

WEST MERCIA PROTOCOL REGARDING MATERIAL HELD BY SOCIAL SERVICES IN PROSECUTIONS INVOLVING CHILD WITNESSES OR CHILD VICTIMS

1. Introduction

1.1 This Protocol is between

- The County of Herefordshire District Council
- The Shropshire County Council
- The Telford and Wrekin Council
- The Worcestershire County Council

(the expression 'the social services authority' in the following paragraphs refers to any of the above)

- The West Mercia Constabulary ('the police' or 'the investigator')
- The Crown Prosecution Service, West Mercia ('the prosecutor')

1.2 Its purpose is to ensure that all parties are aware of their obligations with regard to the disclosure of material held by the social services authority which is relevant to criminal investigations and criminal prosecutions involving child witnesses or child victims.

1.3 The final agency signing will date the document. This protocol will take effect from that date.

1.4 Where differences of interpretation arise between organisations that are signatories to this Protocol, the following individuals (or their successors) will be responsible for defining the areas of disagreement and agreeing measures for the resolution of those differences, including amendment of the Protocol under paragraph 1.5 below, if need be.

County of Herefordshire District Council: Mr. Colin Oldham, Children's Services Manager

Shropshire County Council: Ms. Claire Porter, Group Solicitor

Telford & Wrekin Council: Mrs. Barbara Evans, Head of Safeguarding and Corporate Parenting in consultation with Ms. Kirsty Fisher, Senior Solicitor

Worcestershire County Council: Mr. David Elliott, Principal Solicitor (Personal Services)

West Mercia Constabulary: Supt. David Spencer

Crown Prosecution Service, West Mercia: Mr. Jim England, Chief Crown Prosecutor

1.5 Any provisions of the Protocol may be amended at any time with the consent of all parties.

2 Social Services Actions

2.1 Duties of disclosure of unused material under the Criminal Procedure & Investigations Act 1996 ('the Act') are imposed upon two categories of persons only: the investigator and the prosecutor. All other categories of persons are treated as third parties, rather than as belonging to this prosecuting or investigating team. Third parties frequently include the social services authority, in cases involving child witnesses or child victims.

2.2 The police must make reasonable enquiries of the relevant social services department(s) as to whether they possess unused material relating to such cases, although speculative enquiries are not required. Any material coming into the hands of the police from the social services authority will be material obtained in the course of an investigation and subject to disclosure in certain circumstances.

2.3 Material held by the social services authority in relation to cases where there are multi-agency child protection investigations will be disclosed to the police in accordance with the principles set out in "Working Together". Material or information disclosed in this manner will be assumed to attract Public Interest Immunity from disclosure to other third parties unless the contrary is asserted by the social services authority.

2.4 In other cases, the social services authority have no duty to retain or disclose material or information to the police, but will consider any request for such material or information and balance that request against any other conflicting duties or obligations; always bearing in mind the general public interest in assisting the police to carry out their investigations. Where voluntary disclosure by the social services authority is not felt appropriate, the police may apply to the court for a witness summons and thereby gain access to the information or material if the court so orders.

2.5 Social services authority personnel should be aware that any information given, whether in writing or orally and in confidence, may have to be disclosed to other third parties by order of the court at a later stage.

2.6 Any reports prepared by the social services authority at the request of the police, and actually obtained by the police, are subject to the requirements of the Act relating to disclosure.

2.7 The social services authority have a right to be heard in an application made by the Crown Prosecution Service concerning Public Interest Immunity (PIT) material which they hold or have supplied to the police, in accordance with rule 6, The Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules 1997.

3 Police Actions

3.1 There is a duty under the Code of Practice, issued under Section 23 of the Act ('the Code') for an investigation to pursue all reasonable lines of enquiry, whether these point towards or away from a suspect. What is reasonable will depend upon the particular case, but it may include enquiries as to the existence of material relevant to the investigation in the possession of the social services authority. It is not necessary to make speculative enquiries, but frequently the existence of the material will be known or can be deduced from the circumstances. For example, where a child witness is in the care of the local authority, the social services authority may have relevant material relating to the allegation under investigation.

3.2 If the officer in charge of the investigation, or the disclosure officer, believes that the social services authority hold material that may be relevant to the investigation, the social services authority should be told of the investigation by the police. The social services authority should also be alerted by the police to the need to preserve relevant material.

3.3 The police disclosure officer should inform the prosecutor of the involvement of the social services authority and the nature of the material the social services authority are believed to possess by way of Form MG6. In some circumstances, it may be appropriate for the police disclosure officer and investigator to consider, with the prosecutor, whether the social services authority should be approached and further material sought or inspected.

