



West Midlands **LGA**
local government association

PROTOCOL

BETWEEN

WEST MIDLANDS POLICE

CPS WEST MIDLANDS

AND

WEST MIDLANDS LOCAL AUTHORITIES

IN THE EXCHANGE OF INFORMATION IN
THE INVESTIGATION AND PROSECUTION
OF CHILD ABUSE CASES IN THE WEST
MIDLANDS

JANUARY 2006

A PROTOCOL BETWEEN THE CROWN PROSECUTION SERVICE POLICE AND LOCAL AUTHORITIES IN THE EXCHANGE OF INFORMATION IN THE INVESTIGATION AND PROSECUTION OF CHILD ABUSE CASES IN THE WEST MIDLANDS

1. PARTIES

- 1.1 The parties to this protocol are the Local Authorities of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton, West Midlands Police and the Crown Prosecution Service West Midlands.

2. AIM

- 2.1 The aim of this protocol is to provide an agreed framework between the parties for the sharing and exchange of relevant information in child protection investigations for the purposes of criminal prosecutions in the West Midlands

3. OBJECTIVES

- 3.1 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 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.

4. INTRODUCTION

- 4.1 Good practice calls for effective co-operation between the parties; working in the best interests of the child; 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 abuse cases.
- 4.2 The Parties recognise the fundamental importance of inter-agency working in combating child 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* (1999). Furthermore, the Parties will comply with Section 10 Children Act 2004 which provides a

statutory basis for co-operation between agencies to promote the well being of children.

4.3 This protocol recognises:

- Social Services and Education departments of Local Authorities will always seek to act in the best interests of the children with whom they are involved; and
- The Police and the Crown Prosecution Service are bound by a duty to protect the confidentiality of material held by Local Authorities (dealing with the appropriate Social Services or Education department) 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.

5. THE LEGAL FRAMEWORK

5.1 The duties of the Parties are set out in the legal framework at Annex A. This also sets out the legal obligations, on which this protocol is based, of the Parties in relation to exchanging and sharing of information.

6. WRITTEN NOTICE TO LOCAL AUTHORITY

6.1 As soon as the Police investigating a suspected crime believe material exists within the Social Services and Education files which may be relevant to the investigation, they will notify the Local Authority by means of a written notice. Each Local Authority will establish a Single Point of Contact (SPOC) within the Legal Department for receipt of the written notice. Details of the SPOC for each Local Authority are set out in Annex B to this agreement

6.2 The Police will appoint, as appropriate, a suitably trained disclosure officer who will carry out the examination of relevant material on Social Services and Education files held by the Local Authority and whose task it will be to liaise with the Local Authority from the outset. If criminal proceedings are commenced, this disclosure officer will also act as Disclosure Officer under Criminal Procedure and Investigations Act 1996 (CPIA).

6.3 The written notice 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 (if different);
- A summary of the case and the details of the offences being investigated;

- 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; the request must be as prescriptive and detailed as possible, and limited to that which is strictly necessary.
- A statement of how failure to disclose relevant information would prejudice or delay the investigation.
- Timescales for Local Authority to reply to the written notice, and where appropriate for the police to be given access to relevant material. Timescales will be case specific taking account of the stage/nature of the investigation/prosecution, but will be as long as reasonably practicable.

The police should use the notice attached at Annex C to this agreement.

7. EXAMINATION OF LOCAL AUTHORITY MATERIAL BY THE POLICE

- 7.1 Upon receipt of the written notice from the Police, the Local Authority SPOC (or delegated officer) will identify and collate relevant material from the Social Services/Education files which it is necessary to disclose for the purposes of the police investigation in the light of the information provided at 6.3 above. As appropriate, the SPOC (or delegated officer) will liaise with relevant departments within the Local Authority in the collation of such material.
- 7.2 At this stage, the local authority will disclose to the police information that which 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 disclosed 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 CPS or in default of such an agreement, an order of the court made under the CIPA.
- 7.3 The Local Authority will ensure that documents filed in Family Court proceedings are not included in the files to be examined by the police. Where there are documents filed in Family Court proceedings, the Local Authority will provide a list of that material without describing what it is, in order for the police/CPS, if appropriate, to apply to the Family Court for disclosure. However, the text or summary of a judgment given in such proceedings will be included in the files to be examined by the police.
- 7.4 Where exceptionally, for reasons of confidentiality, lack of requisite third party consent or otherwise, the Local Authority is not able to include other material (not filed at Court) in the files to be examined by the police, then the Local Authority will notify the police Disclosure Officer in writing of the existence of this material.

