's services to protect children in their area and ensure they receive adequate and safe care. The child is automatically a party and is represented by a Children's Guardian appointed by the Children and Family Court Advisory and Support Service (CAFCASS). The Children's Guardian is an independent person whose role is to promote the child's welfare and ensure that appropriate arrangements made for them. The main types of order are care orders and supervision orders which require the local authority to look after or supervise the child. These cases are typically heard in a family court but can sometimes be taken to the High Court, depending on seriousness.

Private Family Law Proceedings are generally applications about arrangements for children of separated parents. Where the parents are unable to agree where the child should live and/or how much time the child should spend with each of their parents the court may need to resolve these issues. Separated parents are encouraged to use mediation first, and the court as a last resort. CAFCASS provide safeguarding checks for the court at an early stage so that, where appropriate, the court can encourage parents to reach agreement.

In summary, **public proceedings** are about protecting children from harm and often involve state intervention, while **private proceedings** focus on resolving disputes between family members without state involvement unless required.

Q: How will the police know when a case involves contemplated public law proceedings?

The local authority must notify the police of prospective court proceedings and make its Annex 1 request at the point that it enters into the pre-proceedings framework with a family, where it believes the police hold evidence which is relevant to whether the children are suffering or likely to suffer significant harm from their parent or primary care giver. Some context about pre-proceedings is given below.
The Court Orders and Pre-Proceedings Statutory Guidance for Local Authorities stipulates that when parenting is not improving enough to protect the child from significant harm, the local authority should hold a legal planning meeting to obtain legal advice about the family. At the meeting, a decision should be made in principle about whether the threshold criteria have been met. The local authority should then decide, based on a robust analysis of the level of assessed risk, whether it is in the best interests of the child to provide a further period of support for the family with the aim of avoiding proceedings, or whether proceedings should be initiated immediately. The meeting should also identify any evidence gaps, clarify

whether additional assessments will be required, and consider what would be a suitable draft care plan for the child.

Unless the local authority considers that the level of risk requires an immediate application to court, the local authority should send a Letter before Proceedings to parents and/or others with parental responsibility. This initiates a period of pre-proceedings which should last no longer than 16 weeks.
It is essential during pre-proceedings to narrow the issues as far as possible and to seek resolution without proceedings. At this stage the local authority should collate key evidence and request material from core partner agencies, including police. This is the stage where the Annex 1 request is made of the police. This ensures that where proceedings become unavoidable, all key evidence is already available to enable the Court to make a timely decision, avoiding delay for the child. Annex 1 helps the local authority, police, and lawyers share information early so decisions can be made about safeguarding, support, or whether proceedings are needed.

Q: What does the term 'litigants in person' mean?

'Litigants in person' are people who represent themselves in legal proceedings, rather than being represented by a solicitor or barrister.

Q: What is the significance of the requirement that, "*Local arrangements, overseen by local safeguarding partners, must address:*
***(Bullet 5) - 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 purpose of this bullet point is to ensure that police forces and local authorities have in place a locally agreed arrangement for dealing with occasions when the police or the local authority asks the other to provide relevant material. These local arrangements must specify how and when such requests can be made.

This does not mean that contact must be made in every case, but the intention is that the local arrangements will be in place to facilitate engagement between the police and the local authority whenever it is necessary for a request to be made.

The police should not make requests for third party material from a local authority as a matter of course. Such requests must only be made where they are necessary and proportionate, where they are made in pursuit of a reasonable line of enquiry and/or where the material sought is relevant to an issue in the criminal case.

Part A: disclosure from the police to family proceedings

Q: Don't the police and local authorities already have processes in place to share information ?

In respect of child protection matters, which may lead to public law proceedings as outlined above, the local authority and police have statutory duties to co-operate and share information as required to ensure children and vulnerable adults are protected from harm and their welfare promoted. This takes place via joint s47 Children Act 1989 investigations, strategy discussion meetings and child protection conferences etc. The guidance within the Protocol is to ensure that partner agencies have agreed local processes and understand how to provide effective early notification of proceedings. It is only envisaged that this should occur where it is reasonably believed that the police hold material that is required to prove a key issue in dispute in the proceedings.

Q: Who is responsible for making representations on behalf of police/CPS about disclosure sought by a local authority or family court from police/CPS where there are parallel criminal investigations or proceedings?

That depends on the stage which the criminal proceedings have reached.

If the criminal case is pre-charge or has concluded, the police should lead on representations because of their responsibility for the investigation. Investigators should consult local procedures / sharing agreements and seek advice from the force Data Protection Officer where required.

If the criminal case is post-charge, but has not concluded, the CPS should lead on representations because of their responsibility for the prosecution, and should be in a position to say whether they have no objections to disclosure or if they have concerns about disclosure. The police may also have representations from a safeguarding perspective, depending on the risks which would arise from onward disclosure. How the representations are made to the court should be established by the police and the CPS, and could be by way of joint representations through one representative.

