

**LANCASHIRE PROTOCOL  
RELATING TO THE  
DISCLOSURE OF INFORMATION TO AND  
FROM FAMILY PROCEEDINGS**

## **Table of Contents**

### **Part 1: INTRODUCTION**

|     |                      |   |
|-----|----------------------|---|
| 1.0 | Parties              | 4 |
| 2.0 | Background and Scope | 4 |
| 3.0 | Aims and Objectives  | 5 |

### **Part 2: DISCLOSURE INTO THE FAMILY JUSTICE SYSTEM**

|     |   |   |
|-----|---|---|
| 4.0 | Local Authority Request For Disclosure From the Police  | 5 |
| 5.0 | Disclosure by the Police / CPS to the Local Authority   | 6 |
| 6.0 | Notification by the Police to the Local Authority of the Existence and Status of a Criminal Investigation | 7 |
| 7.0 | Recovery of Reasonable Costs  | 8 |
| 8.0 | Private Law Proceedings / Litigants in Person   | 8 |

### **Part 3: DISCLOSURE FROM THE FAMILY JUSTICE SYSTEM**

|      |  |    |
|------|--|----|
| 9.0  | Police Request to Local Authority for Disclosure   | 9  |
| 10.0 | Disclosure by the Local Authority to the Police  | 9  |
| 11.0 | Applications by the Police and the CPS to the Family Court for Disclosure of Material Relating to Family Proceedings | 10 |
| 12.0 | Text or Summary of Judgment in Family Proceedings  | 12 |
| 13.0 | Disclosure by the CPS to the Criminal Defence  | 12 |
| 14.0 | Public Interest Immunity (PII) Application   | 14 |

### **PART 4: LINKED DIRECTIONS HEARINGS**

|      |   |    |
|------|---|----|
| 15.0 | Linked Criminal and Care Directions Hearings – Criteria   | 15 |
| 16.0 | Arrangements for Linked Directions Hearings               | 15 |
| 17.0 | Matters to be Considered at the Linked Directions Hearing | 18 |
| 18.0 | Review  | 19 |

## **Annexes**

- 1. Request for Disclosure of Police Information - Application Forms**
- 2. Disclosure of information from the Police during on-going criminal investigation & pre-charge**
- 3. Police Request to Local Authority for Disclosure of Material**
- 4. Contact Details and SPOCS**
- 5. Application form for Litigants in Person**
- 6. Prosecutor CPIA notice to Local Authority**
- 7. Local Authority Representations to Prosecution**

## **PART 1 : INTRODUCTION**

### **1.0 PARTIES**

- 1.1 The Parties to this Protocol are the Designated Family Court Judge for Lancashire, the Crown Court Resident Judges, the Crown Prosecution Service, Lancashire Constabulary and the Local Authorities within Lancashire; namely Lancashire County Council, Blackburn-with-Darwen Council, and Blackpool Unitary Authority.

### **2.0 BACKGROUND AND SCOPE**

- 2.1 This local Protocol has been adopted following the issue in October 2013 of the 'Protocol and Good Practice Model: Disclosure of information in cases of alleged child abuse and linked criminal and care direction hearings' (hereinafter referred to as "the 2013 Protocol"). Section 19 of the Protocol provides that local agencies should adopt a local protocol; however, this must not depart from the requirements of the Public Law Outline and Orders used must be in the prescribed form set out with "the 2013 Protocol".
- 2.2 This Protocol applies to cases involving criminal investigations into alleged child abuse and/ or Family Court proceedings concerning a child. Lancashire Constabulary will adhere to this Protocol when considering requests for Police information in both private or public law cases and in handling those requests originating outside of the Lancashire area.
- 2.3 This Protocol seeks to ensure that timely advance notice is provided to the Chief Constable of the existence of the family proceedings together with the detail and nature of the information sought, and to encourage the early disclosure of complete and relevant information between the Police, the parties and the Court; subject only to the avoidance of prejudice to the proper conduct of on-going Police enquiries at the time of the request. This is to ensure that the Family Court has sufficient information to make a determination in respect of any factual or welfare issues within the proceedings. It should be noted that disclosure to the family court will take precedence over criminal investigations.
- 2.4 The Police, CPS and Local Authorities have an obligation to protect the confidentiality of information disclosed pursuant to this Protocol.

