

## **ANNEX 3 - GUIDANCE NOTES FOR LOCAL AUTHORITY REPRESENTATIVES**

This note is designed to provide guidance to all local authorities seeking disclosure from the Police. This covers:

1. Requests made to the Police, and how to make these
2. Court directions which may prove necessary

### **1. General principles**

- 1.1 Early notification that disclosure is required from the Police and regular communication between partner agencies is key. The local authority should be considering making a request for Police disclosure at the following points in any case:
  - a. When you contemplate proceedings
  - b. When you issue court proceedings on any case which has not entered the pre-proceedings process
- 1.2 Please note that this procedure is not required if you are sharing information received from the police with another local authority for example in the form of a MERLIN, Child Protection Case Conference (CPCC) or Multi Agency Risk Assessment Conference (MARAC) report, in the furtherance of child protection. Should you intend to share that information more widely, with someone outside of the local authority, the procedure below needs to be followed prior to any disclosure being made.
- 1.3 The procedure used for requesting documents for use in family proceedings is via the application for disclosure of police information
- 1.4 The aims of the application are:
  - To provide the Family Court with early information to enable it to properly determine any necessary direction(s) which need to be made in relation to documents, records or other evidential material held by the police in relevant criminal

proceedings or investigations which may inform the court (and the parties) in the determination of any factual or welfare issue within family proceedings

- To provide timely advance notice to the Police of the existence of the family proceedings and the nature and detail of the information sought from the police
- To enable the Police to indicate in advance what documents, records, or other evidential material (including both used and unused material) is or may be available to be disclosed to the family court and whether there is any objection to or difficulty in the immediate disclosure of the same
- To enable the local authority to obtain relevant information from the Police in the pre-proceedings stage of any case in order to ensure proper assessments are undertaken when a decision has been made to utilise this process, rather than issue court proceedings
- To encourage applications for disclosure that are limited to material that is relevant and necessary for resolution of the issues in the Family Court Proceedings

1.5 Local authorities must ensure that they use the application proportionately having regard to what is reasonable, directly relevant, and necessary when seeking disclosure. Parties are encouraged to review the Guidance Notes, which provides additional information.

1.6 If a local authority fails to complete the application correctly, this may well result in this being rejected by the Police and the local authority will be directed to complete the process again. This will cause a delay in disclosure being provided. Examples of such failures would include blanket requests for disclosure or applications without full and proper information to enable it to be processed.

1.7 Prior to seeking disclosure from the Police, the local authority must consider the records held by their client. If a CPCC/MARAC has been convened in respect of the child(ren), the local authority will have been provided a report from the Police containing information dating back 5 years from the initial meeting. Using this report, the local authority should be in a position to submit a focused request for disclosure using the following sections of the application:

- A. Section 8 - seeking permission to share police information held by their client. Records held by the local authority must be attached to the application so they can be considered for redactions, this includes the report prepared for any CPCC/MARAC;
  - B. Section 6/7 - seeking additional information about specific incidents. Please note requests will be rejected unless the date of the incident, reference number or description has been listed. The local authority should initially request the relevant investigation report(s) and once reviewed, should submit a redefined request for specific documents.
  - C. Section 5 – in cases where the local authority is aware of the subject’s criminal history, section 5 of the application must not be completed.
- 1.8 If a CPCC/MARAC has not been convened, and the local authority is not in possession of information relating to the criminal history of a parent or carer, section 5 of the application must be completed, requesting a summary report. The local authority is reminded to provide the following information so that searches on Police systems can be carried out accurately: (i) timeframe for searches to be completed, (ii) nature of the information sought and (iii) details of significant individuals.
- 1.9 The summary report will detail the crime reference, nature of the allegation, subject details, and outcome. Once the local authority is in receipt of the summary report, specific evidence relating to a particular incident can be requested from the Police. In such cases the local authority should complete section 6/7 of the application and resubmit this to the Police.
- 1.10 The local authority should give consideration to information being requested, if the child is placed with/already residing with an alternative carer (e.g. another family member or partner), Police disclosure can be sought in relation to that person but an explanation should be given to the Police as to why this is necessary. Initial disclosure should be in the form of the PNC and wider searches should be completed via the Disclosure Barring Service (DBS). Should DBS not respond within an appropriate

timeframe, a direction should be obtained from the court against the DBS.