A significant concern for the police and the CPS will be the disclosure of material to people who may be witnesses in criminal proceedings. A person who has been charged and is already a defendant in a criminal case will probably know the case against them, but careful consideration may need to be given to any disclosure to witnesses that may prejudice the prosecution.

Q: If I am seeking "criminal material" should I seek to obtain it from the police, CPS, or both – don't they hold the same material? Should I seek an order?

The police and the CPS do not hold the same material. The police may hold material relevant to safeguarding which they do not have to provide to the CPS, and other material the police obtain or generate in the course of the investigation is not automatically shared with the CPS.

In general, relevant criminal material is held by police including material generated by criminal investigation, and this should be sought directly from the police.

If the material sought has been created or obtained by the CPS itself, this should be sought from the CPS. This is a limited category of material relating to the decision of the CPS to prosecute and the conduct of the case before court.

Seeking material by way of an order should be a last resort: see Annex 2 and Annex 3, 1.14 and 4.1-4.3.

Part B: disclosure sought by an investigator

Q: Who are the parties that need to put in place local arrangements to use Annex 6 (2.1)?

Each police force will be responsible for deciding who is responsible for putting local arrangements in place in respect of Annex 6. The team and leadership level may vary according to force structure. It may include Criminal Justice and / or Information Management Teams. Local arrangements may identify further steps which are needed to use Annex 6 effectively in the local area.

Q: How does an investigator make a Part B request for 'information' to the local authority?

There is no prescribed form for a Part B request for information because the information sought, and the information the requestor is able to provide, varies. This process should be undertaken as per force policy and procedure (for example, this could be undertaken via email). Local arrangements should identify what works best and who are the best points of contact.

Q: Why does Part B not contain timescales for disclosure sought by police, when Part A sets them out for disclosure to be provided by the police?

In short, because there are stricter timescales in the family court whereas there is significant variance including far longer timeframes in the criminal courts. The judge in criminal proceedings may make directions about the date when third-party material needs to be disclosed, and those deadlines should be communicated and every effort made to meet them.

Q: How does the CPS determine whether the information / material provided by the local authority meets the disclosure test?

The Investigator / Disclosure Officer must review all relevant unused material in their possession and bring any content that could be reasonably considered capable of meeting the disclosure test to the CPS's attention, providing copies of such material for inspection.

The CPS will then review the material in line with the Criminal Procedure and Investigations Act 1996 and its Code of Practice and the CPS Disclosure Manual.

In deciding what material satisfies the disclosure test, the prosecutor must pay particular attention to material that has potential to weaken the prosecution case, is inconsistent with it and/or which assists the case for the accused. Material which satisfies the disclosure test is likely to be different in each case, and different for each accused. It will include anything that undermines the prosecution case on an essential element of the offence charged, evidence that undermines identification of the accused and evidence that points away from the accused having committed the offence with the requisite state of mind.

Q: What is CPIA Sensitive material?

Sensitive material is material, the disclosure of which the disclosure officer believes would give rise to a real risk of serious prejudice to an important public interest (Criminal Investigations and Procedure Act 1996 Code of Practice).

Depending on the circumstances, examples of such material *may* include the following, among others:

- material given in confidence;
- material where disclosure might facilitate the commission of other offences or hinder the prevention and detection of crime;
- material supplied to an investigator during a criminal investigation which relates to a child or young person and which has been generated by a local authority social services department, an Area Child Protection Committee or other party contacted by an investigator during the investigation;
- material relating to the private life of a witness.

Q: How should sensitive material which is deemed disclosable be dealt with?

Within criminal proceedings, where CPIA sensitive material is identified as meeting the disclosure test, and the prosecutor is satisfied that disclosure would create a real risk of serious prejudice to an important public interest, the options are to:

- disclose the material in a way that does not compromise the public interest in issue;
- obtain a court order to withhold the material – this is a Public Interest Immunity (PII) Hearing;
- abandon the case; or
- disclose the material because the overall public interest in pursuing the prosecution is greater than in abandoning it.

PII applications to the court for the withholding of sensitive material should be rare.

Within family proceedings, the police and/or CPS may hold material which is relevant to family court proceedings but which they seek to withhold on the basis of serious prejudice to an important public interest. This too may require a hearing to determine whether the material should be shared.

Q: At what point in criminal proceedings must the local authority provide the police with a list of the material within family proceedings and how will they do this?

The local authority should provide police with such a list on request. This can be through a Part B request agreed through local arrangements.

Q: What is a C2 form and where can the police find this?

A C2 application form is used make an application in existing court proceedings relating to children. The form can be found here.

Q: What is the difference between Annex 6 and the C2 form?

Form C2 is a Court application form which must be used in order to make an application within existing Family Court Proceedings. This is a mandatory requirement as set out in the Family Procedure Rules. For example, the police must use the Form C2 to apply within the Family Court proceedings for directions permitting the disclosure of material to the police from a third party, for use within the criminal investigation.

