



## Information Sharing Protocol

PRACTICAL  
ARRANGEMENTS  
FOR POLICE,  
LOCAL AUTHORITIES  
AND THE CROWN  
PROSECUTION  
SERVICE (CPS) IN  
THE EXCHANGE OF  
INFORMATION IN THE  
INVESTIGATION AND  
PROSECUTION OF  
CHILD & VULNERABLE  
ADULT ABUSE CASES

May 2008

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## **1. GEOGRAPHICAL SCOPE**

1.1 This agreement concerns the practical arrangements for the Police, Local Authorities and the Crown Prosecution Service (CPS) in the exchange of information in the investigation and prosecution of child and vulnerable adult abuse cases and covers the geographical boundaries of:

- Kent Police;
- Kent County Council;
- Medway Council;
- Kent CPS Area.

## **2. COMMENCEMENT, INTERPRETATION AND AMENDMENT**

2.1 This agreement will take effect from 1<sup>ST</sup> June 2008 and amends and supersedes the Service Level Agreement for Children dated October 2004.

2.2 Any provision of this agreement may be amended at any time with the consent of the Parties concerned. Amendments should wherever possible, be consistent with nationally agreed protocols and policy. Such amendments must be ratified by those individuals named at 2.3.

2.3 Where differences of interpretation of this protocol arise between the Parties, the following individuals will be responsible for defining the area of disagreement and agreeing measures for their resolution:

- Head of Public Protection, Kent Police;
- Policy and Performance Manager for Child Protection and Children in Need, Kent County Council.
- Adult Protection Policy Manager, Kent County Council.
- Director of Adult Services, Medway Council.

- Chief Crown Prosecutor, Crown Prosecution Service

Any casework difficulties are expected to be resolved promptly and locally at the appropriate level.

2.4 This agreement is in no way intended to prevent or inhibit early dialogue and exchange of information between agencies for the purpose of

- Protecting children in furtherance of joint investigations under sections 47 and 17 of the Children Act 1989, and the Multi-Agency Kent & Medway Child Protection Procedures; or
- Vulnerable Adults in accordance with Department of Health Publication 2000 'No Secrets' and the Kent and Medway Safeguarding Vulnerable Adults Policy Protocols and Guidance and Kent Police Policy N65T 'The Protection of Vulnerable Adults' e.g. strategy discussions/planning meetings and case conferences. Appropriate Public Protection Unit records of such dialogue and/or exchange will be kept.

### **3. MONITORING**

3.1 The individuals referred to in paragraph 2.3 will be responsible for monitoring the workings of this agreement and any local arrangements with a view to improving efficiency and the well being of local professional working arrangements.

### **4. SIGNATORIES**

4.1 The signatories agree to implement the provisions of the National Protocol through this service level agreement.

**For the Kent Police**

Name: Allyn Thomas, Assistant Chief Constable, Kent Police.

Signature: .....

Date: ...18/6/08.....

**For the Kent County Council**

Name: Peter Gilroy, Chief Executive, Kent County Council

Signature: .....

Date: ...21/5/08.....

**For the Medway Unitary Authority**

Name: Deborah Upton, Chief Legal Officer, Medway Council

Signature: .....

Date: ...28/7/08.....

**For the Kent Area of the Crown Prosecution Service**

Name: Roger Coe-Salazar, Chief Crown Prosecutor

Signature: .....

Date: ...3/6/08.....

**5. AIM**

5.1 This agreement provides an agreed framework between the Parties for the sharing and exchange of relevant information in child and vulnerable adult protection investigations for the purposes of criminal prosecutions in Kent.

## **6. OBJECTIVES**

6.1 The objectives of this protocol are:

- To provide guidance in obtaining and sharing information between the Parties in order to protect the welfare of children and vulnerable adults by investigating and prosecuting offenders through the criminal justice system;
- To provide guidance that enables the Parties to apply a consistent approach to information sharing locally; and
- To foster a greater understanding between the Parties of their respective roles within the criminal justice system.

## **7. INTRODUCTION**

7.1 Good practice calls for effective co-operation between the Parties; working in the best interests of the child or vulnerable adult; and careful exercise of professional judgment based on thorough assessment and analysis of relevant information. This protocol is addressed to those who work in the investigation and prosecution of offenders in relation to child and vulnerable adult abuse cases.

7.2 The Parties recognise the fundamental importance of inter-agency working in combating child and vulnerable adult abuse. The Parties are committed to share information and intelligence between them where this is necessary to protect children as set out in The Government's Guidance entitled *Working Together to Safeguard Children* (2006), and Vulnerable Adults as described in the government's guidance entitled 'No Secrets' (Department of Health 2000), and as indicated by their signed commitment to the principles of the Kent & Medway 'Three Tier Model for Information Sharing'.

7.3 This protocol recognises:

- (a) Local Authorities will always seek to act in the best interests of the children and vulnerable adults with whom they are involved; and
- (b) The Police and Crown Prosecution Service are duty bound to seek relevant material that may have an impact on a criminal case
- (c) The Police and the Crown Prosecution Service are bound by a duty to protect the confidentiality of material held by Local Authorities and will not disclose to Third Parties, except with the leave of the court, or with the consent of the Local Authority, any material obtained directly or indirectly as a result of having access to material held by Local Authorities.