- 7.5 The Local authority will where necessary provide in writing to the police Disclosure Officer a synopsis of the work done to collate the material at 7.1 above, setting out the extent of the search for material and any difficulties encountered in accessing said material.
- 7.6 Within the timescales set out in the written notice at 6.3 above, the police will examine and review the Local Authority material collated at 7.1 above. The review will usually take place on Local Authority premises but may be elsewhere by agreement.

8. COPYING OF LOCAL AUTHORITY MATERIAL BY POLICE

- 8.1 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 the investigation. The Police will accept that any material they read and any notes or copies they take are to be regarded as sensitive and, in particular, will not be disclosed to the defence without the consent of the Local Authority, or following an order of the Court under CPIA

9. APPLYING THE CPIA DISCLOSURE TEST

- 9.1 The Criminal Procedure and Investigations Act 1996 (CPIA) requires the prosecution to disclose to the defence any material that could reasonably be considered capable of undermining the prosecution case against the accused or of assisting the case for the accused. This also applies to sensitive material. Where appropriate, application can be made to the Court to withhold sensitive material which satisfies the disclosure test on the grounds of public interest immunity.
- 9.2 When the Police submit a full file to the Crown Prosecution Service, the Police disclosure officer will identify all unused material on the appropriate schedules (MG6C and MG6D). This means that all material that is viewed and/or obtained from the Local Authority will be listed and described on the sensitive schedule (MG6D). The written notes at 7.3-7.5 above will also be included in the schedule. It will be the duty of the Police disclosure officer to identify and point out on the schedule any material which might undermine the prosecution case or might reasonably assist the defence case. Any such material, together with the written notes at 7.3-7.5 will always be copied with the full file submitted to CPS.
- 9.3 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). In accordance with the Attorney General Guidelines on Disclosure 2005, the CPIA regime must be scrupulously followed by CPS. 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.

- 9.4 The Crown Prosecution Service shall treat all material disclosed by the local Authority as sensitive material.
- 9.5 Where any Local Authority material reviewed by the Crown Prosecution Service falls within the statutory disclosure test under the CPIA, the Crown Prosecution Service shall write to the Local Authority SPOC, within 2 working days of review, setting out the reasons why the material falls to be disclosed and informing them of that decision. The form at Annex D to this agreement will be used by CPS.
- 9.6 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 Crown Prosecution Service on the issues of disclosure. The form at Annex E to this agreement 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 Crown Prosecution Service to discuss whether the timescale can be extended in the particular circumstances of the case). In respect of each item of Local Authority material identified by CPS as satisfying the disclosure test, the Local Authority will indicate:
- That the Local authority agrees to disclosure to the defence, or;
 - That the Local authority agrees to disclosure but only subject to appropriate editing. Alternatively, in the view of the Local Authority, disclosure might be appropriate only to the extent that the defence are given access to inspect (but not copy) the material at Local authority premises, or;
 - That the Local Authority will not agree to disclosure in any form, asserting public interest immunity.
- 9.7 If the Local Authority agrees to the disclosure of material identified by CPS to satisfy the CPIA disclosure test, CPS will disclose the material to the defence in the agreed format.
- 9.8 If the Local Authority asserts public interest immunity and objects to disclosure to the defence, CPS should negotiate with Local Authority to further explore whether appropriate disclosure can nevertheless be made in edited form or by summarising in another document the key issues arising in the material. Failing such agreement, CPS will make a public interest immunity application to the court as soon as reasonably practicable. CPS 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.

10. CONTINUED REVIEW OF DISCLOSURE

10.1 Under section 7A CPIA, CPS has a duty to keep under continuing 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.

10.2 The Local authority SPOC (or delegated officer) will, on liaison with the relevant Local Authority departments at 7.1 above, instruct those departments to make available to the police (through the SPOC) any relevant material (as identified in the written notice at 6.1 above) not supplied at that initial stage, whether that material arises at a later stage or was simply unavailable or overlooked. The local authority SPOC will then contact the police disclosure officer to make arrangements for examination by the police of this further material.