- 2.5 Adherence to the procedures set out within this Protocol should ensure that ordinarily it will not be necessary for a Court Order to be sought.
- 2.6 This Protocol should also be referred to when disclosure from the Local Authority/ Family Justice System is required into the Criminal Justice System.

### **3.0 AIMS AND OBJECTIVES**

- 3.1 To provide early notification to the Local Authority and the Family Court that a criminal investigation has commenced and timescales anticipated relating to any prosecution.
- 3.2 To provide early notification to the Police/ CPS of the existence and details of Family Proceedings.
- 3.3 To facilitate timely and consistent disclosure of information and documents between the Local Authority and the Police/ CPS, into the Family Justice System.
- 3.4 To facilitate timely and consistent disclosure of information and documents from the Family Justice System to the Police and/ or the CPS.
- 3.5 To specify a procedure for linked direction hearings in concurrent criminal and care proceedings.
- 3.6 To facilitate the timely disclosure of information to private proceedings that have commenced or will commence before the Family Court.

## **PART 2 : DISCLOSURE INTO THE FAMILY JUSTICE SYSTEM**

### **4.0 LOCAL AUTHORITY REQUEST FOR DISCLOSURE FROM THE POLICE**

- 4.1 Where the Local Authority is contemplating Family Proceedings, or Proceedings have commenced, timely advance notice to the Police requesting disclosure will be provided using the form at **Annex 1** to this Protocol. This must include details of all parties (and legal representatives) and details of the allocated Local Authority lawyer. **The application must state precisely what evidence and information is sought and where appropriate why it is relevant to the proceedings.**

4.2 Whilst Lancashire Constabulary will ordinarily seek to provide a standard 'package' of relevant information relating to the parties to the proceedings, the '2013' Protocol is designed facilitate requests for material held by the Police that are central to the issues in the case. It is to be understood by all Parties that this Protocol should be used proportionately and is designed to facilitate only requests for material held by the Police relevant to the central issues in the case. Requests for disclosure should not be drawn any wider than is necessary and only relevant material will be disclosed. The disclosure request should be focussed identifying specific relevant documents wherever possible. **Requests or Court Orders should not be so broad as to ask for 'any and all material from the Police file'**.

4.3 Where the Police decide that disclosure cannot be made the Local Authority shall notify the Police Family Court Disclosure Officer, and if necessary the CPS lawyer, of any subsequent application to the Family Court for disclosure of prosecution material. The Local Authority shall notify the Police/ CPS of the date and time of the Family Court hearing at which disclosure will be determined. The Local Authority will ensure that any Order against the Police and/or CPS is served forthwith on the Police/ CPS (and in any event within two working days of the date of the Order). Any order by the Family Court for disclosure will be in the form provided for with the '2013 Protocol' (use of which by the Family Court is mandatory).

## **5.0 DISCLOSURE BY THE POLICE/ CPS TO THE LOCAL AUTHORITY**

5.1 Disclosure to the Family Court will always take precedence when there is a criminal investigation on-going. However, the Police will not disclose material where to do so might prejudice the investigation and/or prosecution. If a non-disclosure decision is made the Police will set out in writing why the disclosure request is opposed, and indicate the approximate date on which disclosure can be made.

5.2 The Police will seek to provide disclosure of all relevant material within 10 working days where a case is subject to on-going proceedings. Where the Local Authority is seeking information at the pre-proceedings stage, the Constabulary will seek to provide the information within 20 working days. If the information sought relates to an on-going inquiry/ investigation, it is still expected that a 'primary' disclosure of relevant material will be provided prior to any suspect being charged. The obligation to provide secondary disclosure of further relevant information will be on-going. Details of the provisions in relation to disclosure in these circumstances are set out at **Annex 2**. If the Police decide that a disclosure cannot be made, a clear reason for the decision should be provided.

- 5.3 Where criminal proceedings have commenced Lancashire Constabulary will notify the CPS in order that CPS may give due priority to charging decisions involving Family Court Proceedings.
- 5.4 On occasion consideration will be given as to whether the material can be released in a redacted format. In certain circumstances, where particularly sensitive material is sought and so as not to hinder the family proceedings, the Police may consider requesting that the information is disclosed directly to the presiding Judge. Or, the Local Authority may be requested to obtain a direction from the Court that upon receipt the material is not to be disclosed to named individuals.
- 5.5 Where criminal proceedings have been commenced (or are contemplated), the Police might wish to consult with the CPS lawyer before a decision is made on whether to disclose Police material to the Local Authority. However, due regard should be given to Annex 2.
- 5.6 The Local Authority will ensure that the Police material will only be disclosed to the professionals and parties in the family proceedings (unless the permission of the court is obtained to disclose material to others), in accordance with the undertaking contained within the standard application pro-forma attached at Annex 1.

