

Protocol for the interface and Information Exchange when Independent Office for Police Conduct investigations coincide with Local Child Safeguarding Practice Reviews in England

1. This protocol has been produced by the Independent Office for Police Conduct (IOPC) and Child Safeguarding Practice Review Panel (the Panel) on behalf of Local Safeguarding Partnerships (LSP) in England.

2. Parties

This Protocol is between Local Safeguarding Partnerships (LSP) and the Independent Office for Police Conduct (“IOPC”).

3. Aims

Promote the welfare and safeguarding of children.

Provide a framework between the Parties for the understanding of the purpose of LSP reviews and IOPC investigations, as well as the sharing and exchange of relevant information between LSPs and the IOPC.

Ensure the Parties are informed about the process of Local Child Safeguarding Practice Reviews and IOPC investigations, their impact upon one another, the statutory obligation on LSPs to report within 6 months and the disclosure of relevant information between the Parties.

Both Parties recognise the importance of cooperation and that the sharing of information should be positively encouraged, unless there are specific reasons not to.

4. Context

When a child dies or is seriously harmed as a result of suspected or known abuse or neglect, a review may be conducted by an LSP to identify ways that professionals and organisations can improve processes and the way they work together to safeguard children and prevent similar incidents from occurring. LSPs should not come to determinations on the actions of individuals. The focus of a review is on learning and not holding individuals to account.

The reviews are known as Local Child Safeguarding Practice Reviews in England. For the purposes of this protocol the reviews will be referred to as LCSPRs.

LCSPRs and IOPC investigations will result in the gathering of material, some of which may be of value to either Party. The Parties recognise that the overriding interest in the safeguarding and welfare of children means that lessons need to be learnt immediately in order to better protect children who may currently be at risk.

5. Roles

The IOPC oversees the police complaints system in England and Wales and has a duty to maintain public confidence in it. As well as Home Office police forces, its remit extends to

other organisations with staff that have police-like powers. The IOPC:

- Independently investigates the most serious matters, including deaths and serious injuries following police contact and serious allegations of misconduct.
- Can oversee investigations carried out by police forces into allegations of misconduct where it decides not to investigate a matter independently.
- Deals with some types of reviews from individuals who are dissatisfied with the way the police have handled their complaint.
- Sets the standards by which police should handle complaints.
- Identifies from its work potential for learning to improve policing at a local and national level.

The Child Safeguarding Practice Review Panel (the Panel) was established under the Children and Social Work Act 2017 and operates under the relevant legislation and statutory guidance. The Panel has the power to commission reviews of serious child safeguarding cases and to work with local safeguarding partners to improve learning and professional practice arising from such cases. Underpinning the work of the Panel is its vision that all children are protected from abuse, neglect, and harm through excellent safeguarding practice. The Panel's mission is to provide robust oversight and leadership of learning across the child protection and safeguarding system. The provision of timely LCSPRs by Local Safeguarding Partnerships provides a central component of supporting the delivery of the Panel's ambitions for local multi-agency safeguarding arrangements.

Local Safeguarding Partnerships were set up under the Children and Social Work Act 2017 for the purpose of supporting and enabling local organisations and agencies to work together in a system where children are safeguarded and their welfare promoted. A key role in supporting partnerships to continuously improve their local practice to safeguard and promote the welfare of children derives from the learning generated from LCSPRs. Each LSP consists of three statutory partners (a) the local authority (b) a clinical commissioning group for an area any part of which falls within the local authority area and (c) the chief officer of police for an area any part of which falls within the local authority area.

6. Local Safeguarding Partnership Process

Local authorities have a statutory duty under 16C(1) of the Children Act 2004 (as amended by the Children and Social Work Act 2017) to notify the Panel where:

A local authority in England knows or suspects that a child has been abused or neglected and (a) the child dies or is seriously harmed in the local authority's area, or (b) while normally resident in the local authority's area, the child dies or is seriously harmed outside England.

Upon receipt of a notification a request is made to the LSP to provide a rapid review of the incident to the Panel.

The purpose of the rapid review is to:

- gather the facts about the case, as far as they can be readily established at the time.
- discuss whether there is any immediate action needed to ensure children's safety and share any learning appropriately.
- consider the potential for identifying improvements to safeguard and promote the welfare of children.
- decide what steps they should take next, including whether to undertake an LCSPR.

The rapid review has three possible outcomes:

- Decide whether the case does not meet the criteria for a further review and no further action is taken.
- Proceed to an LCSPR.
- Decide whether the case also raises national issues and ask the Panel to consider undertaking a National Review.

Once a decision has been agreed to undertake an LCSPR by the LSP there is a statutory requirement to publish the review within 6 months from the decision date.

The purpose of LCSPRs is to identify improvements to be made to safeguard and promote the welfare of children. Understanding whether there are systemic issues, and whether and how policy and practice need to change, is critical to the system being dynamic and self-improving. Consequently, reviews may be conducted without any direct input from the alleged perpetrator of the abuse.