10.3 Similarly, on liaison at 7.1 above, the Local Authority SPOC will instruct the relevant Local Authority departments to forward to the police disclosure officer via the SPOC:

- any material which the Local Authority has voluntarily disclosed to the defence. (It is accepted that it will be rare for such material not to be included in the material made available for police examination at 7.4 above.)
- details of any relevant defence request for material from the Local Authority under the Data Protection Act 1998, or under the Freedom of Information Act 2000
- details of any witness summons issued by the defence requesting the Local Authority to produce relevant material to the Court.

The Local Authority SPOC will then contact the police to make arrangements for examination by the police of the above.

10.4 CPS will liaise with the police disclosure officer to determine whether in the light of developments in the case, including representations made in the Defence Statement served under CPIA, that a further notice should be served on the Local Authority SPOC to make available additional material for police inspection. Such notice will take the form of that at Annex C of this agreement. In respect of such additional material, the procedure set out above at paragraphs 6-9 above will apply.

11. MISCELLANEOUS PROVISIONS

11.1 Where in the written notice served on the Local Authority at 6.1 above, the police seek access to Educational material; the Local Authority will identify the status of the school(s) concerned. Where the Local Authority

identifies a school as an Independent School, it should notify the police, so that the police may approach the school directly to obtain the material.

- 11.2 Nothing in this protocol will prevent the police making direct contact with a Local Authority maintained school (or Local Authority education or Social Services Department) for the purposes of a routine straightforward enquiry (e.g. to establish the name and address of a pupil whose identity may be of relevance to the investigation). There would be no objection to the police using the form at Annex C to this agreement for this purpose, alternatively Form WA170 may be used where appropriate.
- 11.3 Where original documents held by the Local Authority are required for production at Court in criminal proceedings, CPS will notify the Local Authority SPOC. CPS will take responsibility for receipt and secure storage of such material and for arranging the return of such material at the conclusion of proceedings.
- 11.4 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 as soon as practicable all material in their possession belonging to the Local Authority.
- 11.5 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. Subject to the provisions of The Family Proceedings (Amendment No 4) Rules 2005, 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, where appropriate be obtained by CPS from the court in which the family proceedings are being (or were) conducted.
- 11.6 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 their terms and the spirit of the protocol.

12. REVIEW

- 12.1 All parties to this protocol will continuously review and monitor progress of the initiative. Any concerns should be raised in the first instance with the CPS protocol co-ordinator Mark Paul.
- 12.2 In any event, 12 months from the implementation date of this protocol, a full review will be undertaken by way of further meeting of all parties.

13. IMPLEMENTATION

- 13.1 This agreement will take effect in respect of all police investigations commencing on or after 1 March 2006.

SIGNATORIES TO THE AGREEMENT

On behalf of Birmingham City Council

Date_____

On behalf of Coventry City Council

Date_____

On behalf of Dudley MBC

Date_____

On behalf of Sandwell MBC

Date_____

On behalf of Solihull MBC

Date_____

On behalf of Walsall MBC

Date_____

On behalf of Wolverhampton City Council

Date_____

On behalf of West Midlands Police

Date_____

**On behalf of Crown Prosecution Service
West Midlands**

Date_____

ANNEX A

LEGAL FRAMEWORK

INTRODUCTION

1. Professionals can only work together effectively to protect children 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... 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] QB 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 recognise that it may be necessary for a local social services authority or education 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 social services and education 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.

FREEDOM OF INFORMATION ACT 2000

11. The Freedom of Information Act 2000 came into force on 1 January 2005. The Act gives a right of access to anyone, anywhere in the world, to recorded information held by public authorities.
12. The Act creates two important rights of access for any person making a request for information to a public authority: a) to be informed in writing by the authority whether it holds the information of the description specified in the request and b) if that is the case, to have that information communicated to them. These rights are fundamental to the Act and they are legally enforceable. However, they are subject to important limitations in the form of exemptions.

CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996

13. The Criminal Procedure and Investigations Act 1996 (the 1996 Act), 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 April 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 dictates that 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 reasonably be considered capable of undermining the prosecution case or of assisting the case for the accused (initial disclosure).
14. In Crown Court cases, the defence is required to provide, within 14 days of initial disclosure by the prosecution, a statement setting out the nature of their defence and particulars of certain 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.
15. 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.
16. 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 its duty of disclosure.

