

# 2013 Protocol and Good Practice Model

## Disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings

October 2013

Association of Chief Police Officers

Association of Directors of Children Services

Association of Independent Local Safeguarding Children Board Chairs

Crown Prosecution Service

Department for Education

HM Courts & Tribunals Service

Local Government Association

President of the Family Division

Senior Presiding Judge for England and Wales

Welsh Government



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## 1. Parties

- 1.1. The signatories to the 2013 Protocol and Good Practice Model (hereinafter the “2013 protocol”) with the exception of the paragraphs listed at 1.4 below are the Senior Presiding Judge, the President of the Family Division, and the Director of Public Prosecutions on behalf of the Crown Prosecution Service (CPS).
- 1.2. This 2013 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.
- 1.3. The Department for Education (DfE), the Welsh Government (WG), Local Government Association (LGA) and Association of Directors of Children Services (ADCS) are not signatories to the 2013 protocol and the content of this document is not, nor does it seek to be binding on Local Authorities. However, the DfE, WG, LGA and ADCS support the content of this document and consider it to be a Good Practice Model, offered by way of assistance, and therefore urge all Local Authorities 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.
- 1.4. Paragraphs 7.1, 11.5, 11.7, 11.8, 16.1 to 16.7, 16.9, 16.10, 16.15 and all of 17 of this 2013 protocol are directed at the judiciary. The signatories to those paragraphs are the President of the Family Division and the Senior Presiding Judge.

## 2. Scope

- 2.1. This 2013 protocol will apply to cases involving criminal investigations into alleged child abuse<sup>1</sup> (child victims who were aged 17 and under at the time of the alleged offending) and/or Family Court<sup>2</sup> proceedings concerning a child (aged 17 and under).
- 2.2. This 2013 protocol will come into force on 1 January 2014.

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<sup>1</sup> Child abuse includes both sexual abuse and non-sexual abuse

<sup>2</sup> Family Court means for the time being the Family Proceedings Court, the County Court (when exercising its family jurisdiction) and the Family Division of the High Court. Once the Family Court comes into existence it means the Family Court and the Family Division of the High Court

### **3. Aims and Objectives**

- 3.1. To provide early notification to the Local Authority and to the Family Court that a criminal investigation has been commenced.
- 3.2. To provide timely early notification to the Local Authority and to the Family Court of the details and timescale of criminal prosecution.
- 3.3. To facilitate timely and consistent disclosure of information and documents from the police, and the CPS, into the Family Justice System.
- 3.4. To provide notification to the police and the CPS of an application to the Family Court for an order for the disclosure of prosecution material into the Family Justice System.
- 3.5. Subject to the Family Procedure Rules 2010 (and relevant Practice Directions<sup>3</sup>) the Criminal Procedure Rules 2013 and the common law duty of confidentiality, to facilitate timely and consistent disclosure of information and documents from the Family Justice System to the police and/or the CPS.
- 3.6. To provide a timely expeditious process for the Local Authority to respond to a request from the police for material held by the Local Authority which would assist a criminal investigation.
- 3.7. To provide for timely consultation between the CPS and the Local Authority where Local Authority material satisfies the test in Criminal Procedure and Investigations Act 1996 for disclosure to the defence.
- 3.8. To provide a streamlined and standard process for applications by the police and/or the CPS for the permission of the Family Court for disclosure of material relating to Family Court Proceedings.
- 3.9. To specify a procedure for linked directions hearings in concurrent criminal and care proceedings.