## **6.0 NOTIFICATION BY THE POLICE TO THE LOCAL AUTHORITY OF THE EXISTENCE AND STATUS OF A CRIMINAL INVESTIGATION**

- 6.1 Within five working days of the commencement of a criminal investigation concerning alleged child abuse, details will be provided to the Local Authority SPOC, using the pro-forma attached at **Annex 3**.
- 6.2 The Police will contact the Local Authority SPOC at the point of charge, with an update relating to the prosecution or, in consultation with the CPS, the reason as to why this case is not proceeding. Contact details for Lancashire SPOCs are set out at **Annex 4**.
- 6.3 Within five working days of the Case Management Hearing in the Crown Court, the CPS will provide to the Local Authority SPOC the details of the any directions relevant to the family proceedings.

## **7.0 RECOVERY OF REASONABLE COSTS**

7.1 It is recognised that cases before the family court will frequently address matters of concern regarding the safety and welfare of children. In many such instances it is expected that the Police will have already fulfilled a safeguarding duty of disclosure by way of the provision of information to Local Authority social workers and CAFCASS officers. Accordingly, due to the volume of requests received and the resource required to facilitate disclosure to the family court, Lancashire Constabulary will seek to recover costs incurred in the provision of information for any (both public/ private) family court proceedings. Any such costs will be reasonable and take cognisance of the Association of Chief Police Officers Guidance on Charging for Police Services.

## **8.0 PRIVATE LAW PROCEEDINGS/ LITIGANTS IN PERSON**

8.1 The Police will follow and adhere to the procedures set out within this Protocol in respect of applications made for disclosure in Private Law proceedings. In private law proceedings, the Constabulary will see to provide relevant information within 20 working days of receipt of the request.

8.2 It is recognised that on occasions, in Private Law proceedings, individuals will not be represented by Solicitors and will bring matters to the Court as litigants in person. In these circumstances, should any party be represented by a Solicitor, that Party will be directed to apply for disclosure on the understanding that the non-represented party will be afforded the opportunity to view the disclosure.

8.3 In the scenario where neither party is represented the form provided at **Annex 5** should be completed and accompanied by a Court Order. Consideration may be given to the requirement of payment where and if appropriate.

## **PART 3 : POLICE REQUEST TO LOCAL AUTHORITY FOR DISCLOSURE**

### **9.0 POLICE REQUEST TO LOCAL AUTHORITY FOR DISCLOSURE**

- 9.1 Following the commencement of the investigation, Lancashire Constabulary will provide details to the Local Authority using the form at Annex 3.
- 9.2 The Annex 3 form will include details of the investigation and prosecution if commenced. Requests for material **must** be as prescriptive and detailed as possible and necessary for the pursuit of reasonable lines of enquiry. The form at Annex 3 will include reasonable timescales for the Police to be given access to relevant material, but the presumption will be that the Local Authority will deal with any request from the Police as expeditiously as possible so as to not to jeopardise the criminal investigation. Timescales will be case specific taking account of the stage/nature of the investigation and/or prosecution.

### **10.0 DISCLOSURE BY THE LOCAL AUTHORITY TO THE POLICE**

- 10.1 Upon receipt of the form at Annex 3 from the Police, the Local Authority SPOC (or delegated officer) will identify and collate relevant material from the Children's Services or other files as appropriate, the SPOC (or delegated officer) will liaise with relevant departments within the Local Authority in the collation of such material for the Police to assist the criminal investigation.
- 10.2 The Local Authority will identify for the Police the school(s) attended by the child/children subject to the investigation. This will enable the Police to approach the school directly. Alternatively, if it is practicable to do so, the Local Authority will obtain and collate relevant educational files for Police examination.
- 10.3 The Local Authority will have due regard to the guidance set out within 'the 2013 Protocol' relating to the inclusion and availability of records and what may be disclosed to the Police.
- 10.4 Where material is disclosed in relation to Police duties under Section 46 of the Children Act 1989 and disclosure is for the purposes of child protection the Police cannot make onward disclosure of any documentation **or information** contained therein for the purpose of the investigation or prosecution without the express permission of the Family Court (for the

avoidance of doubt, this will include disclosure to the CPS).