17. Where the prosecution holds relevant sensitive material that meets the criteria for disclosure under the 1996 Act, then a public interest immunity application should be made to the court to withhold this material from the defence. Any decision to withhold such material is a matter for the court to determine.
18. 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 which falls within the test for disclosure must be disclosed. Special care needs to be taken in deciding where the balance lies between the two competing public interests.
19. Local authority social services 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] 1 AC 274.
20. The position of PII with respect to social services files has recently been summarised 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. A PII application need not be made unless the material satisfies the CPIA test for disclosure (capable of undermining the prosecution case or assisting the defence). If the test is not satisfied, no question of disclosure to the defence arises; the material should be withheld without reference to the court.

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

21. 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.
22. 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.

23. 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

24. 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 social services 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.
25. 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 which 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.
26. In most cases social workers will be involved where the police are investigating allegations of sexual or physical abuse of children. In addition to complying with the 1996 Act, they should also adopt the Attorney General's guidelines and have regard Article 6 of the European Convention on Human Rights.

NON-JOINT INVESTIGATIONS

27. 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.

28. 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.
29. 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.
30. Where a person has been charged with an offence and the social services and/or education departments of a 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.
31. 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.
32. 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 asserts 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.
33. Paragraphs 51-54 of the Attorney General’s Guidelines 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.

FAMILY PROCEEDINGS (AMENDMENT NO 4) RULES 2005

34. The Rules which came into force on 31 October 2005 now permit the communication of information relating to the proceedings (whether or not contained in a document filed with the court), not only where the court gives permission, but also where the communication is to (inter alia) ' a professional acting in furtherance of the protection of children ', which is defined as including a police officer who is exercising powers under section 46 of the Children Act (police protection) or is serving in a child protection unit or a paedophile unit of a police force. Also the text or summary of the whole or part of a judgment given in the proceedings can be disclosed, inter alia, to a police officer for the purpose of a criminal investigation or to a member of the CPS to enable the CPS to discharge its functions under any enactment.

CHILDREN ACT 2004

35. The Act contains duties in respect of co-operation between agencies in order to safeguard children. In particular Section 10 of the Act provides that the Local Authority must make arrangements to promote co-operation with its relevant partners to improve the well-being of children. The relevant partners of the Local Authority will include the police. In turn, each relevant partner must co-operate with the Local Authority in making such arrangements for the purposes of Section 10.

CONCLUSION

36. The aim of the protocol is to provide an agreed framework between the Parties for the sharing and exchange of relevant material in child protection 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 protection investigation and promote the efficiency of the criminal justice system.

ANNEX B

DETAILS OF SINGLE POINTS OF CONTACT WITHIN LOCAL AUTHORITY LEGAL DEPARTMENTS

**DETAILS OF SINGLE POINTS OF CONTACT WITHIN LOCAL AUTHORITY
LEGAL DEPARTMENTS**

<p>Birmingham City Council</p> <p>Name:</p> <p>Tel:</p> <p>Fax:</p> <p>E-mail:</p>	<p>Coventry City Council</p> <p>Name:</p> <p>Tel:</p> <p>Fax:</p> <p>E-mail:</p>
<p>Dudley MBC</p> <p>Name:</p> <p>Tel:</p> <p>Fax:</p> <p>E-mail:</p>	<p>Sandwell MBC</p> <p>Name:</p> <p>Tel:</p> <p>Fax:</p> <p>E-mail:</p>
<p>Solihull MBC</p> <p>Name:</p> <p>Tel:</p> <p>Fax:</p> <p>E-mail:</p>	<p>Walsall MBC</p> <p>Name:</p> <p>Tel:</p> <p>Fax:</p> <p>E-mail:</p>
<p>Wolverhampton City Council</p> <p>Name:</p> <p>Tel:</p> <p>Fax:</p> <p>E-mail:</p>	

ANNEX C

PROTECTION OF CHILDREN REQUEST FOR DISCLOSURE OF MATERIAL HELD BY LOCAL AUTHORITY

**PROTECTION OF CHILDREN: REQUEST FOR DISCLOSURE OF
MATERIAL HELD BY _____ [LOCAL AUTHORITY]**

The Police are conducting a criminal investigation into allegations made against the following individuals:-

NAME:			
ADDRESS:			
DATE OF BIRTH:			

The circumstances of the allegations are as follows:
(attach case summary, key witness statements, expert reports as appropriate)

--

Details of child(ren) involved in the allegations

Name			
Address			
Date of Birth			
Relationship to offender(s)			
Victim or witness			
Social worker			
School(s) attended (with dates)			

I believe that your Authority may hold the following material relating to the alleged offender(s) or the above child(ren) which may be relevant to our investigations.

