

2013 Protocol and Good Practice Model

Disclosure of information in cases of alleged child abuse

LOCAL PRACTICE ARRANGEMENTS



October 2013 Protocol and Good Practice Model

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

The 2013 Protocol and Good Practice Model ("2013 protocol") has the backing of the Judiciary of England and Wales in both the criminal and family jurisdictions. The Senior Presiding Judge, the President of the Family Division and the Director of Public Prosecutions (on behalf of the 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). 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.

Local authorities are not signatories to the "2013 Protocol." It does not seek to be binding on local authorities. This is recognised in the "December 2013 Judicial Protocol on the Disclosure of Unused Material in Criminal Cases," which states that the "2013 Protocol" is not binding on local authorities, but it does represent best practice and therefore should be consulted in all such cases. Currently, the Greater Manchester Police (GMP) and the 10 Greater Manchester local authorities (LA's) are not signatories to the Protocol.

The purpose of the 2013 Protocol is the protection of children. The information exchange arrangements aim to ensure that Family Court proceedings are completed within the 26 week timetable; and at the same time the arrangements will strengthen the prosecution process and achieve justice in cases of alleged child abuse.

The 10 LA's for a trial period of 6 months commencing 1st June 2014¹ are proposing to consider a change to their local practices to incorporate Part's A and B of the Protocol on a case by case basis. As a result of discussions with GMP and Crown Prosecution Service (CPS) the following is agreed:-

- (a) GMP have confirmed that from 1st June 2014 they will only be asking for disclosure in those cases which on balance a criminal prosecution is likely, or a decision via the CPS will be required; and
- (b) Only CPS qualified solicitors/barristers will consider material and determine disclosure work.

The CPS and LA's have both previously adopted on occasion poor practice and had an inconsistent approach when seeking access to material. Requests for material or requests for a witness summons have often asked for the whole file or the whole file has been sent by the LA. Requests by either the CPS or the LA's should be specific wherever possible. The CPS agreed that a request for the whole file should be the exceptional. In the event that the LA has been requested to disclose the whole file and not just the relevant material then the LA must first seek clarification as to whether actually they mean the full file or not. Even if the criminal case is mid-trial and there was an issue raised and this has not come out through relevant disclosure already made, we should be asked to search for that piece of information and it should be rare that full file be asked for, the Judge's responsibility is to consider whether that material exists in and/or ask for the full file and see if there is any information relevant to the defendant assertion is within the file.

Similarly requests by a LA for material held by the police and or the CPS should seek to be specific in nature.

Set out below are the local procedures/practices which are agreed and will underpin the Protocol during this trial pilot period: -

¹ This Local Practice Arrangement has now been reviewed and is agreed until January 2016, this be reviewed again after this time.

Part A: Disclosure into the Family Justice System

- Local authority will continue to use all pre-existing forms/procedures for requesting information from GMP, for use within public law s31 care proceedings.
- GMP and the LA's are unable to create a SPOC to receive all notifications and then that SPOC sift out to relevant departments, collate the disclosure and continually review on an ongoing basis making additional disclosure (without prompt) when we see something relevant to the case. Existing practice will continue. In broad terms, notifications by GMP/local authority of police investigation/care proceedings to remain the same, existing procedures will be followed (this is done typically through GMP referrals and followed up with strategy meetings and for LA's by SW discussion/strategy meeting in the usual course of their day to day work (no change) and/or Legal's first request of FWINs/Antecedents sent to the Disclosure Unit.