## **8. THE LEGAL FRAMEWORK**

- 8.1 The legal obligations of the Parties in relation to exchanging and sharing of information are set out in Annex A. The protocol is based on these obligations.

## **9. PROCEDURE**

- 9.1 Investigators should bear in mind that the early advice of the Crown Prosecution Service should be sought in cases of the type (child and vulnerable adult abuse) envisaged by this protocol and in any event the ultimate decision to charge will be that of the Crown Prosecution Service. It is in the interest of all parties including victims and suspects that all relevant material be considered at the earliest opportunity and if possible pre-charge.
  
- 9.2 As soon as the Police investigating a suspected crime believe material exists within Local Authority files that may be relevant to the investigation, they will notify the Local Authority by means of a written notice (Annex B). The investigating officer will make a written note within the investigation plan that they have complied with section 9.2

9.3 The Police will appoint, as appropriate, a suitably trained Disclosure Officer who will carry out the examination of relevant material on Local Authority files and whose task it will be to liaise with that Local Authority. In some cases the Investigating Officer and the Disclosure Officer will be one and the same person.

9.4 The written notice (Annex B) used by the Police Disclosure Officer will include:

- The identity and contact details of the Police Disclosure Officer;
- The identity and contact details of the Officer in the Case (OIC);
- The identity and contact details of the Crown Prosecution Service Reviewing Lawyer (post charge)
- A summary of the case and the details of the offence(s) being investigated (to include a copy of the case summary, if available);
- A statement of the relevant information which is sought from the records in order to pursue all reasonable lines of enquiry, and why that information is thought likely to be relevant to the investigation;
- A statement of how failure to disclose relevant information would prejudice or delay the investigation;
- Whether the enquiry relates to a defendant in custody.
- Written consent from the subject unless this would compromise the case in which case it must include the reason why - ( consent form at Annex E).

If the written notice does not give specific and detailed information, there is a risk that the Local Authority will be unable to correctly identify the relevant material.

9.5 In light of the information provided by the Police in the Notice referred to in 9.4 above, the Local Authority Disclosure Officer will, within 28 days, identify and collate relevant material from the Local Authority files which it is necessary to provide to the Police for the purposes of the Police investigation and inform the Police in writing accordingly. If the request from the Police involves a custody case, this should be clearly stated in the notice referred to in 9.4 and in those circumstances the Local Authority Disclosure

Officer will do all that is reasonably practicable to expedite a response to the Police<sup>1</sup>. The review of the material from the Local Authority files by the Police will usually take place on Local Authority premises but may take place elsewhere by agreement between the Local Authority Disclosure Officers and the Police Disclosure Officer. The Police Disclosure Officer will, following any viewing, sign the K.C.C. pro-forma (Annex C), or for Medway Council, (annex D), indicating which documents have been copied or whether notes have been taken, leaving a copy of those notes on the file.

9.6 With regard to children, the Local Authority will ensure that documents filed in public or private law Family Court proceedings are not included in the files to be seen by the Police and/or Crown Prosecution Service. Where there are documents filed in Family Court proceedings, the Local Authority will provide a list of that material, in order for the Police, if appropriate, to apply to the Family Court for disclosure.

9.6A With regard to vulnerable adults, the Local Authority will ensure that documents filed with the Court of Protection or the Office of the Public Guardian are not included in the files to be seen by the Police and/or Crown Prosecution Service. Where there are documents filed with the Court of Protection, the Local Authority will provide a list of that material , in order for the Police, if appropriate, to apply to the Court of Protection for disclosure.

9.7 The Local Authority will not reveal to the Police relevant medical reports or other medical information without the consent of the author of that material. Where there is such material, the Local Authority will seek early consent from the author to reveal it to the Police. Where the Local Authority do not receive a response to their request for consent, where the author cannot be traced or contacted from the information contained on the file or consent is refused. The Local Authority will inform the Police

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<sup>1</sup> At this stage, the Local Authority will reveal to the Police information that is relevant for the purposes of the Police investigation. This does not mean that the Local Authority, by so doing, is agreeing that the information provided to the Police should in due course be disclosed to the defence. Such disclosure will be decided either by agreement between the Local Authority and the Crown Prosecution Service or in default of such an agreement, an order of the court made under the Criminal Procedure & Investigations Act 1996 (CPIA).

that material exists. Following charge, the Police and the Crown Prosecution Service may seek consent from the author of the material and/or apply for a witness summons to obtain the material or seek the assistance of the Safeguarding Vulnerable Adults Committee or the Safeguarding Children's Board health representative.

- 9.8 The Local Authority will ensure that within 28 days from receipt of the written notification in 9.4 above, they afford the Police Disclosure Officer access to the material. If there are difficulties in complying with the agreed timescale or if the material is ready for review earlier, the Local Authority Disclosure Officer will notify the Police Disclosure Officer immediately.
- 9.9 Where the Police review the material, the Local Authority will accept that the Police may take notes or copies of the material as appropriate, as they require for the purposes of their investigation. The Police will accept that any material they read and any notes or copies they take are to be regarded as sensitive material, which is subject to Public Interest Immunity (PII).
- 9.10 Any material identified by the Police Disclosure Officer during the review as being relevant to the issues in any criminal proceedings which may reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case of the accused, must be brought to the attention of the Local Authority Disclosure Officer with a view to the Police Disclosure Officer obtaining a copy of the relevant documents. Any copy documents provided by the Local Authority to the Police will be treated as sensitive material, which is subject to Public Interest Immunity.
- 9.11 When the Police submit a full file to the Crown Prosecution Service, including all correspondence between the Police and the Local Authority, the Police Disclosure Officer will identify all unused material on the appropriate (MG6D form (sensitive

unused material ) and in particular material that is viewed and obtained from the Local Authority. It will be the duty of the Police Disclosure Officer to identify any material, which might undermine the prosecution case or might reasonably assist the defence case.