[Describe material in precise detail where possible, specify relevant time periods, etc]. Use Annex C continuation sheet where necessary.

Any material obtained by us will be treated as sensitive and dealt with in accordance with Criminal Procedure and Investigations Act 1996. In accordance with paragraph 3.5 Code of Practice CPIA, we are under a duty to pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. Such lines of enquiry include seeking access to the above material which you may hold. Our investigation might be prejudiced or delayed if we are not allowed access to the material.

In accordance with the West Midlands Protocol re exchange of information in child abuse cases, we would ask that arrangements are made for us to examine the above material. Any material filed in Family Court Proceedings must not be made available, but we should be made aware of its existence.

In the circumstances of this investigation, it is important that arrangements are made for us to examine the material by
_____ **[Date]**


Stage reached in investigation/court proceedings: _____

Officer: _____ **Police Station:** _____ **Date:** _____

Tel: _____ **Fax:** _____ **Email:** _____

**PROTECTION OF CHILDREN: REQUEST FOR DISCLOSURE OF
MATERIAL HELD BY LOCAL AUTHORITY**

[Precise description of material to which access is sought, continued)

A large, empty rectangular box with a thin black border, intended for the user to provide a precise description of the material to which access is sought. The box is currently blank.

ANNEX D

PROTECTION OF CHILDREN NOTICE TO LOCAL AUTHORITY FROM PROSECUTOR THAT MATERIAL SATISFIES CPIA DISCLOSURE TEST

PROTECTION OF CHILDREN:

NOTICE TO LOCAL AUTHORITY FROM PROSECUTOR THAT MATERIAL SATISFIES CPIA DISCLOSURE TEST

You will be aware that the police have recently examined material held by your Authority in the following proceedings:-

	NAME	DATE OF BIRTH
Lead Defendant		
Lead Child victim		

I have received the material in accordance with Criminal Procedure and Investigations Act 1996. Please note that in accordance with Section 3 CPIA, the following material falls for disclosure to the defence because it is capable of undermining the prosecution case or assisting the case for the accused. **Use Annex D continuation sheet where necessary.**

Document Reference	Description

I would be grateful if you would indicate in respect of each item listed above whether a) you have no objections to disclosure, b) you have no objections to disclosure subject to appropriate editing, c) you object to disclosure (in which case I will not make disclosure subject to any Court order).

I would be grateful if you could reply by _____

Prosecutor: _____ **Tel:** _____

Address: _____ **Fax:** _____ **Date:** _____

Signed: _____ **E-mail:** _____

PROTECTION OF CHILDREN:

NOTICE TO LOCAL AUTHORITY FROM PROSECUTOR THAT MATERIAL SATISFIES CPIA DISCLOSURE TEST

Document Reference	Description

ANNEX E

PROTECTION OF CHILDREN

NOTICE TO PROSECUTOR FROM LOCAL AUTHORITY: REPRESENTATIONS ON DISCLOSURE

PROTECTION OF CHILDREN**NOTICE TO PROSECUTOR FROM LOCAL AUTHORITY:
REPRESENTATIONS ON DISCLOSURE**

I thank you for your notice dated _____ indicating that certain Local Authority material satisfies the test for disclosure in Section 3 CPIA.

I have the following representation in respect of proposed disclosure to the defence.

(Indicate in respect of each item a) that disclosure is agreed b) that disclosure is agreed subject to editing (specify where appropriate) c) that disclosure is not agreed)

Use Annex E Continuation Sheet where necessary

a) Disclosure is agreed

Item	Comment

b) Disclosure is agreed subject to editing

Item	Comment

c) Disclosure is not agreed

Item	Comment

Representative of Local Authority: _____ Date _____

Signed: _____

Tel: _____

Fax: _____

E-mail: _____

PROTECTION OF CHILDREN

**NOTICE TO PROSECUTOR FROM LOCAL AUTHORITY:
REPRESENTATIONS ON DISCLOSURE**

a) Disclosure is agreed

Item	Comment

b) Disclosure is agreed subject to editing

Item	Comment

c) Disclosure is not agreed

Item	Comment