

Joint Protocol in respect of access to Social Care Records by the Avon and Somerset Constabulary and Crown Prosecution Service (CPS)

Between

Avon and Somerset Constabulary (the Police)

and

Crown Prosecution Service (CPS)

and

Bath and North East Somerset Council

North Somerset Council

Somerset Council

Bristol City Council

South Gloucestershire Council

(The ASC Authorities)

1. Purpose:

- 1.1 The aim of this Protocol is to provide clear and standardised processes to facilitate the sharing of relevant information for the purpose of the prevention and detection of crime and/or the apprehension and prosecution of offenders between the ASC Authorities and Avon and Somerset Constabulary (the Police) and the Crown Prosecution Service (CPS). The protocol is in accordance with the Data Protection Act 1998, the common law duties of confidentiality and the principles of public interest immunity.
- 1.2 The objective of this Protocol is to promote effective multi-agency working.
- 1.3 The parties acknowledge that this Protocol is subordinate to any statutory obligations imposed on any of the participating parties, or any order made by any Court.
- 1.4 This Protocol does not cover information exchanged between the parties during investigations under Section 47 of the Children Act 1989 or information exchanged covered by the document entitled 'Working together to Safeguard Children.'

2. Over-arching Principles

- 2.1 Each signatory will ensure appropriate levels of confidentiality to information shared for the purposes of this agreement.
- 2.2 Personal information that is disclosed pursuant to the Protocol will not be used for any secondary purpose without the agreement of the originating agency.
- 2.3 ASC Authorities will facilitate requests made by an officer of Inspector rank or above that are related to an enquiry satisfying the purpose of this agreement. In facilitating the requests the ASC Authorities will arrange to provide disclosure of the

specific documents relevant to the investigation.

3. Child Protection Issues

- 3.1 This Protocol recognises that a distinction is to be drawn between
- (i) requests for information made by the Police about individuals who are identified in allegations, and
 - (ii) referrals about individuals giving rise to potential, current child protection concerns.

And that this Protocol only relates to the former.

- 3.2 Where, as a consequence of their enquiry, the Police suspect that a person who is still a child has suffered or is likely to suffer significant harm, a referral will be made by the Senior Investigating Officer to the relevant police Child Abuse Investigation Team and then to the relevant ASC Authorities duty social work team.
- 3.3 ASC Authorities will ensure that any current child protection concerns that arise from referrals by the Police as a consequence of the enquiry are managed in accordance with the Local Safeguarding Children Board's child protection policy and procedures. This will involve the convening of a strategy discussion to identify the appropriate action to be taken in an individual case.

4. Police Access To ASC Authorities Children's Services Records

- 4.1 Access to information about the Data Subject **1** where consent to disclosure has been given by the Data Subject can be dealt with in accordance with organisational standard procedures and is not part of this Protocol. In cases where consent to disclosure has been given by the data subject, there must be clear evidence that such consent is fully informed as to the nature and extent of the information to be disclosed and the purposes for which it may be used.
- 4.2 This Protocol deals with requests for access to information held by ASC Authorities concerning individuals other than the Data Subject, or where consent has not been obtained or has been sought and refused.
- 4.3 It is recognised that when the Police have made a request for access to information pursuant to paragraph 4.8 of this Protocol ASC Authorities should inform the police if consent to disclosure of personal information is to be sought from the individual who is the subject of the Police disclosure request. If the police consider that the investigation would be jeopardized if the ASC Authority seeks the individuals consent to disclosure of the information they should inform that ASC Authority including reasons for their view.
- 4.4 The signatories recognise that information held by ASC Authorities files may be subject to Public Interest Immunity (PII). It is recognised that personal information disclosed to the Police by the ASC Authorities will be regarded as sensitive material.

¹ A Data Subject is an individual who is the subject of personal data. Personal Data is information relating to a living individual who can be identified from that data or from that Data and other information in the possession of the Data Controller.

Such material may fall within the statutory disclosure tests under the Criminal Procedures and Investigations Act. The prosecution has a duty to disclose material that might assist the defence. PII can be claimed to withhold this material. A claim for PII is based on a public interest which is strong enough to compete with and sometimes prevail over the public interest in a fair trial and therefore gives rise to a need for the court to consider competing public interests. The ASC Authorities have a duty to keep the information in their files confidential. It is recognised that there is a public interest in maintaining confidentiality. ASC Authorities have a duty to claim PII, and this cannot be waived. In each case the court needs to balance the competing public interests in order to decide whether or not to disclose the documentation.