- 10.5 Where, in exceptional circumstances, the Local Authority is not able to include other material (not relating to Family Court proceedings) in the files to be examined by the Police, the Local Authority will notify the Police in writing of the existence of this material; indicating the reason why the material is not being made available to the Police. Such a course should be exceptional because the Local Authority recognises that the material will be regarded as sensitive by the Police and the CPS. It will not be disclosed to the defence without further consultation with the Local Authority or order of the court.
- 10.6 Within the timescales set out in the Annex 3 request (or otherwise agreed between the Local Authority and the Police), the Police will examine and review the material collated by the Local Authority. The review will usually take place on Local Authority premises but may be elsewhere by agreement. The Police may make notes and/or take copies of the material. The material will not be disclosed to the defence without further consultation with the Local Authority or order of the court.
- 10.7 Where further relevant Local Authority material comes to light after the Police examination of the material at paragraph 10.6 above, the Local Authority will contact the Police and/or the CPS to arrange an examination of the new material by the Police.
- 10.8 Similarly, where new issues arise in the criminal case (e.g. following the receipt of the defence case statement), the Police will submit a further Annex 3 form requesting access to material not previously examined.

#### **11.0 APPLICATIONS BY THE POLICE AND THE CPS TO THE FAMILY COURT FOR DISCLOSURE OF MATERIAL RELATING TO FAMILY PROCEEDINGS**

- 11.1 At the stage prior to committal to Crown Court or service of prosecution papers pursuant to section 51 Crime and Disorder Act 1998, applications will be made by Lancashire Constabulary Legal Services. After this stage, applications will generally be made by CPS.

- 11.2 Applications by the Police for disclosure must contain details of the named officer to whom release is sought and must specify the purpose and use to which the material is intended to be put. Applications should seek leave (where appropriate) to disclose the material to the CPS, to disclose the material to the criminal defence solicitors and (subject to section 98(2) of the Children Act 1989) to use the material in evidence at the criminal proceedings.
- 11.3 Applications by the CPS must specify the purpose and use to which the material is intended to be put and should seek leave to share the material with the Police and with the defence and (subject to section 98(2) Children Act 1989) to use the material in evidence at the criminal proceedings.
- 11.4 Applications shall be made on Form C2. The application must be served by Police or the CPS on all Parties to the Family Proceedings (The Local Authority having informed the Police of details of all parties to Family Proceedings as per this protocol).
- 11.5 The application will be determined at a hearing at the Family Court. Police and the CPS will not attend the hearing unless directed to do so by the Family Court.
- 11.6 Where it is practicable to seek prior written consent to disclosure from **all Parties** to the Family Proceedings, the Police or the CPS should do so. Application should then be made in writing to the Family Court seeking a consent order.
- 11.7 Alternatively (**and whenever this is possible**), the Police and/or the CPS will ask the Local Authority allocated lawyer (or SPOC if details of allocated lawyer are not known) to request that the Family Court considers the issue of disclosure to the Police and/or the CPS at the next hearing. In this way, the Family Court will be in a position to make any orders as appear appropriate without the need for Police and/or the CPS to make application to the Family Court. When requesting the Family Court to make an order in accordance with this paragraph, the Local Authority will put the other parties to the proceedings on notice; and will provide the court with details of the officer to whom disclosure is to be made and the purpose for which it is to be made.
- 11.8 In rare cases, where it considers it appropriate to do so, the Family Court should make orders for disclosure to the Police and/or the CPS without application having been made by the Police or the CPS.

## **12.0 TEXT OR SUMMARY OF JUDGEMENT IN FAMILY PROCEEDINGS**

- 12.1 The Local Authority will forward to the CPS copies of relevant Family Court judgments (and summaries thereof) in the possession of the Local Authority. The judgments may be appropriately redacted.
- 12.2 Where the Local Authority is not in possession of a judgment which appears to be relevant to the concurrent criminal proceedings (e.g. fact-finding judgment), it will notify the CPS in order that the CPS can obtain the judgment directly from the Family Court. In these circumstances it will not be necessary to make formal application for disclosure on Form C2; the CPS will request release of the judgment under Practice Direction 12G above.
- 12.3 Where it appears to the Local Authority that the judgment will be relevant to the criminal proceedings, the Local Authority will request that the Family Court expedite the preparation of the judgment for release to the CPS (and if possible at public expense). Alternatively, the issue of disclosure of the judgment to the CPS under Practice Direction 12G can be considered at a linked directions hearing.