- 9.12 In the event of further relevant material coming into the possession of the Local Authority, the Local Authority Disclosure Officer will disclose to the Police Disclosure Officer that material and will provide a continuous opportunity to review and take copies of that material. Further, it is accepted by the Local Authority that as an enquiry develops, the material may have to be re-visited.
- 9.13 On receipt of the full file the Crown Prosecution Service will review the unused material in accordance with its statutory duties under the Criminal Procedure and Investigations Act 1996 (CPIA), Attorney - General's Guide lines on disclosure, Code of Practice and the Disclosure Manual.
- 9.14 The Crown Prosecution Service shall treat all material provided by the Local Authority as sensitive material.
- 9.15 Where any Local Authority material reviewed by the Crown Prosecution Service falls within the statutory disclosure tests under the CPIA, the Crown Prosecution Service shall advise the police to write to the Local Authority Disclosure Officer, within 7 days of review, setting out the reasons why the material falls to be disclosed and informing them of that decision. Within 7 days of receipt of that notification, the Local Authority Disclosure Officer shall be given an opportunity to make any representations in writing to the Police or Crown Prosecution Service on the issues of disclosure.
- 9.16 If the Local Authority agrees with the Crown Prosecution Service to disclose material identified by the Crown Prosecution Service, which falls within the statutory disclosure tests under the CPIA, The police shall place this material on a (MG6c non-sensitive

unused material form), the Crown Prosecution Service will disclose the material to the defence.

9.17 It might be possible to disclose material to the defence in a form (such as a section 10 admission or in an edited format) without compromising its sensitivity. In any event the Crown Prosecution Service will not disclose any material to the defence unless by agreement with the Local Authority or by order of the court following an application for Public Interest Immunity.

9.18 If the Local Authority asserts Public Interest Immunity and objects to disclosure, to the defence, of any material identified by the Crown Prosecution Service which falls within the statutory disclosure tests under the CPIA, the Crown Prosecution Service will make a Public Interest Immunity application to the court as soon as reasonably practicable. The Crown Prosecution Service will notify the Local Authority of the date and venue of the Public Interest Immunity application and inform the Local Authority of their rights to make representations to the court under the Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997 and the Magistrates' Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.

9.19 Following receipt of a defence statement, the Police Disclosure Officer will immediately send a copy of the defence statement to the Local Authority Disclosure Officer.

9.20 The Local Authority Disclosure Officer will reconsider the relevance of the material held by the Local Authority in the light of the defence statement. Where the Local Authority identify further material to be revealed, the Local Authority Disclosure Officer will notify the Police Disclosure Officer of the existence of such material.

9.21 The Police Disclosure Officer will review that material held by the Local Authority Disclosure Officer and any material previously revealed to the Police for the purposes

of carrying out ongoing disclosure obligations under the CPIA Rules. The Local Authority Disclosure Officer will arrange for the material to be available for further review by the Police Disclosure Officer within 14 working days of receiving a written request. The Local Authority Disclosure Officer will retain a copy of the defence statement.

- 9.22 In the event of the Defence making an application under section 8 of the CPIA for further disclosure of material held by the Local Authority and already considered by the Police and/or the Crown Prosecution Service in the criminal proceedings, the Crown Prosecution Service will liaise with the Police and Local Authority Disclosure Officer prior to the hearing of the application.
- 9.23 Where the defence apply for a witness summons against the Local Authority for disclosure of material not in the possession of the Police or the Crown Prosecution Service, the Local Authority will inform the Police Disclosure Officer and the Crown Prosecution Service of the time and place of the hearing of the witness summons, the nature and grounds of such an application and the nature of material being sought.
- 9.24 The Prosecutor has a duty to keep under continuing review the question of whether there is any unused material, which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case of the accused. The parties recognise that they may need to review the material again if other issues become relevant during the course of the criminal proceedings.
- 9.25 When the Local Authority voluntarily discloses material to the defence they will reveal it to the Police and/or Crown Prosecution Service. In addition, when the defence request material from the Local Authority under the Data Protection Act 1998, the Local Authority will notify the Police and/or Crown Prosecution Service of the fact of that request.

9.26 In the event that there are no criminal proceedings, or the proceedings are discharged, or the accused is acquitted, the Police and/or Crown Prosecution Service will return all material in their possession belonging to the Local Authority to the Local Authority Disclosure Officer. The schedules of unused material will remain in the Police file to identify any Local Authority material considered by the prosecution in the particular case.

## **10. SCHOOLS AND OTHER ORGANISATIONS INVOLVED IN THE CARE OF CHILDREN AND VULNERABLE ADULTS**

10.1 The Parties to this protocol would encourage other organisations that are involved in the care of children and vulnerable adults, to follow the provisions laid down in this protocol in the sharing of information with the Police and Crown Prosecution Service in criminal investigations.

