

2013 PROTOCOL AND GOOD PRACTICE MODEL (“2013 PROTOCOL”) DISCLOSURE OF INFORMATION IN CASES OF ALLEGED CHILD ABUSE AND LINKED CRIMINAL AND CARE DIRECTIONS HEARINGS

Frequently Asked Questions

1. What is the 2013 Protocol and Good Practice Model (2013 protocol) about?

It is about the protection of children. It concerns information exchange between the Local Authorities and Family Courts on one side and the Criminal Justice System (the police and the Crown Prosecution Service) on the other. It also encourages joint management of cases by the criminal and the Family Courts.

2. Who are the signatories and supporters of the protocol?

The 2013 protocol has been signed by the President of the Family Division, the Senior Presiding Judge and the Director of Public Prosecutions on behalf of the Crown Prosecution Service (CPS). The Department for Education, the Welsh Government, the Local Government Association and the Association of Directors of Children Services urge all Local Authorities in England to adopt the disclosure practices described within the document, observance of which will improve timeliness and therefore achieve better outcomes for children and young people who are subject to the relevant proceedings. The protocol is issued with the support of the Association of Chief Police Officers (ACPO), HM Courts & Tribunals Service and the Association of Independent Local Safeguarding Children Board (LSCB) Chairs.

3. When does the protocol apply?

The 2013 protocol applies from the moment the police start an investigation into alleged child abuse (sexual abuse or non-sexual abuse); or from the moment that a Local Authority contemplates proceedings in the Family Court involving a child. A child is defined as a person aged 17 or under at the time of the alleged incident giving rise to the investigation or contemplated proceedings.

4. Why do we need a national protocol?

The same law in both the criminal and Family Court jurisdictions applies across England and Wales. Despite this, experience has shown that the current approach to information exchange varies across the country. This will not necessarily be in the best interests of the child or children subject of the proceedings. In particular, cases with a cross geographic boundary element will be handled more efficiently if the same practice is adopted nationally.

5. What about local arrangements?

Paragraph 19.1 of the 2013 protocol provides that local agencies should agree and adopt a local protocol to implement the 2013 protocol as soon as possible and, in any event, before 1 January 2014. This should be signed by the Crown Court Resident Judges, Designated Family Judges,

Police forces, CPS and Local Authorities in each CPS Area. There are 13 CPS Areas in England and Wales.

6. What are the benefits for the Local Authorities?

There will be more timely disclosure of material from the police. This will improve the timeliness of the Family Court proceedings. Each police force will provide a single point of contact for the purposes of disclosure requests. Disclosure will be made by secure email wherever possible. The protocol encourages a less “risk averse” approach by the police and CPS to the release of prosecution material to the Local Authority.

The 2013 protocol is fully up to date on the legal principles and gives practitioners confidence when making decisions on disclosure to the police; enabling the delegation of disclosure decisions to social workers/ paralegals.

7. What are the benefits to the police and CPS?

Material held by Local Authority Children’s Services Departments (or Social Services Departments in Wales) is often very important to the police and the CPS in criminal investigations into alleged child abuse. For example, the Local Authority might hold a record of what the child first said about the offences or a record of other allegations made by the child or by other children. The Local Authority might hold material that needs to be disclosed to the defence in the criminal proceedings.

The 2013 protocol ensures that, using a single point of contact at the Local Authority, the police gain access to relevant Local Authority material at the very outset of the criminal investigation. The police and CPS will be kept updated on the progress of any concurrent Family Court proceedings and will be given early notice of any potential order of the Family Court for the police and CPS to disclose the papers in the criminal case to the Local Authority.

8. What is the role of the courts?

The Crown Courts and the Family Courts are signed up to the 2013 protocol. This was not the case with an earlier version of the protocol issued in 2003. The courts will ensure that the parties to the respective court proceedings (i.e. Local Authority and CPS) are aware of the protocol and are complying with it. The courts will manage concurrent criminal and Family Court proceedings in a joined up way in the best interests of the child or children; this will include conducting joint directions hearings to ensure that both sets of proceedings are conducted in a timely and just way.

9. Does the law permit a Local Authority to share confidential information with the police and the CPS?

The law permits the disclosure of confidential information where a countervailing public interest can be identified. Such a public interest will include the administration of justice, the prevention of wrongdoing and enabling another public body to perform its public duty. In these

circumstances, the exchange of relevant material with the police and CPS is not restricted under Data Protection Act 1998.

Under the arrangements in the 2013 protocol, the Local Authority is reassured that the CPS will not disclose any Local Authority material to the defence in the criminal case without the agreement of the Local Authority or a court order.

10. What happens when the law requires the CPS to disclose Local Authority material to the defence?

The CPS must disclose the material to the defence if it might reasonably be considered capable of undermining the prosecution case or assisting the case for the accused. The CPS will consult with the Local Authority before any disclosure takes place. Any views expressed by the child and/or parents and carers will be taken into account. Sensitive material will be edited out as far as possible before disclosure is made.

In some cases, the CPS will ask a Crown Court judge to rule whether the material needs to be disclosed. This is a public interest immunity hearing. However, the law allows the Local Authority to agree that the public interest in the prosecution of serious crime overrides issues of confidentiality. This will mean that a court ruling is not necessary. The Local Authority is reassured to know that the law prevents the defence using the material for a purpose other than the conduct of the current criminal case.

11. What about material relating to Family Court proceedings?

There are complex legal rules about whether material used in Family Court proceedings can be disclosed to the police and the CPS. Usually the permission of the Family Court is required. The 2013 protocol aims to summarise these rules for the benefit of Local Authority Children's Services, the police and CPS. This ensures that disclosure can be made promptly to the maximum extent permitted by law. There is a streamlined process under which the permission of the Family Court for disclosure can be obtained.

12. Will disclosure of police or CPS material to the Local Authority and the Family Court prejudice the criminal case?

The police and CPS will usually delay disclosure of the criminal case papers if it might prejudice the criminal investigation or prosecution. The police and CPS will take account of the views of the people who have provided witness statements in the criminal case. However, to avoid prejudice, the 2013 protocol encourages the disclosure of edited or summarised versions of the prosecution case; and encourages the making of court orders restricting disclosure of the material within the Family Court case.

13. Can the protocol be extended to include the NHS?

It is recognised that medical records relating to the victims of alleged child abuse are very important to both the criminal and Family Court

proceedings. It is hoped that the 2013 protocol arrangements can be developed in due course to include access to medical records.