## **13.0 DISCLOSURE BY THE CPS TO THE CRIMINAL DEFENCE**

- 13.1 The Criminal Procedure and Investigations Act 1996 requires the prosecution to disclose to the defence any material (including sensitive material) that could reasonably be considered capable of undermining the prosecution case against the accused or of assisting the case for the accused (the “disclosure test”). Where appropriate, application can be made to the criminal court to withhold sensitive material which satisfies the disclosure test on the grounds of public interest immunity (PII application).
- 13.2 PII applications to the criminal court for the withholding of sensitive material should be rare. Fairness ordinarily requires that all material which weakens the prosecution case or strengthens that of the defence should be disclosed. There is no basis for making a PII application except where the prosecutor has identified material that fulfils the disclosure test, disclosure of which would create a real risk of serious prejudice to an important public interest.
- 13.3 All material obtained from the Local Authority will be listed by the Police on the sensitive disclosure schedule MG6D. The lists of material not disclosed by the Local Authority to the Police will also be included on the MG6D

(see paragraph 10.3 - 10.7 of the '2013 Protocol' : material withheld on the ground of confidentiality).

- 13.4 Material obtained by the Police in accordance with Rule 12.73(1)(a)(viii) Family Procedure Rules 2010 (see paragraphs 10.5 and 10.6 of the Protocol must not be disclosed to the CPS. The Police will reveal the existence of the material on the MG6D (without describing it). As appropriate, the CPS will seek the permission of the Family Court to access the material.
- 13.5 Where the material has been obtained following an application by the Police to the Family Court, the Police must indicate to the CPS whether the Family Court has given permission for the material to be shared with the CPS and with the defence. Further application to the Family Court may be required by the Police and/or the CPS as appropriate.
- 13.6 The CPS will review the material in accordance with its statutory duties<sup>22</sup> and under the Attorney General's Guidelines on Disclosure. Only material which might undermine the prosecution case or might reasonably assist the defence case will fall to be disclosed. There will in no circumstances be "blanket" disclosure to the defence.
- 13.7 Where a Local Authority document is not made available to the Police on the basis of confidentiality (e.g. consent has not been obtained from the person to whom the document relates), the CPS will consider whether it is appropriate to seek access to such material by means of a witness summons in the criminal court.
- 13.8 Where in these circumstances application is made by the CPS for a witness summons, the CPS will serve the application on the criminal court and the Local Authority, identifying the Local Authority SPOC as the person who is required to produce the document(s). In addition, where the Crown Court so directs, the CPS will, in accordance with the Criminal Procedure Rules, serve the application on the person to whom the confidential document relates.
- 13.9 Where any Local Authority material reviewed by the CPS falls within the statutory disclosure test under the CPIA, the CPS will write to the Local Authority SPOC, within 2 working days of review whenever possible, setting out the reasons why the material falls to be disclosed and informing them of that decision. The form at Annex 6 to this 2013 protocol will be used by the CPS. The CPS will provide to the Local Authority proposals for the editing or summarising of the material for the purposes of disclosure to the defence. Where no material falls for disclosure, the CPS will inform the Local Authority that this is the case.

- 13.10 Within 5 working days of receipt of that notification, the Local Authority shall be given an opportunity to make any representations in writing to the CPS on the issues of disclosure. This will include objections to disclosure on the basis that the person to whom the material relates has not consented. Note that disclosure of documentation which has been created under the auspices, and for the purposes, of the LSCB, can only be made with the prior consent of the LSCB Chair.
- 13.11 The form at Annex 7 to this 2013 protocol will be used for this Purpose. Where, exceptionally, the Local Authority is unable to meet the 5 working day timescale, the Local Authority will contact the CPS to discuss whether the timescale can be extended in the particular circumstances of the case.