10.2 Where the Police investigating a suspected crime believe material exists with Schools or other organisations that maybe involved in the care of vulnerable adults the Police should contact the Local Authority to identify the status of the school or organisation . Where the Local Authority identifies the school as an Independent School or other private organisation , it should inform the Police, so that the Police may approach the school or organisations directly to obtain the material.

## **11. MISCELLANEOUS PROVISIONS**

11.1 In some cases to which this protocol applies a child or vulnerable adult concerned may be (or have been) the subject of court proceedings in the family or other jurisdiction.

Nothing in this protocol authorises the disclosure of any document filed with the court in such proceedings or any information relating to them. This applies whether the

proceedings are concluded or still pending. If material is identified that falls into this category then leave must be obtained from the court in which the family proceedings are being (or were) conducted.

11.2 This protocol does not diminish the existing legal rights of the Parties. Specifically, it will not operate to restrict the right of any Party to claim Public Interest Immunity in connection with any material that has come within the ambit of the Police investigation.

### **11.3 Review of this Protocol**

The Signatories will undertake to review this protocol in twelve months time, and subsequently every two years.

### **11.4 Complaints and Breaches of the Protocol**

A complaint from a vulnerable adult, a victim, an alleged offender, or their representative about information held under the terms of this protocol will be investigated first by the organisation receiving the complaint via their own internal complaints procedures.

If the complaint requires the protocol to be reviewed, no action will be taken without the consent of all Parties to this protocol.

A suitably independent arbiter (for example a Data Protection Officer or Caldicott Guardian from a separate agency) will be appointed by the Signatories to deal with alleged breaches, complaints or disagreements not resolved between the signatories.

11.5 All signatories to this protocol accept that the protocol is entered into in good faith and on that basis all signatories will use their best endeavours to comply with the terms and the spirit of the protocol.

**FLOW CHART OUTLING THE PRACTICAL ARRANGEMENTS FOR POLICE, LOCAL AUTHORITIES AND CROWN PROSECUTION SERVICE IN THE EXCHANGE OF INFORMATION IN THE INVESTIGATION AND PROSECUTION OF CHILD AND VULNERABLE ADULT ABUSE CASES [WHERE APPROPRIATE TO INCLUDE HISTORIC ABUSE AND OFFENCES OF RAPE]**

Please see protocol<sup>1</sup> for more detailed guidance

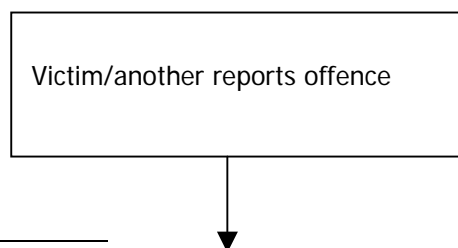
In all cases where the victim of the abuse is a child or vulnerable adult the processes outlined within this protocol must be adhered to. Whilst there is no statutory responsibility to pursue speculative enquiries, experience dictates that it is reasonable to do so, in every case.

Where the victim alleges historic abuse or is an non-vulnerable adult, consideration must be given to this line of enquiry. Each case will be dealt with on its merits and the justification for decisions made must be recorded.

An enquiry to establish whether and what material is held by a local/ unitary authority is vital to the effective investigation of the offence. It should be considered by an investigator as an early and pre-charge enquiry as any information obtained may have a bearing on the CPS decision to charge. A failure by the prosecution team to deal with these enquiries may result in the defendant being acquitted, wasted costs orders and unnecessary additional work.

The CPS will not authorise charges until satisfied that all proper enquiries have been made, unless on the basis of the Threshold Test as set out below.

In some circumstances it may be necessary to seek authority to charge for the purposes of making an application to remand the defendant in custody. Where this is the case there may have been insufficient time for the local/ unitary authority to provide a response. Where the CPS lawyer authorises charge following the application of the 'Threshold Test', enquiries with local/ unitary authority will form part of the OIC's 'action plan'. 'Due dates' will be carefully monitored by the CPS and the reasons for delay in obtaining a response beyond this date will be recorded by the OIC.



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<sup>1</sup> Practical arrangements for police, local authorities and crown prosecution service in the exchange of information in the investigation and prosecution of child and vulnerable adult abuse cases [revised May 2008]

At outset of investigation obtain the victim/witness consent to enable the local/ unitary authority to disclose any relevant material (to include medical records) to the police for the purpose of establishing whether any material would be disclosable under CPIA [use form Annex E]. If the material relates to the suspect, consent from the suspect is not required.

N.B. Where the police investigating a suspected crime believe material exists within schools or other organisations that maybe involved in the care of vulnerable adults the police should contact the local/unitary authority to identify the status of the school or organisation. Where the local /unitary authority identifies the school as an independent school or other private organisation, it will inform the police, so that they may approach the school or organisation directly to obtain the material.



Written notice (in the form of Annex B to the Joint Service Level Agreement) completed by OIC and forwarded directly to local/ unitary authority representative. *Where the case involves complex issues the OIC should consider discussing case with the CPS who may assist in drafting of the application.*

For Canterbury, Ashford, Thanet, Dover or Folkestone contact:

Sarah Cuckow or Gill Sissons on 01227 767020 FAX: 01227 780671

For Maidstone, Swale, Tonbridge/Wells, Dartford, or Gravesend contact:

Julia Sweeting on 01622 694298 FAX: 01622 696133

(for general enquiries or archived records contact Julia Sweeting)

For Medway contact:

Caroline Budden, Assistant Director (Children's Care) FAX: 01634 332848

Application must identify OIC and/or disclosure officer in case and to provide contact details.