4.5 However the disclosure of personal information may be justified and lawful in circumstances where to do so would be in the interests of the administration of justice and in the public interest. This would include the prevention/detection of crime and/or the apprehension and prosecution of offenders. Any disclosure must be the minimum necessary to meet the requirements of the situation. It is intended under this Protocol that unless in exceptional circumstances the ASC Authorities will disclose information to the Police if the following conditions are satisfied:

- The crime is sufficiently serious that the public interest favours disclosure.
- Without disclosure the task of preventing or detecting the crime or apprehending or prosecuting offenders would be seriously prejudiced or delayed.
- The Police will ensure that any intelligence recorded as a result of any disclosure through this Protocol is appropriately marked to reflect the PII interest of the ASC authority. When no longer relevant, secure destruction will also be assured in accordance with organisational policy.
- That any request originates from or is approved by a police officer of the rank of Inspector or above

4.6 It is accepted that, even if the above conditions are satisfied, there is no statutory obligation to disclose on the part of any signatory to this agreement. In exceptional cases any partner agency, such as a health body, may wish to refuse access to information held. In these circumstances the partner agency will provide written confirmation as to the reasons for the refusal.

4.7 The Police can be informed about the existence of medical records and reports on ASC Authorities files including the date and author of the report/record. However, such report/records cannot be disclosed without the consent of the relevant health body and will therefore be removed from the Authority's file. It is agreed that the Police will approach the relevant health body to ask for disclosure of the report/record.

Procedure

4.8 As soon as the Police investigating or prosecuting a suspected crime believe that specific material exists within ASC Authorities files, which may be relevant to the investigation, they will request access to the records by means of a written notice from an officer of the rank of Inspector or above.

4.9 The written notice will include

- The identity and contact details of the police officer requesting the information.
- A summary of the case and the details of the offence being investigated.

- Details of the specific relevant information which is sought from the records in order to pursue all reasonable lines of enquiry.
- A statement as to why that information is likely to be relevant to the investigation and/or prosecution.
- A statement of how failure to disclose relevant information would prejudice or delay the investigation or prosecution
- Sufficient details to identify the information being sought.
- A statement as to why seeking the consent of the individual to disclosure with prejudice the investigation
- An undertaking from the officer requesting the information that the Police will not disclose or release the information, notes or copies of the documents unless it is necessary and appropriate and only to: -
 - Police Officers and staff who have a need to see them.
 - The Crown Prosecution Service
 - The author of the document as necessary
 - The subject of the document or their legal representative
 - Any other person that is required by an order of the court or where
 - There is a statutory requirement to do so as detailed in clause 5.2 of this Protocol.
 - The suspect of the crime being investigated

A pro forma written notice and undertaking is attached to the Protocol as Appendix 1

- 4.10 It is acknowledged by the Police that it will not be necessary and appropriate to release notes or copies of documents to the suspect. It may be necessary and appropriate to show the suspect notes or copies of documents in an interview to enable the suspect to answer questions.
- 4.11 Each ASC Authority will identify a single point of contact to facilitate and manage all requests received. A list of relevant ASC officers will be maintained by all parties and reviewed at regular meetings to be held to review the Protocol.
- 4.12 Upon receipt of the written notice, the ASC Authority will:
- (a) Seek to identify and then confirm with the Police whether or not the requested specific relevant information is contained within the case record.
 - (b) If the information is available, produce it for inspection at a nominated office.
- 4.13 The Police may read the specific relevant information and make notes as necessary to further the investigation. The ASC Authorities may provide copies of any documents, which are required for the purposes of the investigation and/or prosecution. The ASC Authorities will keep a record of all applications for disclosure and a note of all documents seen.
- 4.14 ASC Authorities will not permit original records to be removed from their possession without an order of the Court.
- 4.15 The Police will inform the ASC Authority in writing (email is acceptable) if they become aware of any defence application for disclosure of CYP files or documents.

5. Crown Prosecution Service (CPS)

- 5.1 When the Police submit a full file to the CPS all unused material viewed and obtained from ASC Authority will be regarded as sensitive material.

Where any material falls within the statutory disclosure tests under the Criminal Procedures and Investigations Act (CPIA), the CPS shall inform the ASC Authority of the reasons why the material falls to be disclosed to the defence. The CPS will not disclose any material to the defence unless by agreement with ASC Authority or by order of the court following a public interest immunity application. If the ASC Authority asserts public interest immunity and objects to the disclosure to the defence then the CPS will list the matter before the court and notify the Authority so that it can make separate submissions to the court with regard to public interest immunity.

- 5.2 The Prosecutor has a duty to keep under continual review the question of whether there is any unused material, which might undermine the prosecution case or might reasonably assist the defence case. The parties recognise that they may need to review the material again if other issues become relevant during the course of the criminal proceedings.