3.4 If material relevant to the investigation is inspected or obtained from the social services authority, it will become unused material or information within the terms of the Code. This applies particularly to relevant information conveyed verbally by the social services authority. It will have to be recorded on the appropriate schedule by the police, and revealed by them to the prosecutor in the usual way.

3.5 Any reports prepared by the social services authority at the request of the investigator and supplied to the investigator, will also be subject to the requirements of the Act relating to disclosure.

3.6 Where material is obtained from the social services authority, the investigator should discuss with them whether any sensitivity is attached to the material that might influence whether it is used as evidence, otherwise disclosed to the defence, or is regarded as attracting Public Interest Immunity. The material will not be disclosed by the Crown Prosecution Service to the defence without the social services authority's consent, or a court order following a PIT application. The social services authority's view must be passed to the prosecutor using the form MG6; unless they specifically assert to the contrary, it will be assumed that PIT applies to the material or information.

4 Crown Prosecution Service Actions

4.1 The Crown Prosecution Service reviewing lawyer should consider whether it is appropriate to advise the police to seek access to the material as part of their duties to explore all reasonable lines of enquiry. It will be important to do so if the material is likely to undermine the prosecution case, or likely to assist a known defence.

4.2 In advising the police on whether to approach the social services authority, the reviewing lawyer should consult with the disclosure officer, and if necessary with the officer in charge of the investigation.

4.3 If relevant material held by the social services authority is inspected by the police but not retained, it becomes unused material or information within the terms of the Code and needs to be recorded by the police on the appropriate schedule. An example might be where an investigator examines relevant material held by the social services authority, but decides not to obtain it. The record of information inspected in this way should then be assessed for disclosure to the defence as for all other unused material.

4.4 Where the social services authority are -unable to comply with requests for information or material for any reason the reviewing lawyer should consider whether to make an application for a witness summons. In the Crown Court under the amended Criminal Procedure (Attendance of Witnesses) Act 1965, there is a power to require advance production of the material. This may satisfy the need to examine the material to ensure that no material which undermines the prosecution case or assists the defence case, is present.

4.5 Before applying for the witness summons, it is appropriate to make a formal request directly to the social services authority. The request should explain:

- what material or information is thought that the social services authority holds;
- the reasons why access to the material is sought;
- the known or suspected issues in the case;
- what will happen to the material if it is released;
- invite views on whether the material is considered sensitive by social services authority and whether they consider it attracts Public Interest Immunity;
- what will happen if the material is not released.

A suitable time should be given for a response before making the application for the witness summons.

4.6 The procedure for applying for a witness summons is governed by the Rules of Court. Applications for witness summonses and pre-trial discovery in respect of the social services authority should only be made where the reviewing lawyer considers that the material sought is likely to undermine the prosecution case and it may affect the decision to continue with the case.

4.7 If the social services authority provide material to the police it shall be assumed to attract P and the reviewing lawyer will not reveal it to the defence unless:

- the social services authority consent to this after further discussion or
- if the social services authority maintain that the material is sensitive, the reviewing lawyer shall apply to the court for a ruling as to whether the material attracts P11 and may therefore be withheld, or whether it must be disclosed to the defence.

4.8 The Crown Prosecution Service have a duty to disclose to the defence the existence of any material which they believe may undermine the prosecution case. Once the defence have supplied a statement setting out the nature of the defence case, the Crown Prosecution Service has a further duty to disclose to the defence any material which might assist the defence case. However, they will not disclose material which the social services authority indicate attracts P11 but will apply to the court for an order whether that material may be withheld or disclosed.

5 Contacts

5.1 The following individuals can be contacted regarding issues arising from the operation of this protocol.

- John Howarth, Senior Solicitor, Social Services & Education, County of Herefordshire District. Council, P0 Box 240, Hereford HR1 12T, tel 01432 260000, fax 01432 260206.
- Claire Porter, Group Solicitor (Social Services and Education), Shropshire County Council Shirehall, Abbey Foregate, Shrewsbury SY2 6ND, tel 01743 251000, fax 01743 252795.
- Kirsty Fisher, Group Solicitor Telford & Wrekin Council, Civic Offices, P0 Box 215, Telford TFI 4LF, tel 01952 383255
- David Elliott, Principal Solicitor, (Personal Services), Worcestershire County Council, County Hall, Spetchley Road, Worcester WR5 2NP, tel 01905 766674, fax 01905 766677.
- Superintendent David Spencer, Head of Criminal Justice Support Department, West Mercia Constabulary, Hindlip Hall, P0 Box 55, Worcester WR3 8SP, tel 01905 723000, fax 01432 346745.
- Jim England, Chief Crown Prosecutor, Crown Prosecution Service, West Mercia Area, Artillery House, Heritage Way, Droitwich WR9 8YB, tel 01905 825001 fax (01905 825100)