Local/unitary authority lawyer to respond to OIC indicating either that material exists or that there is no relevant material. The written notice to the local/ unitary authority will indicate whether the defendant has been remanded in custody in which case due priority will be given to the request. In all other cases, the request will be dealt with and a response provided as soon as possible and in any event within 28 days.

Where it is established that the local/ unitary authority hold material filed in public or private family law proceedings the OIC/disclosure officer must contact Legal Services Department, FHQ (19:2023) for further guidance. The matter should not, and cannot be left unresolved.

OIC / disclosure officer views and assesses relevance of the local/unitary authority material and identifies any disclosable material having applied CPIA test. The view of the local/ unitary authority as to the disclosure of any such material must be sought and recorded.

OIC to provide information regarding local/unitary authority material in main body of MG3, (or by reference to form MG6D which may be spplied at the same time as the MG3) paying particular attention to any material that is considered disclosable.  
Reviewing lawyer to consider impact of any disclosable material and to prepare detailed review note, and record the decisions on the Disclosure Record Sheet. This note will include any issues arising out of any unwillingness on the part of the local/ unitary authority to disclose.

Whether charge agreed or deferred, reviewing lawyer to provide advice to OIC and record action plan to deal with local/unitary authority material. Where charge authorised, lawyer to record advice involving any common law disclosure issues on the Disclosure Record Sheet (DRS). Where material is identified post charge it must immediately be drawn to the attention of the reviewing lawyer who will at that time consider its impact and advise accordingly. Details of any such review and advice will be recorded on the DRS.

At point of Full File submission, any local/unitary authority material will be described on MG6D, save to the extent that local/unitary authority have already sanctioned the disclosure of such material to the defence, in which case it will be described on the MG6C. Any disclosable material will be subject to an entry on the MG6E. The form Annex B will be subject to an entry on the MG6C and be routinely provided by the police to the CPS. Subject to any redaction of sensitive issues, the form Annex B will be disclosed to the defence in every case.

The MG6D and any material obtained or copied from local/unitary authority will be subject to thorough review by lawyer to determine and address any issues relating to Public Interest Immunity applications. Views on the disclosure of the material will already have been sought (and recorded) from the local/unitary authority by the OIC/disclosure officer or at the request of reviewing lawyer. If the local authority deem any of the material to be sensitive, it must be treated as such. The (CPS) Disclosure Record Sheet will be used for the purpose of recording the decisions made. Sensitive material and PII will be dealt with in accordance with the guidance provided in chapter 8 and 13 of the Disclosure Manual. Any disagreement over the status of material deemed disclosable should, in the first instance be escalated to individual line managers.



**Defence Case Statement.** Where any Defence Case Statement is received, the reviewing lawyer will advise the disclosure officer regarding any issues relevant to local/unitary authority material and/or further lines of enquiry. Where appropriate, the reviewing lawyer will advise whether to provide the local/unitary authority lawyer with a copy of the Defence Case Statement with a request to supply any additional material identified as discloseable.



In event of section 8 application for further applicable material held by local/unitary authority, the CPS will liaise with relevant party prior to the hearing.



At the conclusion of any subsequent proceedings, all material obtained from the local/unitary authority will be returned. The schedules of unused material will remain in the police file to identify any local/unitary authority material considered by the prosecution.



**N.B.** Where the local/unitary authority are summoned to produce material (not already in possession of the police or the CPS) to a court, they will notify the police and CPS of the time and date of the proposed hearing. Any voluntary disclosure by the local/unitary authority to the defence will also be subject to notification.

## LEGAL FRAMEWORK

### INTRODUCTION

1. Professionals can only work together effectively to protect children and vulnerable adults if there is an exchange of relevant information between them. This has been recognised by the courts. In *Re G (a minor)* [1996] 2 AER 65 Butler Sloss LJ said:

***“The consequences of inter-agency co-operation is that there has to be a free exchange of information between Social Workers and Police Officers together engaged in an investigation. The information obtained by Social Workers in the course of their duties is however confidential and covered by the umbrella of Public Interest Immunity (PII). It can however be disclosed to fellow members of the Child Protection Team engaged in the investigation of possible abuse of the child concerned”.***

2. Any disclosure of personal information to others must always have regard to both common law and statute law. This framework sets out the legal position of the Local Authority Police and the Crown Prosecution Service in relation to exchanging and sharing of information.

### THE COMMON LAW OF CONFIDENTIALITY

3. Personal information about children and families held by the agencies is subject to the legal duty of confidence, and should not normally be disclosed without the consent of the subject. The law permits the disclosure of confidential information where a countervailing public interest can be identified. Such a public interest might relate to the proper administration of justice and to the prevention of wrongdoing. The court in *R v Chief Constable of North Wales Police, ex parte Thorpe* [1996] OB 396 Lord Bingham CJ, considered that where a public body acquires information relating to a member of the public which is not generally available and is potentially damaging, the body ought not to disclose such information save for the purpose of and to the extent necessary for performance of its public duty or enabling some other public body to perform its public duty.
4. There is a public interest in the prevention and detection of crime and in the apprehension or prosecution of offenders. Both domestic case law and the Data Protection Act 1998 recognize that it may be necessary for a Local Authority to disclose confidential material in its possession to the Police for the purposes of a Police investigation or criminal proceedings. The material to be disclosed must be both relevant and necessary for the purposes of the Police investigation.
5. The information the Parties to this protocol possess will have usually come to the Local Authority from the individual him/herself and a range of other sources. There is no publication to any member of the public. The purpose of disclosure is to facilitate the more effective administration of justice, either by providing further evidence of criminal conduct or by revealing the hopelessness of cases that might otherwise have reached the trial stage. Therefore, disclosure of material between the Parties to this protocol is permitted both by the general law on confidentiality and in particular by the law governing such disclosures by public bodies.