GMP will adhere to the principles set out in paragraphs 4.1 to 4.4 (page 5 of the 2013 Protocol) and use their best endeavours to comply with the 14 day timescales

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

- GMP will use all pre-existing forms (attached) and procedures for requesting information from local authority social care records, in connection with a criminal investigation and when it is believed a charging decision will be required. For example, in Manchester and Rochdale, GMP will complete the existing request letter and obtain signed consent for disclosure to GMP/CPS from the data subject and/or parent/guardian/parental responsibility holder, as necessary. No change in practice.
- Change in practice: - If GMP/CPS consider that some or all of the information disclosed from the local authority social care records satisfies the disclosure test under the CPIA 1996 (only material which undermines the prosecution case or assists the defence case) and should be considered for disclosure to the defence, the CPS will notify the local authority of this using form from the October 2013 Protocol at Annex E.
- Change in practice: - GMP will in conjunction with the local authority then approach the data subject and/or parent/guardian/parental responsibility holder for a second stage consent – an informed consent for information to be disclosed to the defence legal representatives for the purposes of the criminal proceedings only.

Change in practice (a) or (b) and (c): -

- (a) The local authority will complete the form Annex F (14 days) setting out whether consent has been obtained and whether the local authority can enter into negotiations with the CPS regarding disclosure of information to the defence legal representatives. The local authority will confirm to the CPS that if disclosure is made to the defence, it is made to the defence legal representatives only, that the defence should treat the documents as sensitive and are not permitted to disclose/give copies of the document individually to the defendant(s); also, that the documents should be securely destroyed at the conclusion of the criminal proceedings (the CPS confirming in writing that they will state this when disclosing records to the defence legal representatives).
- (b) Or, alternatively the local authority will complete the form Annex F (14 days) stating that consent has not/cannot be obtained setting out the reasons for this and that the local authority cannot agree to disclosure. In these circumstances, the local authority will ask that the CPS to consider whether a PII application should be made for the Judge to be able to consider the records and decide what disclosure should be made to the defence legal representatives. If a PII application is made, this will also then prompt the court, where necessary, to send out an R(TB) v Stafford Notice² in the criminal courts, the

² See: Revised Best Practice Guideline For the Disclosure of Third Party Material
HH Judge Gilbert QC, HH Judge Morris, HH Judge Lakin, October 2011 (Greater Manchester)

requirement for the Crown Court to seek representations from the data subject is contained in Rule 22.3(2)(b)(ii) and Rule 22.3(5)(b) Criminal Procedure Rules 2013 (attached)- in both cases, CPS (and not the court) will serve notice on the data subject to the data subject to allow them to make any representations to the court regarding the proposed disclosure of documents to the defence legal representatives.

(c) And, the CPS of its own discretion may determine that a PII application will not be necessary and take the decision to forward information to the defence in the full knowledge that neither the LA or subject has not consented. In these circumstances, the CPS will notify the LA in writing and provide a separate letter addressed to the subject (it is CPS policy in all cases to consult with the person to whom confidential information relates before disclosure is made to the defence; and to communicate disclosure decisions to them. The letter will be delivered to the subject by the LA) confirming their decision and subsequent actions of disclosure they have taken and under what authority (i.e. the protocol etc...)

In all cases the exact information given to the defence must be able to be strictly identified and a clear paper trail of accurate disclosure(s) kept by the CPS. The CPS will inform the local authority with the defence firm name/address, reference, and exactly what information from the social care records is disclosed to the defence legal representatives. It is noted that it is a criminal offence under section 17/18 CPIA if the defence do not respect the confidentiality of material disclosed to them.

In all cases the information relied upon and used within the criminal proceedings is to be notified to the LA by the CPS at the conclusion of the proceedings.

In all cases of disclosure, the LA will attach to the material a written notice in the following terms: -

“The material being provided is;

- i. Not to be provided to the defendant in person any of the disclosed documents, whether by original and/or copy.
- ii. Not to cause or permit any further copies to be made of the documents, except to the parties legal representatives.
- iii. To securely destroy all copies of the local authority disclosed documents at the conclusion of the criminal proceedings.”

Attachments: -

- LA Standard letters requesting information from GMP
- GMP letter requesting information from LA's
- LA response to GMP's initial request for disclosure & schedule of documents disclosed to GMP/CPS
- Annex E – Notice to the LA from prosecutor that material satisfies CPIA disclosure test
- Annex F – Notice from LA: representations on disclosure