The Annex 6 Form is the NPCC Third Party Material Request Form, created by the National Chief's Council Disclosure Portfolio, which is the recommended form for all forces to use when making requests for third party material within a criminal investigation. (There may be third parties who insist that applications for material are made on their own forms or via a portal, and such applications remain valid). This form sets out the parameters of what material the police require and why it is necessary and proportionate to obtain the material; it seeks to ensure compliance with all relevant legislation and guidance. The Annex 6 Form may be used to support, not replicate, a C2 application. It can serve as evidence in support of the Form C2 application to Court, instead of filing a statement from the Officer in the Case.

Q: Can Annex 6 be used for private law proceedings?

Annex 6 can be used for any type of police request for third party material within a criminal investigation. See above for the requirement for Form C2 and how Annex 6 can support this.

Q: Why does Annex 6 include an option for the individual to not be informed of the request?

Annex 6 is the NPCC Third Party Material Request Form, which is used by police forces for all requests for third party material where an expectation of privacy exists. The circumstances in which Annex 6 is used are broader than the circumstances to which the 2024 Protocol applies. Annex 6 can be used to request material relating to a victim / witness / suspect from any third party. There will be instances, particularly when requesting material relating to a suspect, where policing powers can be used and the request can be made without the need for consent or agreement. There may also be instances where it may prejudice the investigation should the individual become aware of the request, in which case the police would confirm that on the form and not inform the individual.

Q: The 2013 Protocol contained an Annex E which required the CPS to confirm when material was to be served on the defence, which meant that a local authority would know who material had been shared with– doesn't the 2024 Protocol need something similar?

The previous Annex E created a blanket approach to all material provided to the CPS, requiring the CPS to report on its handling in respect of each item provided. The 2024 Protocol sought to remove this. When material is sought by the police and/or the CPS for the purpose of criminal proceedings, it should be anticipated that some or all of the material will be disclosed to the defence. A local authority must therefore pay close attention to Part 2 of Annex 6, the Third Party Response Form, which is where any concerns about disclosure should be raised. The local authority, through local arrangements, may provide the CPS with a document on which they expect the CPS to record and communicate the use of the material so that any concerns by the local authority can be addressed.

Q: The 2013 Protocol required the CPS to seek local authority / family court material following service of the prosecution case – why has this changed?

The investigator remains the investigator whatever stage the case is at. Their responsibility to pursue reasonable lines of inquiry is theirs and theirs alone. The duty continues from the beginning of the investigation until the conclusion of the prosecution and, to a more limited extent, beyond. The prosecutor has a responsibility to advise and assist in respect of reasonable lines of inquiry whether the case is pre-charge, post-charge or post-service. Even after a case has been charged and material has been served, an investigator may determine that a reasonable line of inquiry needs to be pursued. It is therefore considered that seeking third party material remains within the investigator's remit.

Q: What if police make a 'capture all' request in respect of family court or local authority material?

Requests for access to third party material should never occur as a matter of course. The Criminal Procedure and Investigations Act 1996 (CPIA) Code of Practice requires the investigator to follow all reasonable lines of enquiry. It should never be assumed that because of the nature of an offence that is being investigated that particular types of material will need to be accessed. The circumstances of the individual case should dictate whether personal records should be requested.

Third party material should only be requested in an individual case if it has been identified as relevant to an issue in the case. There will be cases where no investigation of third-party material is necessary at all, and others where detailed scrutiny is needed. There must be a properly identifiable foundation for the inquiry, not mere conjecture, or speculation. There is also a need to balance the potential probative value of the material with the intrusion of obtaining it. Police should always ensure such requests are proportionate, whilst recognising the absolute right to a fair trial, and if police consider that a request does not seem necessary or proportionate then it should be queried with CPS. This guidance should be considered alongside the Attorney General's Guidelines on Disclosure[7].

Q: Why are requests for family court material sometimes received late in proceedings?

This may be because it was not previously clear that the family court material existed or was relevant to the criminal case under investigation. An issue may only be raised by a defendant in their defence statement, or in their evidence, or may come to light through other lines of inquiry being followed, for instance identifying and speaking to a further witness. Wherever family court material may exist and be relevant, always broach this with the CPS as soon as possible to prevent requests for such material arriving late in the proceedings.

Part C: linked directions hearings

Q: Are the precise mechanisms in Part C for linked directions hearings mandatory?

No, the principle and spirit of linked directions hearings is more important than the precise mechanisms proposed in Part C which are a guide and can be adjusted to suit a particular case.

Where there are concurrent family and criminal proceedings, the focus should be on ensuring that the parties in each set of proceedings are aware of the other, through whatever mechanism best suits the circumstances. That enables consideration to be given to whether a linked directions hearing may be appropriate. Linked directions hearings can be a valuable procedure. They enable information to be shared where appropriate, such as information about the documentation in each set of proceedings. They also mean that an explanation can be provided to both the criminal and family judge at the same time where there are issues about disclosure.