6. It is acknowledged that the law in the disclosure of confidential information is complex. There are restrictions on the sharing of information between the Parties under the Data Protection Act and the Human Rights Act. However, the sharing of information is not necessarily contrary to these Acts.

### **DATA PROTECTION ACT 1998**

7. The Data Protection Act 1998 (the 1998 Act) requires that personal information is obtained and processed fairly and lawfully; only disclosed in appropriate circumstances; is accurate, relevant and not held longer than necessary; and is kept securely. The Act allows for disclosure without the consent of the subject in certain conditions, including for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders, and where failure to disclose would be likely to prejudice those objectives in a particular case.
8. When disclosing personal information, many of the data protection issues surrounding disclosure can be avoided if the consent of the individual has been sought and obtained. Where consent of the individual is not sought, or is sought but withheld, there *can* be an exchange of information between the Parties where there is an overriding public interest or justification for doing so. The Act contains general non-disclosure provisions, but sections 27-31 provide a number of specific exemptions. Section 29 covers crime. In the context of Local Authority material, personal data processed for the purposes of prevention or detection of crime and the apprehension or prosecution of offenders is exempt from the first data principle (except to the extent to which it complies with the requirements of the second and third schedules of the 1998 Act).
9. Section 35 of the 1998 Act allows for disclosure by exempting data from the non disclosure provisions (except to the extent to which it complies with the requirements of the second and third schedules of the 1998 Act), where disclosure is required by any enactment, rule of law, or an order of the court and, where disclosure is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or for the purpose of obtaining legal advice or is necessary for the purposes of establishing, exercising or defending legal rights.
10. This means that the exchange of relevant information between the Parties in this protocol is not restricted under the Act because it will nearly always be the case that the exemptions constitute an overriding public interest in favour of sharing the information.

### **CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 (as amended by the Criminal Justice Act 2003)**

11. The Criminal Procedure and Investigations Act 1996 (the 1996 Act) (CPIA), the Code of Practice made under section 23 of the 1996 Act, and the Attorney General's Guidelines on the disclosure of information in criminal proceedings, published November 2000 and revised in 2005, govern the disclosure of unused prosecution material to the defence. Guidance to the Police and the Crown Prosecution Service is contained in the Disclosure Manual. The 1996 Act applies to all criminal investigations begun on or after 1 April 1997 and applies to a two-stage disclosure process. As soon as reasonably practicable after a not guilty plea in the Magistrates' Court: or service of the prosecution case, committal or transfer to the Crown Court, the prosecution must disclose to the defence any prosecution material that has not been previously disclosed and which might undermine the prosecution case (primary disclosure). Investigations begun on or after 4 April 2004 apply CPIA in its amended form and require the prosecution to disclose, at the same

stage of the proceedings as above, any material which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused, and which has not previously been disclosed. This is now referred to as 'Initial Disclosure'.

12. In Crown Court cases, the defence is required to provide, within 14 days of primary/Initial disclosure by the prosecution, a statement setting out in general terms their defence and particulars of any alibi witnesses. On receipt of the defence statement, the prosecution must as soon as reasonably practicable disclose any further material which may reasonably be expected to assist the accused's defence, as disclosed by the defence statement (secondary/on-going disclosure).
13. In Magistrates' Court cases, the defence may give a defence statement to the prosecutor.  
The requirements of a defence statement voluntarily given in Magistrates' Court cases are the same as those in Crown Court cases.
14. Throughout the proceedings, the prosecution is under a continuing duty to keep under review whether material should be disclosed to the defence. After the defence has provided a defence statement, the 1996 Act enables them to apply to the court for an order requiring the prosecution to disclose material if the defence considers that the prosecution has failed to comply with the secondary disclosure.
15. Where the prosecution holds relevant sensitive material that meets the criteria for disclosure under the 1996 Act (or as amended), then a public interest immunity application may be necessary to withhold this material from the defence. Any decision to withhold such material is a matter for the court to determine.
16. Public Interest Immunity (PII) enables the courts to reconcile two conflicting public interests - the public interest in the fair administration of justice and the need to maintain the confidentiality of information the disclosure of which would be damaging to the public interest. PII is an exception to the general rule that all material that falls within the tests for disclosure must be disclosed. Special care needs to be taken in deciding where the balance lies between the two competing public interests.
17. Local Authority files are no longer a "class" of material to which PII automatically applies. Each case, and each document should be considered individually. Where PII can, or may apply, the Local Authority may itself conduct the balancing exercise and agree that, in an individual case, the conflicting public interest. In the investigation and prosecution of crime overrides the PII interests in confidentiality *R v Chief Constable of West Midlands Police ex parte Wiley* [1995] 1AC 274.
18. The position of PII with respect to Local Authority files has recently been summarized in *Re R (Care: Disclosure: Nature of Proceedings)* [2002] 1 FLR 755. Any person advancing a claim to PII in respect of material held by a Local Authority should set out with particularity the harm that it is alleged will be caused to the public interest. Before embarking on a claim for PII, consideration should be given to the question whether the material passes the threshold test for disclosure under the Criminal Procedure and Investigations Act 1996, and if so why.

