

2013 PROTOCOL AND GOOD PRACTICE MODEL:

DISCLOSURE OF INFORMATION IN CASES OF ALLEGED CHILD ABUSE AND LINKED CRIMINAL AND CARE DIRECTIONS HEARINGS

EXECUTIVE SUMMARY

1. The 2013 Protocol and Good Practice Model: disclosure of information in cases of alleged child abuse and care directions hearings ("2013 Protocol") was published on 17 October 2013.
2. The Senior Presiding Judge, the President of the Family Division and the Director of Public Prosecutions (on behalf of the Crown Prosecution Service (CPS)) are signatories. The protocol is issued with the support of the Association of Chief Police Officers (ACPO), HM Courts & Tribunals Service, the Association of Independent Local Safeguarding Children Board (LSCB) Chairs, the Department for Education (DfE), the Welsh Government (WG), the Local Government Association (LGA) and the Association of Directors of Children Services (ADCS).
3. The 2013 Protocol deals with all aspects of information exchange from the outset of a police investigation and from the stage when Family Court proceedings are contemplated by a Local Authority. It is different to previous arrangements (for example the 2003 Protocol), as the new 2013 Protocol deals with disclosure from the police and the CPS to the Local Authority and into the Family Justice System, in addition to disclosure from the Local Authority to the police and the CPS. The 2013 Protocol incorporates processes enabling the police and the CPS to get access to material relating to Family Court proceedings (whether or not requiring the consent of the Family Court). The 2013 Protocol also incorporates arrangements for linked care and criminal directions hearings.
4. The fundamental purpose of the 2013 Protocol is the protection of children. The information exchange arrangements aim to complete the Family Court proceedings within the 26 week timetable; and strengthen the criminal prosecution process and achieve justice in cases of alleged child abuse.
5. The approach to disclosure of information has to date varied across the country. The 2013 Protocol aims to dispel misunderstandings of the legal principles and give practitioners confidence in exchanging information between agencies to the maximum extent permitted by the law. In particular, cases with a cross geographic-boundary element will be handled more efficiently if the same practice is adopted throughout England and Wales.

Part A: Disclosure into the Family Justice System

6. The 2013 Protocol ensures that a disclosure request is sent by the Local Authority to a police single point of contact as soon as Family Court proceedings are contemplated (and in any event in accordance with any directions of the Family Court). The disclosure request to the police must be focussed on identifying the documents which are really needed. In addition to material directly concerning a child, the disclosure request can relate to police records of violence between adults provided that the Family Court proceedings concern at least one child.
7. The arrangements reduce delay in disclosing the information by the police to the Local Authority and ensure that disclosure takes place by secure electronic means. The Local Authority and Family Court are kept up to date with the progress of the investigation and prosecution; and the Local Authority and Family Court will be provided with reasons if a suspect is not charged.
8. The 2013 protocol encourages a less “risk averse” approach to disclosure by the police; ensuring that there is proper analysis of the issues in the criminal case (in consultation with the CPS).
9. Where voluntary disclosure is not made to the Local Authority, the police and the CPS will be given advance notice of any application to the Family Court for an order for disclosure against them. This enables timely compliance with any court order. There is more time to consider editing and summarising material for disclosure and to seek an order of the Family Court prohibiting onward disclosure of prosecution material to named individuals (e.g. prosecution witnesses).

Part B: Disclosure from the Local Authority/ Family Justice System into the Criminal Justice System

10. Utilising a single point of contact at the Local Authority, the police are given timely access to all Local Authority material with the exception of certain material relating to Family Court proceedings. 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 the CPS is not restricted under Data Protection Act 1998.
11. The material is provided by the Local Authority on the understanding that it will not be disclosed to the defence legal representatives in the criminal case without the agreement of the Local Authority or without an order of the Crown Court.

12. The 2013 Protocol provides clarity for practitioners on the legal principles. This enables disclosure decisions to be delegated within the Local Authority to social workers and paralegals. In particular, the document includes detailed guidance for Local Authorities, police and the CPS on disclosing and accessing material relating to Family Court proceedings.
13. The arrangements aim to reduce the number of occasions where the Local Authority is involved in applications for public interest immunity (PII) in the Crown Court. Local Authority material is not a “class” of material to which PII automatically applies. Depending on the sensitivity of the material, the Local Authority may itself agree that the public interest in the prosecution of crime overrides the interests of confidentiality. The CPS will consult with Local Authority to agree disclosure to the defence in edited or summarised form (to protect confidentiality) wherever this is possible.

Part C: linked directions hearings

14. The 2013 Protocol includes arrangements for the joint management by the courts of concurrent care and criminal proceedings.
15. Linked directions hearings are extremely useful in resolving outstanding disclosure issues, in setting the timetables for the concurrent proceedings and for coordinating the use of expert witnesses.

17 October 2013