#### **14.0 PUBLIC INTEREST IMMUNITY (PII) APPLICATION**

- 14.1 If the Local Authority does not agree to disclosure of Local Authority material to the defence, the CPS must negotiate with the Local Authority to explore whether disclosure can be made in edited form or by summarising in another document the issues arising in the material. Whilst recognising that the prosecution must always comply with its statutory duty of disclosure, the sensitivity can often be removed in this way. PII applications in the criminal court will be rare. Local Authority material relating to a child is no longer a “class” of material to which PII applies. Depending on the sensitivity of the material, the Local Authority may itself agree that the public interest in the prosecution of crime overrides the interests of confidentiality. In highly exceptional cases, the CPS may need to make disclosure to the defence of the edited/summarised document without the consent of the Local Authority.
- 14.2 If a PII application is appropriate, the CPS will make a PII application to the criminal court as soon as reasonably practicable. The CPS will notify the Local Authority of the date and venue of the PII application and inform the Local Authority of their right to make representations to the criminal court.
- 14.3 Where PII is sought on the basis of lack of consent from the person to whom the confidential document relates, CPS must in accordance with the Criminal Procedure Rules notify the person to whom the document relates (as above, notification of date and venue of PII application and the interested person’s right to make representations to the court).

## **PART 4 : LINKED DIRECTIONS HEARINGS**

### **15.0 LINKED CRIMINAL AND CARE DIRECTIONS HEARINGS – CRITERIA**

15.1 The Protocol shall apply where a person connected with the child who is the subject of care proceedings or the himself is to be tried at Crown Court for any violent or sexual offence for an offence of child cruelty against the child, or any other child or any person connected with the child and either :

- (i) The Local Authority, Crown Prosecution Service, or any party to the care proceedings (including the child's guardian) considers that the care and criminal proceedings do, or may, impinge on one another;

OR

- (ii) In any care proceedings in either care centre in the High Court or County Court or in any proceedings in the Crown Court a Judge is satisfied that the Protocol does or may apply.

### **16.0 ARRANGEMENTS FOR LINKED DIRECTIONS HEARINGS**

16.1 The allocated case management judge in the Family Court (ACMJ) (in Family Proceedings Court this will be the legal adviser) will consider whether or not there is likely to be a need for a linked directions hearing in respect of the criminal and family cases. If the ACMJ considers that a linked directions hearing is likely to be appropriate he/she shall liaise with the relevant Resident Judge to invite him to nominate a judge to be responsible for the management of the criminal case.

16.2 In the care proceedings it is expected that the ACMJ will issue directions for the linked hearing which will spell out the respective parties' obligations, and which may include, but will not be limited to, recordings and, orders in the form at Annex I to this protocol (use of which by the Family Court is mandatory). At the same time, the ACMJ will consider giving permission to the Local Authority to serve its case summary on the CPS and the Crown

Court (in accordance with paragraph 16.6 below).

- 16.3 Once a judge has been identified to manage the criminal proceedings, the Resident Judge shall direct the listing officers to liaise with family listing to agree the listing of the criminal and care cases for a linked directions hearing before the nominated criminal judge and the ACMJ. In an appropriate case the Resident Judge may agree to the ACMJ undertaking the responsibility for the management of the criminal case if he/she is authorised to try criminal cases, and, where appropriate, serious sexual offence cases.
- 16.4 If on receipt of criminal proceedings sent from the Magistrates' Courts and consideration of that case by the Resident Judge, or if during a Case Management hearing or other pre-trial hearing listed before the Crown Court, the Resident Judge or judge (as the case may be) is satisfied that this Protocol does or may apply but that no reference has yet been made to the ACMJ for consideration in accordance with paragraph 16.1 above, the judge shall notify the Designated Family Judge accordingly who shall consider with the relevant Resident Judge and the ACMJ, whether a linked directions hearing is required. If there is agreement on the need for a linked directions hearing, the Resident Judge shall nominate a judge to be responsible for the management of the criminal case and arrangements shall then be made for the criminal and care cases to be listed for a linked directions hearing in accordance with paragraph 16.3 above.
- 16.5 The criminal case shall be listed before the judge at the Crown Court in public with the linked directions appointment in the care proceedings listed for hearing in private immediately thereafter. Subject to any specific objections raised by the parties, the advocates appearing in the criminal case may be invited to remain during the directions appointment in the care proceedings.
- 16.6 In every case involving a linked directions hearing the Local Authority's legal representative, **by no later than 4.00pm not less than 5 working days prior to the linked directions hearing**, shall with the permission of the family court prepare and serve on the CPS and the Crown Court a case summary setting out the basis of the Local Authority's application, its contentions in respect of findings sought in relation to the 'threshold criteria' (Local Authority's 'threshold document'), the current position in respect of the child, details of the proposed assessments and/or expert(s) assessments being undertaken and the timescales for the same and the timetable (if any) set for the proceedings within the Family Court.
- 16.7 The Local Authority's legal representative and the CPS shall agree a