## **THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

19. The Human Rights Act 1998 gives effect to the rights and freedoms guaranteed under the European Convention on Human Rights. Article 6 ensures that every accused has the right to fair trial. It states that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Article 8 protects the right to respect for private and family life home and correspondence.
20. Article 6 is a 'special' right, which means that it cannot be balanced against other public interests. On the other hand, Article 8 is a 'qualified' right which means that it can be interfered with where it is in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
21. The court will order disclosure of information regarding sexual and physical abuse of children (social service and education records) where it is necessary for an accused to have a fair trial (Article 6). The court will also order disclosure of the information where it is necessary for the protection of health or morals, for the protection of the rights and freedoms of others and for the prevention of disorder or crime (Article 8 (2)).

Disclosure should be appropriate for the purpose and only to the extent necessary to achieve that purpose.

## **JOINT INVESTIGATIONS**

22. Section 26 of the 1996 Act provides that a person other than a Police Officer, who is charged with a duty of conducting an investigation with a view to it being ascertained, whether a person should be charged with an offence, or whether a person charged with an offence is guilty, shall have regard to any of the provisions in the Code of Practice made under the 1996 Act. Material obtained by the Local Authority in the course of an investigation under section 47 of the Children Act 1989, which may be obtained jointly with the Police, but not in the possession of the Police, is not subject to section 26. However, it is acknowledged that where such material is obtained jointly with the Police, the Local Authority should as a matter of good practice, have regard to the Code of Practice.
23. Relevant material acquired during the course of a joint investigation should be given to the Police Disclosure Officer and listed on a sensitive or non-sensitive MG form. If there is any disagreement between the Police and the Local Authority on the material, then this will be resolved by the Court by way of a Public Interest Immunity application (see section 16 of the 1996 Act). Where material that has been jointly obtained is in the possession of the Police, then that material is subject to the provisions of the Criminal Procedure and Investigations Act 1996.
24. In most cases Social Workers will be involved where the Police are investigating allegations of sexual or physical abuse of children and vulnerable adults. In addition to complying with the 1966 Act, they should also adopt the Attorney General's guidelines and have regard to Article 6 of the European Convention on Human Rights.

## **NON - JOINT INVESTIGATIONS**

25. Where a person subject to a criminal investigation has not been charged, it is often the case that the investigating Police Officer will require to know about the background of the complainant, family and associates. Such information may be helpful in assessing the veracity of any complaint and the likelihood of conviction. Occasionally, if the Local Authority had disclosed material to the Police at an earlier stage the person under investigation would not have been charged.
26. In these circumstances, the only mechanism to enable the investigators to make application to the court for the disclosure of such material is to consider whether it is appropriate to make an application for Special Procedure Material, under Schedule 1 of the Police and Criminal Evidence Act 1984. However, this is not a satisfactory approach because it goes against the ethos and spirit of the Parties exchanging and sharing information where it is necessary to protect children and vulnerable adults.
27. Therefore, where full details of the nature of the investigation and the reasons for requiring such material are given to the Local Authority and that the material is treated as confidential, then it is in the interests of justice for there to be disclosure of relevant material before charge. This would be considered 'necessary' in accordance with Schedule 3 of the 1998 Act.
28. Where a person has been charged with an offence and the Local Authority have not been involved in the investigation, but holds or is believed to hold material that could be relevant, then the Local Authority fall within the category of a third party. The procedure for the Police in obtaining such information should be in accordance with this protocol.
29. Schedule 2 of the 1998 Act allows disclosure of non-sensitive material. Such material should be listed on a non-sensitive material form, which will be sent, together with the material, to the Police Disclosure Officer who will forward it to the Crown Prosecution Service.
30. The majority of the material held by a Local Authority will be of a confidential nature. Where the conditions are met in Schedule 3 of the 1998 Act, material should be revealed to the Police Disclosure Officer and the Crown Prosecution Service. The material should be listed on a sensitive material schedule and this together with the documents should be given to the Police Disclosure Officer and the Crown Prosecution Service. Where the Local Authority assert Public Interest Immunity then section 16 of the 1996 Act provides that the court must not make a disclosure order unless a person claiming an interest in the material is given the opportunity to be heard.
31. Paragraphs 51 - 54 of the Attorney General's Guidelines 2005 refer to material held by other agencies, which includes a Local Authority. If it is believed by the investigator, the Police Disclosure Officer or the Prosecutor that it is reasonable to seek production of material held by the Local Authority and the request is refused then application should be made for a witness summons requiring production of the material to the court. The prosecution should be pro-active in such circumstances.

## **CONCLUSION**

32. The aim of the protocol is to provide an agreed framework between the Parties for the sharing and exchange of relevant material in child and vulnerable adult investigations.