1.11 If the local authority are completing a viability assessment and considering an immediate placement of a child(ren) with an alternative carer, a request for disclosure needs to be submitted to the Multi-Agency Safeguarding Hub (MASH)

1.12 The Police must be informed of any key dates in a case. This includes when you anticipate your pre-proceedings assessments to be completed which require the Police information to be completed, and in order for decisions to be made by the local authority.

1.13 Where there are redactions made to a document, and the parties having considered the Guidance Notes explaining the purpose of redactions are of the view that any one of these serves to render the disclosure ineffective, that particular redaction should be clearly identified and a request made to the Police to reconsider that redaction or to provide further information as to why it is considered necessary. No general requests for removal of redactions should be made as this is not proportionate or appropriate.

1.14 Where the investigation is ongoing and the CPS are involved, the Police will discuss the matter with the CPS representative, advise them of the nature of the ongoing proceedings and the material requested at this stage. Should parties object to the Police and CPS making a joint decision on disclosure, the Police are to be notified at the earliest opportunity.

## **2. Cases where proceedings are issued or ongoing**

2.1 In the event of a matter which is before the court, the Police must be notified of any key dates which involve action by the Police.

2.2 If the Annex 1 has been submitted, the Police must be allowed the relevant time period in which to respond and provide disclosure (that being up to 20 business days) unless in cases of exceptional circumstances. Parties to proceedings should not seek orders of the

court for disclosure from the Police without the usual protocol routes being followed first.

- 2.3 If the local authority is requesting ongoing disclosure from the Police and intends to seek an order to this effect, this must not be a general rolling order. The direction should be specific in terms of dates for disclosure, once a month and time limited up to a fact-finding or final hearing and must be led by the local authority representative. If that hearing date is moved, any order varying a timetable must also extend the Police disclosure. Any such directions should use wording such as the following:
  - 2.3.1 Upon receipt of written confirmation from the local authority that updating disclosure is required, the [police] are hereby directed to provide updated disclosure including [insert what is required] on [insert specific dates, up to the listed fact-finding or final hearing].
- 2.4 For complex cases (those involving murder, serious assault or baby death) when the Police provide updated disclosure, they may also provide an updated table/list of what information has been provided to date and what information is considered not relevant for disclosure. It is the responsibility of the parties to the court proceedings to ensure that they have all of the evidence as listed and that no key evidence is outstanding. If specific documents are outstanding, an immediate request must be made to the Police, and in advance of the hearing commencing.
- 2.5 Parties must not request partner agency disclosure from the Police when they are not the lead agency. In real terms, this means that if the local authority (or another party) seeks disclosure from a health agency such as hospital records, or Ambulance Service, this request must be made to that agency and not via the Police.

### **3. Digital evidence**

Digital evidence belonging to the parties

- 3.1 If parties are seeking disclosure of digital information from the Police which relates to devices belonging to the parties a direction

should then be sought from the court in the following terms:

- 3.1.1 The [police] shall disclose to [NAME] by [X DATE] the [detail nature of digital evidence] of [NAME] for the relevant time period of [X DATE – X DATE] in an unredacted format, the court being satisfied that this information is necessary evidence required to be before the court. There is leave to the [police] to apply to the court to vary this order upon notice to the parties, by [X DATE].