schedule of issues identifying those matters which are likely to be considered at the linked directions hearing. The Local Authority shall circulate the Schedule to the solicitors for the other parties in the criminal and care proceedings **by no later than 4.00pm not less than two working days prior to the linked directions hearing.**

- 16.8 On the day of the linked directions hearing the advocates in the criminal and care proceedings shall meet **no later than one hour prior to the time fixed for the hearing** to discuss the schedule of issues with a view to identifying what directions may be required with particular reference to the trial timetable, disclosure and expert evidence and such other matters as may be identified by this Protocol.
- 16.9 The respective court files in the criminal and care proceedings shall be cross referenced and shall be clearly marked as 'linked cases'.
- 16.10 The directions hearing will be linked but not wholly combined because of the different parties and different procedural rules (such as with regard to privacy and rights of audience) which apply. The judge shall determine whether it is appropriate for some or all of the directions to be issued at a joint hearing or separately and the order of any directions to be issued.
- 16.11 At the conclusion of the hearing in the criminal case, counsel for the Crown will be invited to draw the minute of order, to be agreed with the defence, which will be submitted to the judge on the day of the hearing, for his/her approval.
- 16.12 The approved minute of order made in the criminal proceedings will be copied to the parties in the care proceedings by the CPS.
- 16.13 With the permission of the family court, the order made in the care proceedings will be copied by the Local Authority to the CPS and defence lawyers in the criminal proceedings.
- 16.14 The timing of the proceedings in a linked care and criminal case should appear in the Timetable for the Child (in accordance with the Public Law Outline).
- 16.15 **Judicial continuity:** Any adjourned linked directions hearing shall be listed before the same judge (unless the judge otherwise directs) but the judge who is the ACMJ shall not preside over the trial in the criminal proceedings, or pass sentence if there is a guilty plea, nor shall the judge give a "goodyear indication". The judge in the criminal trial or who passes sentence if there is

a guilty plea shall notify the ACMJ of the outcome.

## **17. MATTERS TO BE CONSIDERED AT THE LINKED DIRECTIONS HEARING**

- 17.1 The timetabling of both the criminal and care proceedings (with a view to such timetabling being coordinated to ensure the most appropriate order of trial and that each case is heard as expeditiously as possible).
- 17.2 Disclosure of evidence with particular reference to disclosure of evidence from one set of proceedings into the other with such permission as may be required by the relevant procedural rules.
- 17.3 Expert evidence with particular reference to the identification of expert witnesses, their willingness to act within the court timetable and the requirements of the Practice Direction concerning the instruction of Experts, their availability and role in the criminal and care hearings.
- 17.4 Any directions to be given in relation to issues of public interest immunity and for any witness summonses required for third party disclosure (Rule 28 Criminal Procedure Rules 2013).
- 17.5 Arrangements for the interviewing of children in care for the purpose of the criminal proceedings and any arrangements for the child to give evidence at any criminal or family hearing
- 17.6 To ensure where appropriate that a transcript of relevant evidence or judgment in the trial heard first in time is available in the subsequent proceedings.
- 17.7 Issues relating to any question of assessment or therapeutic input required by any child involved in the proceedings.
- 17.8 Issues in relation to restrictions on publicity which it is considered may be required.
- 17.9 Issues in relation to any relevant material which may be pertinent to the issue of bad character (in respect of previous convictions or other alleged 'reprehensible behaviour' ), whether of defendants or non-defendants.
- 17.10 Other legal or social work related steps in the Family Court proceedings.

## **18.0 REVIEW**

- 18.1 All parties to this Protocol will continuously review and monitor its operation. In the first instance, any concerns regarding the content of this Protocol can be raised with Lancashire Constabulary's Information Assurance and Vetting Manager. Consideration of substantive issues should be presented to the Lancashire Family Court Business Committee (Sub-Committee) for consideration. The Lancashire Designated Family Court Judge must agree any proposed amendments.

**May, 2014**