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<sup>3</sup> In particular, Practice Direction 12G

## **Part A: Disclosure into the Family Justice System**

### **4. Local authority request to the police for disclosure**

- 4.1. As soon as reasonably practicable and in any event on issue of proceedings, the Local Authority will provide notice to the police of the contemplation or existence of Family Proceedings using the form at Annex D to this agreement. The form at Annex D also acts as a request for disclosure from the police (to include a reasonable timescale<sup>4</sup> not exceeding 14 days for the disclosure of the material). The form at Annex D will be sent to the police single point of contact (SPOC) attached at Annex A; (see paragraph 19.2 below).
- 4.2. Where criminal proceedings have been commenced (or are contemplated), the police will immediately forward a copy of the form at Annex D to the CPS. The CPS will give due priority to making charging decisions in cases involving Family Court Proceedings.
- 4.3. Where the information or documents sought does not relate to a child abuse investigation, the police SPOC will forward the form at Annex D to the unit or units holding the information or documents and will take responsibility for liaison with those units and to ensure the provision of information to the Local Authority.
- 4.4. It is to be understood by all Parties that the 2013 protocol should be used proportionately and is designed to facilitate only requests for material held by the police relevant to the central issues in the case. Requests for disclosure should not be drawn any wider than is absolutely necessary and only relevant material should be disclosed. The disclosure request to the police must be focussed identifying the documents which are really needed<sup>5</sup>.

### **5. Notification by the police to the local authority of the existence and status of criminal investigation**

- 5.1. Within 5 working days of the commencement of the investigation, the police will provide to the Local Authority SPOC details of the criminal investigation using the form at Annex C to this Protocol (contact details for Local Authority SPOCs are listed at Annex B, see paragraph 19.3 below).

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<sup>4</sup> In setting the appropriate reasonable timescale, the Local Authority will take account of the timetable of the Family Court proceedings, the requirement that care proceedings must be completed within 26 weeks of the date on which the application was issued, and the requirements of the revised Public Law Outline (PLO)

<sup>5</sup> Re H-L (A child) [2013] EWCA Civ 655

























































## Annex F – Protection of children notice from local authority: representations on disclosure

<b>PROTECTION OF CHILDREN NOTICE TO PROSECUTOR FROM LOCAL AUTHORITY: REPRESENTATIONS ON DISCLOSURE</b>	
<p>I thank you for your notice dated _____ indicating that certain Local Authority material satisfies the test for disclosure in Section 3 CPIA.</p>	
<p>I have the following representation in respect of proposed disclosure to the defence.</p> <p><b>(Indicate in respect of each item a) that disclosure is agreed b) that disclosure is agreed subject to editing (specify where appropriate) c) that disclosure is not agreed, with reasons e.g. absence of consent from person to whom document relates)</b></p>	
<b>a) Disclosure is agreed</b>	
Item	Comment
<b>b) Disclosure is agreed subject to editing</b>	
Item	Comment
<b>c) Disclosure is not agreed</b>	
Item	Comment
<b>Representative of Local Authority: Choose Local Authority</b>	Name:  Telephone: Fax: Secure Email:



## **Annex G – Video- taped evidence of a child witness confidentiality undertaking**

UPON { Solicitor } ..... undertaking

- 1 Not to cause or permit any further copies to be made of the tapes\*
- 2 To keep the tapes in a locked, secure container when not in use or in transit
- 3 To use his/her best endeavours to ensure that the tapes are kept within the personal custody of a single adult when in transit and not to deliver the tape to the Post Office or any commercial carrier
- 4 To release the tapes only to:
  - (1) Counsel instructed in the case
  - (2) any expert authorised by the court to prepare a report for use by the court
  - (3) any other person only with the leave of the court
- 5 To require any person to whom the tape is released to sign a form of undertaking in the same terms as this undertaking.
- 6 To use his/her best endeavours to obtain the return of the tapes to his/her personal possession within 28 days of its release to any person
- 7 To permit his/her client to view the tapes only at his/her professional premises and in his/her presence
- 8 To permit other parties to the proceedings to view the tapes in the presence of that party's legal advisor at the professional premises of one of the parties' legal advisor
- 9 To return the tapes to the police, or arrange for the secure and confidential destruction thereof, forthwith upon his/her ceasing to be instructed in this matter and in any event on closure of the case
- 10 To keep a written record of the name of any person allowed access to the tapes and the date of such access

\*except for those listed in clause 5

Schedule of persons that have viewed the tapes in accordance with this undertaking

Description of tape (inc id-number)	By whom	In presence of (where relevant)	Date seen /released	Date returned	Under-taking given

Signed:

Date: .....