While there is a difficult balance between the Local Authority complying with their duty of confidentiality, and the Police and the Crown Prosecution Service obtaining relevant material from the Local Authority at the earliest stage possible in any criminal investigation, there are no legal reasons why the Parties should not exchange the material expeditiously, as outlined in this protocol. This would benefit everyone involved in any criminal child and vulnerable adult protection investigation and promote the efficiency of the criminal justice system.



**Date:**

**Police Reference:**

Dear Sir/Madam

**PROTECTION OF CHILDREN AND VULNERABLE ADULTS: REQUEST FOR DISCLOSURE OF MATERIAL HELD BY**

[INSERT NAME OF COUNCIL]

Police are conducting a criminal investigation into allegations made *against [name of the alleged offender]* of *[address of alleged offender], [date of birth]*.

The allegations being investigated are, in general terms, that *[set out the circumstances of the offence(s) being investigated and the charges if any.]*

The following child/vulnerable adult is the alleged victim of the offences:

Name of the child/vulnerable adult:

Address:

Date of Birth:

Social worker/office previously involved:

Relationship to the alleged offender (if any):

Name and dates of the service/s received/receiving (if appropriate):

Other children/vulnerable adults in the family:

In addition, we have obtained evidence from the following person/s:

Name of person:

Address:

Date of Birth:

Social worker/office previously involved:

Relationship to the alleged offender (if any):

Name and dates of the service/s received/receiving (If appropriate):

I believe that your Authority may hold material relating to the alleged offender or the above-mentioned persons, which may be relevant to our investigation.

*[Set out the nature of the material sought and the reasons why it may be relevant to the criminal investigation. Include whether or not it is thought that to ask the subject for consent to reveal information to the Police would compromise the evidence collection and why. The nature of material sought may include, but not is not confined to,*

- *Any document or entry relating to previous allegations of a similar character by, or in relation to any of the above mentioned children (whether or not it involves the alleged offender in this investigation);*
- *Any document or entry relating to previous allegations (whether or not of a similar character) by or in relation to any of the above mentioned children involving the alleged offender;*
- *Any document or entry revealing, identifying, suggesting or otherwise referring to the fact, possibility or probability that any of the above mentioned children may have made unfounded allegations in the past or casts doubt on their reliability.]*

I should be grateful if you would ascertain whether or not your Authority holds any such material.

*[Set out any prejudice or delay to the investigation, which may be caused by the material not being disclosed.]*

Any material obtained by us in the course of our investigation will be treated as sensitive and dealt with in accordance with the Criminal Procedure and Investigations Act 1996.

I should be grateful if you were able to reply by [date]\*

OR

The alleged offender has been charged and is now in custody and would therefore ask that your enquiries be expedited\*

I should be grateful if you would reply to me at the above address. If you wish to discuss this request, or any further information, please do not hesitate to contact either myself or *[name of officer]* on *[telephone number]*.

Thank you in advance for your assistance.

Yours faithfully,

Officer in charge of the Investigation/Disclosure Officer

\*Delete as appropriate

**PLEASE DO NOT REMOVE THIS FORM OR NUMBERED POST IT SLIPS UNTIL ADVISED BY LEGAL SERVICES**

SOCIAL SERVICES FILE(S) IN RESPECT OF .....

.....

SUSPECT/DEFENDANT.....

SUSPECTED/ALLEGED OFFENCE.....

**TO BE COMPLETED BY KENT COUNTY COUNCIL**

Paginated by .....

Position.....

Date .....

**TO BE COMPLETED BY POLICE OFFICER**

Inspected by.....

Position/Rank.....Station.....

DOCUMENTS COPIED YES/NO

IF YES, INDICATE THE DOCUMENTS COPIED BY REFERENCE TO THE DOC NUMBER (s)

.....

IF NOTES HAVE BEEN TAKEN, A PHOTOCOPY OF THE NOTES SHOULD BE LEFT WITH THE SOCIAL WORKER TO BE RETAINED ON THE FILE

**I UNDERSTAND THAT ACCESS TO THIS FILE HAS BEEN GIVEN TO KENT POLICE IN ACCORDANCE WITH THE INFORMATION SHARING PROTOCOL AGREED BETWEEN KENT POLICE, KENT COUNTY COUNCIL, MEDWAY COUNCIL AND KENT CPS**

**I UNDERSTAND THAT ANY MATERIAL READ, OR ANY NOTES MADE ARE TO BE REGARDED AS SENSITIVE MATERIAL WHICH IS SUBJECT TO PUBLIC INTEREST IMMUNITY AND SHOULD NOT BE DISCLOSED TO ANY PARTY WITHOUT THE LOCAL AUTHORITY'S WRITTEN CONSENT OR AN ORDER OF THE COURT.**

**Signed .....Date .....**  
**(Name of Police Officer inspecting the file)**

**PLEASE DO NOT REMOVE THIS FORM OR NUMBERED POST IT SLIPS UNTIL ADVISED BY LEGAL SERVICES**

SOCIAL SERVICES FILE(S) IN RESPECT OF .....

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SUSPECT/DEFENDANT.....

SUSPECTED/ALLEGED OFFENCE.....

**TO BE COMPLETED BY MEDWAY COUNCIL**

Paginated by .....

Position.....

Date .....

**TO BE COMPLETED BY POLICE OFFICER**

Inspected by.....

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**Signed .....Date .....**  
**(Name of Police Officer inspecting the file)**