LSPs are responsible for:

- Commissioning and supervising reviewers for LCSPRs and agreeing the methodology to be used.
- Ensuring that practitioners, families, and surviving children are fully involved in reviews and invited to contribute their perspectives without fear of being blamed for actions they took in good faith.

7. IOPC Investigation Process

Most complaints about the police are dealt with by the relevant police force in which the incident occurred. Under the Police Reform Act (2002), police forces must refer certain matters to the IOPC. These include:

- Certain complaints against the police such as those that include an allegation of serious corruption or serious assault.
- Where there is an indication that a police officer or member of police staff has breached the standards of professional behaviour or committed a criminal offence, which meets the mandatory referral criteria.
- Where someone has died or been seriously injured and

i) at the time of death or serious injury the person had been arrested by a person serving with the police and had not been released or was otherwise detained in the custody of a person serving with the police; or

ii) at or before the time of death or serious injury the person had contact – whether direct or indirect – with a person serving with the police who was acting in the execution of their duties and there is an indication that the contact may have caused – whether directly or indirectly – or contributed to the death or serious injury.

Upon receipt of a referral from a police force, the IOPC reviews this to decide whether the matter requires an investigation and, if so, makes a decision on the mode of investigation. There are three different types of investigation:

- Independent - the IOPC investigates the matter using its own investigators.
- Directed - the investigation is carried out by the police under the direction and control of the IOPC.
- Local - the investigation is carried out by the police force on its own behalf, with no involvement from the IOPC.

If the IOPC decides that a matter should be independently investigated, it will gather evidence to establish all the circumstances. Its investigations can include criminal allegations as well as misconduct.

At the end of the IOPC's investigation, it will produce a final report that summarises and analyses the evidence that has been collected.

The IOPC's final report along with a document containing the IOPC's opinion on whether a police officer or member of police staff should be subject to any disciplinary, performance or learning processes, will be sent to the police force involved to seek their views.

While the IOPC will consider the force's views, it will make the final decision on what happens as a result of its investigation. It is generally¹ the police force that carries out any disciplinary, performance or learning action.

If the IOPC think a police officer or member of police staff may have committed a criminal offence, it will pass on its report to the Crown Prosecution Service (CPS). The CPS is then responsible for deciding whether the person should be prosecuted.

If the IOPC decides to carry out a directed investigation, the police force appointed to conduct the investigation will gather evidence. The IOPC directs the investigation in terms of its scope, investigative strategy, and findings of the investigation report. Directed investigations can include criminal allegations as well as misconduct.

¹ The IOPC has the power to present misconduct proceedings in certain circumstances.

8. Cooperation

When there is an IOPC investigation and an LCSPR running in parallel it is expected that each Party's respective investigation or review will be able to progress side by side without compromising the position of each other.

At the earliest opportunity where it becomes known by either Party that an investigation or review is to take place, the respective Parties should make contact with the local police force for the area where the child was normally resident. This initial contact will be to establish whether an IOPC investigation or an LCSPR is being undertaken and the initial point of contact for those undertaking the investigation or review.

Once contact has been made there should be early liaison between both Parties to establish the parameters of each investigation and review, the timelines for undertaking the investigation and review, along with arrangements for ongoing engagement. As part of this early engagement each Party should share their Terms of Reference and provide a relevant point of contact.

If disagreements arise between the Parties regarding the sharing of information, the expectation is that LSPs and IOPC investigation teams work together to resolve any issues locally.

9. Disclosure and sharing of material

Investigation teams and reviewers should take reasonable steps to identify, secure and consider material that is relevant to their investigation or review which is not in their possession. Material may be relevant to both an investigation or review if it appears that it has some bearing on the incident or person being investigated or on the surrounding circumstances of the case.

Investigation teams and reviewers should record and retain material that may be relevant to their own investigation or review. Requests by each Party for the disclosure of material held by the IOPC or an LSP will be considered on a case-by-case basis. Where the material requested is held but was not generated by the IOPC or LSP (for example police logs or reports), consideration should be given to redirecting the requesting party to the organisation that provided the material, in order to meet data protection obligations.

Investigation teams should consider whether to make the LSP an 'interested person' for the purposes of the IOPC's investigation so that it can share information as necessary and update them with the progress of the investigation.

Material will be disclosed between the Parties for the specific purposes of assisting each other's investigation or review². The following principles should be followed when material is disclosed:

- Material will be provided promptly, subject to appropriate handling restrictions. Material should not be shared outside the LSP or the IOPC without the prior written agreement of the Party that provided the material.

² and if applicable / where relevant, any other material generated by either Party in the course of carrying out their statutory functions.