Taped returned to custody of the police/ securely destroyed on .....

Signed: .....

Date: .....

## Annex H – Disclosure direction to police



In the Court  
Sitting at [Place]

No:

### The Children Act 1989

**The Protocol concerning the disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings dated [dd/mm] 2013 (“The Protocol”)**

**The Marriage/Civil Partnership/Relationship/Family of XX and YY**  
**The Children** AA (a boy/girl born on dd/mm/yyyy)  
BB (a boy/girl born on dd/mm/yyyy)  
CC (a boy/girl born on dd/mm/yyyy)

*Adapt as appropriate*

After hearing [*name the advocate(s) who appeared*] ...  
After consideration of the documents lodged by the Parties

### **ORDER MADE BY [NAME OF JUDGE] ON [DATE] SITTING IN OPEN COURT/PRIVATE**

#### **The Parties**

1. The applicant is XX (“The Local Authority”)  
The respondent is YY  
The second respondent is ZZ  
*Specify if any party acts by a litigation friend*  
The third respondent is AA (acting by his/her guardian FF)  
The third respondent is BB (acting by his/her guardian FF)  
The fourth respondent is CC (acting by his/her guardian FF)  
*Delete or Adapt as appropriate*

#### **Recitals**

2. This is an order for information to be provided to this court by the [*name of police force*].
3. The reason that this request for information is made is [*specify*].
4. This order was made at a hearing [without notice]/[on short informal notice] to the [*name of police force*]. The reason why the order was made [without notice]/[on short informal notice] to the [*name of police force*] was [set out].

The [*name of police force*] has the right to apply to the court to vary or discharge the order – see “**The right to seek variation or discharge of this order**” below

**IT IS ORDERED (BY CONSENT):**

5. The [Commissioner of the Metropolitan Police] / [Chief Constable of [*name*] Police] shall by 16:00 on [*date no sooner than 28 days from the date of the order*] disclose to the Local Authority the following information:

*The following are examples:*

- (a) Copies of police call out records and logs relating to [ ], date of birth [ ], and [ ], date of birth [ ], at [*address(es)*] between the dates of [ ] and [ ].
  - (b) Evidence relating to the allegations made by [ ] against [ ], date of birth [ ], of [*address*] including all statements made and photographs taken in connection with the allegations.
  - (c) A copy of any video-taped interview of [ ], date of birth [ ], on [*date*] together with a copy of any transcript available of that interview when completed.
  - (d) A copy of any audio-taped interview of [ ], date of birth [ ], on [*date*] together with a copy of any transcript available of that interview when completed.
6. The Local Authority [*or other named party*] shall serve a copy of this order on [*specify the relevant police officer*] together with a letter setting out in respect of the solicitors representing each party the full name of the firm, the full postal address, and the reference at that firm dealing with the matter giving his/her email address and direct telephone number.
7. The Local Authority [*or other named party*] shall file with this court and serve on the other parties the above evidence by 16:00 on [*date*].
8. The information when supplied may be used only for the purposes of these proceedings and must not be disclosed to any third party without the express permission of this court.

**The right to seek variation or discharge of this order**

9. (*Where the order was made on no, or short, notice*) The [Commissioner of the Metropolitan Police] / [Chief Constable of [*name*] Police] may apply for discharge or variation of this order, upon giving two clear business days’ notice of the hearing to the parties, by 16:00 on [*date no later than 14 days from date of the order*].