6. Police Requests for Witness Statements from Social Workers

- 6.1 This section deals with requests by the police to interview social workers for the purpose of preparing witness statements for potential use in criminal proceedings where the consent of the Data Subject has not been obtained.
- 6.2 The partners agree that social workers should not be interviewed and asked to prepare witness statements in order to provide background information. Such information should be obtained through the process agreed in this document.
- 6.3 Where it is considered necessary for the investigation, the Police will consider interviewing the social worker if
- they are a first-hand witness of a relevant incident or
 - have received relevant information from the suspect or others involved in the investigation
and
 - without a witness statement from the social worker the task of detecting or prosecuting the crime will be seriously prejudiced.

The witness statement may be admissible evidence in any criminal proceedings and social worker may be called to give evidence.

- 6.4 When the Police request to interview a social worker they will explain, in writing (email is acceptable) the purpose of the interview and confirm that it is necessary and in accordance with the requirements of paragraph 6.3 above. Upon receipt by the ASC Authority, the social worker will discuss the matter with his/her team manager and respond to the Police agreeing a date for the interview to take place or inform the Police as to why he/she does not agree to an interview.

7. Disclosure and Family Proceedings

- 7.1 In some cases to which this Protocol applies a child concerned may be (or have been) the subject of court proceedings in the Family Jurisdiction. In such cases the disclosure of information will be governed by Rule 11 of the Family Proceedings Rules 1991 and Rules 21Q – 21U of the Family Proceedings Courts (Children Act) Rules 1991 as well as this Protocol. These rules provide that leave of the court is required to disclose information that has been filed with the court in these

proceedings unless it is covered by the exceptions given in the Rules. If an exception applies the information can be disclosed without first seeking the leave of the court. The relevant Rules are attached to this Protocol as Appendix 2.

Signed [redacted]
for and on behalf of Avon and Somerset Constabulary Date

Signed [redacted]
for and on behalf of the Crown Prosecution Service

Signed [redacted]
for and on behalf of Bath and North East Somerset Council

Signed [redacted]
for and on behalf of Bristol City Council

Signed [redacted]
for and on behalf of North Somerset Council

Signed [redacted]
for and on behalf of Somerset Council

Signed [redacted]
for and on behalf of South Gloucestershire Council

Appendix 1

reply to: Inspector X, CAIT
telephone:
fax:
e-mail:
our ref:
your ref:
date:

Dear

Re: Request for disclosure of information held by (name of ASC Authority)

I am writing to request permission for *[identity of the police officer who will inspect the information]* to inspect case records held by CYP pursuant to the Protocol in respect of access to Social Care Records dated

The Child Abuse Investigation Team *[or relevant team]* are investigating allegations made against *(name and dob of alleged offender)* of *(address of alleged offender)* The allegations being investigated *[include a summary of the investigation including proposed offence, and charges if any]*.

I believe that your authority may hold material relating to the alleged offender and/or the following .

List people who Police wish to see information about including, full names, dates of birth address. Add here any other details to assist CYP to identify the case records such as dates when CYP were involved with the matter, addresses at that time ,social worker/office previously involved and the relationship of the person to the alleged offender)(if any)

It is necessary for the investigating officers to inspect CYPS case records in relation to the above because they believe they contain information about *[include here a statement of the specific information which is sought from the records in order to pursue all reasonable lines of enquiry, add, in relation to each person listed above why that information is relevant to the investigation and/or to the prosecution. It is important to stress that the information sought should be set out specifically and included should be why it is believed that such information may be included within the ASC authority files. Bland statements such as 'there may be information that undermines the prosecution case or assists the defence' is not sufficient].* *(Add if person/people have been asked whether he/she consents to disclosure of the case record and if so whether or not he/she consents).*

I confirm that if this information is not disclosed by CYP this would prejudice or delay the investigation because *[put in here how the investigation/prosecution would be prejudiced/delayed if the police did not have the information and why this information could not be obtainable from somewhere else or why it needs to be verified by reference to CYPS records]*.

I confirm that during their inspection of the case records the investigating officer will take notes of relevant information. They may ask for copies of certain documents if they are relevant. I hereby undertake that those notes and copies of documents will not be released to anyone save the agencies and people listed in paragraph 4.9 of the Protocol referred to above.

I would be grateful if you would reply to me or (name, address and telephone number of officer)

Yours
Inspector

Appendix 2

Rule 11 Family Proceedings Rules 1991

Rules 21Q to 21Y Family Proceedings Court (Children Act) Rules 1991