- Material should be securely shared and retained in accordance with the respective Party's retention policy / relevant information management policies. Where appropriate, these policies may be shared between Parties.
- A record should be kept of what material has been disclosed, including when it was disclosed and who it was disclosed to.
- A record should also be kept of what, if any, material will be returned, and the date of destruction of that material.

In accordance with the UK General Data Protection Regulation and the Data Protection Act 2018 the IOPC and LSPs are considered to be the controllers of information processed for the purpose of their respective investigations or reviews. When information is shared between the Parties, it will be deemed to be shared controller to controller.

Where the LSP or the IOPC requests material which either Party considers to be sensitive or secret, it will notify the other Party of this and the basis on which it considers the material to be sensitive or secret. Sensitive material is material, the disclosure of which would give rise to a real risk of serious prejudice to an important public interest. Secret material is material that justifies heightened protective measures to defend against determined and highly capable threats, e.g. where compromise could seriously damage military capabilities, international relations or the investigation of serious organised crime.

Where these circumstances arise, each party will seek advice and liaise with each other to establish if the sensitive or secret material can be shared in an appropriate format (for example, by editing or redacting parts of the material). In the majority of cases, it is anticipated that dialogue will resolve any difference of opinion between the LSP and the IOPC about whether sensitive or secret material should be shared, including any agreed handling arrangements.

If the matter is unable to be resolved, please refer to section 12 (escalation).

10. Interviews

The IOPC and LSP will conduct separate interviews with key personnel, including police officers and members of police staff. Each Party will, where requested and relevant to the other Party's respective investigation or review, share the product of their interviews.

Unlike some IOPC interviews, LSP interviews do not investigate alleged criminal or misconduct matters. Instead, LSP interviews focus on the circumstances around the death or serious harm of a child and what lessons can be learnt for practitioners and multi-agency working to make sure the same mistakes do not happen again.

11. Reports and Publication

Investigation teams and LSPs should share final versions of their respective reports with each other prior to their publication, subject to any legal restrictions.

If an LCSPR has completed prior to the IOPC's investigation concluding, the LSP should ask the IOPC whether it has any representations on the publication of its report. This is to ensure that:

- There is no content in the LCSPR report, the publication of which, would prejudice any potential future criminal, disciplinary and/or coronial proceedings.
- Any information generated by the IOPC which is referenced in the LCSPR report is accurately cited.

12. Risk of prejudice to an IOPC investigation

While an IOPC investigation should be progressed expeditiously, there may be complex enquiries which means it is not completed within the time-limit for publication of the LCSPR (6 months). Criminal, disciplinary and/or coronial proceedings may also occur following completion of an IOPC investigation.

As the LCSPR is concerned with gathering potential learning for the safeguarding of children, it may not be appropriate to wait for the completion of an IOPC investigation and any associated proceedings before proceeding with the LCSPR process.

It is important that both Parties engage with each other so that the Parties can make an informed decision about any likely impact the LCSPR process may have upon an IOPC investigation or any proceedings.

If, exceptionally, at any time it is the view of the IOPC decision maker overseeing the investigation that there would be irreparable prejudice to the investigation if the LCSPR were to proceed while the investigation or any proceedings were still ongoing, they will notify the LSP of this as well as the reasons for their opinion. If criminal, disciplinary and/or coronial proceedings are taking place, the IOPC decision maker should consult with the organisation(s) co-ordinating those proceedings prior to notifying the LSP³.

Upon receipt of this notification, the LSP will consider and decide what steps to take to address these concerns, for example delaying the publication of the LCSPR.

13. Escalation

In any case where a disagreement concerning information sharing arises between Parties that cannot be resolved, the issue should be escalated to the IOPC Director with responsibility for the investigation and the Chair or Independent Scrutineer for the LSP to discuss matters, with a view to resolving the dispute locally, and before either Parties' respective legislative provisions are utilised.

The legislative provisions enable the Parties to require information to be provided, for the purpose of their respective investigation or review. If that request is not complied with, it can be escalated to the court for a decision. Specifically:

- Section 16H Children Act 2004 sets out the ability for any of the safeguarding partners⁴ for a local authority area to request a person or body to provide information

³ For criminal proceedings this will be the Crown Prosecution Service, for misconduct proceedings this will be the Appropriate Authority, and for coronial proceedings this will be the Coroner conducting any inquest.

⁴ A safeguarding partner in relation to a local authority area in England is defined under the Children Act 2004 Section 16E (as amended by the Children and Social Work Act, 2017) as:
(a) the local authority

for the purpose of enabling or assisting an LCSPR. The body or person must comply with that request.

- Paragraph 19ZA, Schedule 3 Police Reform Act 2002 provides the IOPC with the power to serve an information notice, to request any person to provide information which is reasonably required for the purposes of carrying out their investigation.

(b) a clinical commissioning group for an area any part of which falls within the local authority area
(c) the chief officer of police for an area any part of which falls within the local authority area