#### Digital evidence belonging to third parties

- 3.2 If parties are seeking disclosure of information from the Police involving a third party who is not party to proceedings, this should be raised by the parties and the court must be satisfied that this is necessary, giving consideration to what is proportionate. A direction should then be included in the court order confirming that the court is satisfied that this disclosure is necessary to the case. Prior to any party seeking this direction the local authority shall make contact with the Police and agree a position with regard to who will be responsible for applying any necessary redactions and incurring this cost. An example direction is as follows:

The [police] shall disclose to [NAME] by [X DATE] the [detail nature of digital evidence] of [NAME] for the relevant time period of [X DATE – X DATE], the court being satisfied that this information is necessary evidence required to be before the court. The Police shall serve [Third party NAME] with notice of this direction by [X DATE], and there is leave to [Third party NAME] to make an application to vary this order upon notice to all parties. Should [Third party NAME] intend to make an application to vary this order, [s]he shall do so by [X DATE].

#### **4. Post charge matters**

- 4.1 CPS will take the lead on decisions relating to disclosure of material which has been generated as a result of an investigation that is at a post charge stage. In the event that the CPS have any objections and/or concerns about the material requested in terms of the impact on the trial, they as the prosecuting authority must be

responsible for making any necessary application/submissions to the Court directly. The Police may make separate representations in terms of any concerns from a safeguarding perspective.

- 4.2 In order to take this forward the Police will discuss the matter with the CPS, advise them of the nature of the ongoing proceedings and the material requested at this stage (see 1.15 above). Any directions subsequent to CPS involvement must specifically reference the Police and CPS.
- 4.3 The Police will only provide disclosure in circumstances where they have no safeguarding concerns and the CPS confirm that they have no objections to the disclosure request, or where the Court makes a further order for disclosure following any representation made by the CPS and the Police.

## **5. Indecent images**

- 5.1 In the course of an investigation, the police may seize material including actual or alleged indecent images of children (under 18). If relevant and necessary, a request should seek the police description of those images to be provided, or a further and better description, not the images themselves. Access to such images will not be granted without an order of a Family Court judge. A judge who is being asked to consider an order facilitating access to the images themselves should be addressed on the provisions of s.160 of the Criminal Justice Act 1988 and ss.1 to 7 of the Protection of Children Act 1978, in particular the offence of “making an indecent photograph of a child” and the statutory defences and exceptions, and should only be asked to consider ordering police-facilitated, controlled access (including access which permits a party to have confidential discussion with their legal representatives). The same considerations apply to any other images where dissemination is prohibited.

## **6. Police terminology**

- Police National Computer (PNC) – this report will detail any convictions/cautions or warnings

- Investigation report - CRIS/Niche/FWIN etc. This report will document the path of the investigation, what information has been gathered as a result of any enquires and the outcome.
- Merlin/Public Protection Notice (PPN) – this report will document an initial assessment or decision making around an incident that involves a vulnerable person. These records are automatically referred to the local authority and therefore these reports should be requested using section 7 of the application.
- MG11 – statements
- MG15 – transcript of interview
- VRI/ABE – visually recorded interview
- ROTI – Record of Taped Interview
- ROVI - Record of Video Interview
- BWV – Body Worn Video
- CAD/999 call/STORM – this relates to a call log to the police operator

Example of a summary report drafted by the MPS.

Crime No.	Date of incident	Current Classification on CRIS system	Full Name	DOB	Role	Outcome
1236072/19	27/05/2019 to 29/06/2019  Reported 02/08/2019	SUBSTANT./Offence of Harassment  Victim reports that her ex-partner (Suspect) is harassing via email, calls and text messages.	Ash Smith  Cat Smith	10/10/1974  16/08/1975	Suspect  Victim	Suspect issued a prevention from harassment warning.
2821234/20	07/07/2018  Reported on 19/09/2020	SUBSTANT./Cruelty to or Neglect of Children Whilst at appointment informant mentioned assault on daughter by suspect	Jill Smith  Ash Smith  Cat Smith	18/09/2013  10/10/1974  16/08/1975	Victim  Informant  Suspect	No Further Action

\*Please note the summary report will vary depending on the constabulary.