Dated

## Annex I – Linked criminal and care directions



In the Court  
Sitting at [Place]

No:

### **The Children Act 1989**

**The Protocol concerning the disclosure of information in cases of alleged child abuse and linked criminal and care directions hearings dated [dd/mm] 2013 (“The Protocol”)**

### **The Marriage/Civil Partnership/Relationship/Family of XX and YY**

**The Children**           AA (a boy/girl born on dd/mm/yyyy)  
                                  BB (a boy/girl born on dd/mm/yyyy)  
                                  CC (a boy/girl born on dd/mm/yyyy)

*Adapt as appropriate*

After hearing *[name the advocate(s) who appeared]*....

After consideration of the documents lodged by the Parties

### **ORDER MADE BY [NAME OF JUDGE] ON [DATE] SITTING IN OPEN COURT/PRIVATE**

#### **The Parties**

1. The applicant is XX (“The Local Authority”)  
The respondent is YY  
The second respondent is ZZ  
*Specify if any party acts by a litigation friend*  
The third respondent is AA (acting by his/her guardian FF)  
The third respondent is BB (acting by his/her guardian FF)  
The fourth respondent is CC (acting by his/her guardian FF)  
*Delete or Adapt as appropriate*

#### **Recitals**

2. *[name]* has been charged with offences of *[specify the alleged offences and against whom they were committed]* to which (s)he pleaded not guilty on *[date]* and the proceedings under case number *[xxx]* are listed for *[trial]/[plea and case management]* on *[date]* at the *[name]* Crown Court].
3. This court on *[date]* made a police disclosure direction order. The order *[was complied with on] / [is expected to be complied with by] [date]*.

4. *(for example)* ZZ is [to be] / [being] assessed by Dr [name], Consultant Psychiatrist, in readiness for the Plea and Case Management Hearing on [date].
5. It is recognised that the CPS will seek disclosure of the papers from these proceedings [and from the previous proceedings] regarding [names of children] the children of [name] and [name] [deceased] as well as documents held by the Local Authority on its Social Services files.
6. The Local Authority is expected to ensure that a copy of the Protocol is made available to the CPS solicitor with conduct of the criminal proceedings and the defence solicitor(s) (who will supply it to instructed counsel).

#### **Request**

7. Pursuant to Part C of the Protocol this court considers that a linked directions hearing is appropriate. This court by this order requests that the Resident Judge should nominate a judge to be responsible for the management of the criminal case with a view to listing a linked directions hearing at the [name] Crown Court before the nominated judge and the Allocated Case Management Judge in this case namely [name].

#### **IT IS ORDERED (BY CONSENT):**

8. These proceedings and the criminal proceedings are listed for a linked directions hearing at 10.00am on [date] before His/Her Honour Judge [name] and His/Her Honour Judge [name] sitting at the [name] Crown Court, [address] (estimate 1 hour).
9. The Local Authority shall by 14:00 on [date] serve on the Crown Court, the CPS and the defence solicitors a case summary as set out in para 17.6 of the Protocol, and shall file and serve a copy of it in these proceedings.
10. In accordance with para 17.7 of the Protocol the Local Authority and the CPS shall agree a schedule of issues, setting out those matters which are likely to be considered at the linked directions hearing and the Local Authority shall circulate the schedule to the solicitors for the other parties in the criminal and care proceedings by no later than 16:00 on [date].
11. The Local Authority shall by 12:00 on [date] file with the Court an agreed bundle prepared in accordance with the Family Procedure Rules 2010 PD 27A to include the case summary, the schedule of issues (agreed if possible), and the proposed directions to be sought. The Local Authority shall by the same time file and serve on each of the respondents an index to the bundle. If any respondent is unrepresented the Local Authority shall supply him/her with a full copy of the bundle.
12. The Governor of HM Prison [name] is directed to ensure that the respondent (father) ZZ is produced at 09:30 for the hearing on [date].

13. The Local Authority shall serve a copy of this order on the CPS prosecutor with conduct of the criminal proceedings and on the defence solicitor(s) (who shall provide copies to instructed counsel).

Dated

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alleged child abuse and linked criminal  
and care directions hearings

October 2013