



Department
for Education

Joint Protocol

Subject: His Majesty's Chief Inspector for Education, Children's Services and Skills (HMCI) disclosing details on their register of children's homes with local authorities, the police, the Office of the Children's Commissioner and the Secretary of State for Education.

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Section 1

Aim

This protocol provides a joint framework of understanding and expectations in relation to the disclosure by His Majesty's Chief Inspector for Education, Children's Services and Skills (HMCI) of the information on its register of children's homes. The document sets out:

- the legal context for disclosure by HMCI of that information to local authorities, the police, the Office of the Children's Commissioner and the Secretary of State for Education; and
- practical arrangements and expectations about the disclosure and use of that information by the police, local authorities, the Office of the Children's Commissioner and the Secretary of State for Education.

Background

On 3 July 2012 the Secretary of State set out his response¹ to the accelerated report of the Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups and to the All Party Parliamentary Group's report from the Joint Inquiry into Children Who Go Missing from Care.

Following a positive national consultation, barriers in regulations have been removed so that HMCI can disclose the names and addresses of children's homes from its register to the police and other named public authorities. Disclosure of that information must be made in accordance with the Care Standards Act 2000 (Registration) (England) Regulations 2010² ('the Registration Regulations') as well as in accordance with the wider legal obligations contained in common law, the Data Protection Act 1998 and sector specific legislation. Disclosure under the Registration Regulations will not include the names or personal details of individual children living in children's homes.

Information may be disclosed under the Registration Regulations to:

- Local authorities (LA)
- The police
- The Secretary of State for Education (SofS)

¹ <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120703/wmstext/120703m0001.htm>

² 2010/2130 . These regulations were amended by the Care Standards Act 2000 (Registration)(England)(Amendment) Regulations 2013 S.I.2013/446.

- The Office of the Children's Commissioner (OCC)

This protocol provides a joint framework of expectations and understanding in relation to the disclosure of details of the names and addresses of children's homes which have been requested under the Registration Regulations. It sets out how the receiving public authorities will be expected to receive and process this information. This protocol also seeks to address a concern raised by looked after children during consultation that disclosure could lead to children living in children's homes being targeted inappropriately in enquiries into local crimes that are not related to their own safeguarding.

Statement of values and principles

The protocol recognises that when information is requested on the names and addresses of children's homes from HMCI, that:

- Requests made by the police under the Registration Regulations must be made for the purposes of safeguarding the welfare of children accommodated in children's homes within that police force area.
- A public authority which receives information under the Registration Regulations must, save for exceptional circumstances, ensure that this personal data is not further processed in any manner incompatible with the purpose for which it has been obtained – namely to safeguard the welfare of children.
- This information constitutes personal data within the meaning of the Data Protection Act 1998, and must be processed in accordance with the requirements of that Act.
- Where, exceptionally, personal data obtained under the Registration Regulations are processed for any purpose other than for safeguarding the welfare of children, this will be authorised at a senior level and recorded by the public authority along with details of what the information was used for, and the reasons for this.

It also recognises that:

- Looked after children are entitled to the same level of privacy and protection as all other children in the community.
- Disclosure of details relating to children's homes should not lead to looked after children being inappropriately targeted in enquiries into crimes committed in the local area.
- Looked after children living in children's homes can be more vulnerable to crimes involving exploitation and there is a need to balance their privacy with their safety.

Legal position

A person who carries on or manages a children's home without being registered commits an offence under section 11 of the Care Standards Act 2000 ("the CSA"). HMCI is the registration authority for a range of agencies and establishments including children's homes and must keep a register of those bodies under regulation 7 of the Registration Regulations. HMCI is required under section 36(1) of the CSA to make copies of those registers available at its offices to any person. That sub-section also provides that any person who asks for a copy of or an extract of a register shall be entitled to have one.

This general duty is subject to a restriction under section 36(3) of the CSA which provides that the duty shall not apply in such circumstances as may be prescribed by regulations. The Registration Regulations are made under that power, the effect of which is that information relating to the names and contact details of children's homes and any enforcement action taken against that children's home are not available for public inspection. Instead that information can only be disclosed to certain specified public authorities, namely the Secretary of State for Education, the Chief Officer of Police, a local authority and the Office of the Children's Commissioner where a request has been made by that public authority under section 36 of the CSA.

The information that is not available for public inspection, but which instead can only be disclosed to the four categories of public authority set out above, is as follows:

- the name and address of each person registered in respect of a children's home (paragraph 1 of Schedule 5 to the Registration Regulations);
- where the registered person is an organisation, the address of the office and name and address of the responsible individual (paragraph 2);
- the name, address and telephone number of the children's home (paragraph 3); and
- the date and nature of any enforcement action being taken against the children's home (paragraph 10).

How requests should be made

Police and Local Authorities: The request for disclosure will be sent to HMCI by the Chief Officer of Police for each police force and by the Director of Children's Services for the local authority.

Office of the Children's Commissioner and Secretary of State for Education: The request for disclosure will be made by a senior official, the level of which will be agreed with HMCI before the first set of data is disclosed.

Each public authority will provide a 'secure email address' to which HMCI can send the information.

Where a public authority identifies a continuing need for disclosure of information regarding children's homes in a particular area, it may make a request for that information to be provided on an on-going, monthly basis, and updated periodically by HMCI. In those circumstances, it is anticipated that the receiving public authority will:

- review every twelve months whether there is a continuing need for that information; and
- send a confirmation to HMCI in a format to be agreed that it wishes to continue to receive that information.

HMCI will in turn provide and make available to the Chief Officer of police for each police force and the Director of Children's Services for each local authority, a secure email address to which this request can be sent.

If a confirmation is not sent by the public authority to HMCI every twelve months, HMCI will no longer send the information to the public authority unless or until a further request is received.

Receiving public authorities will be expected to have due regard for the appropriate level at which the information is shared within their organisation and how this is effectively managed, in line with their responsibilities under the Data Protection Act 1998.

The data will be stored safely and securely in line with data assurance principles and will be protectively marked according to its level of sensitivity.

Limits of disclosure

A public authority can only disclose personal data which has been received in accordance with the Registration Regulations where to do so is consistent with their responsibilities under the Data Protection Act 1998 and any specific relevant legislation relating to the exercise of their functions.

Section 2 –

The police and local authorities are likely to already know the locations of children's homes in their area, and there are well established patterns of partnership working in place.

This section of the protocol presents some of the practical issues that may arise in the context of a request for information under the Registration Regulations.

Association of Chief Police Officers (ACPO)

The Association of Chief Police Officers (ACPO) recognise the following principles in respect of the use of information disclosed by HMCI to the police under the Registration Regulations; namely that such information should be used only for the purpose of safeguarding the welfare of children living in children's homes.

The key functions of the police using this information have been agreed as:

- to enable them to take a strategic and operational approach to safeguarding looked after children living in children's homes e.g. to offer homes more targeted support to prevent children going missing from these placements;
- to carry out their community policing role with regards to this vulnerable group of children and young people;
- to contribute to resettlement and management in the community of offenders who pose a risk of harm to children³;
- to carry out their crime prevention function – in the context of being able to deter potential offenders from targeting children living in children's homes; and
- to share information on police knowledge of concerns affecting individual homes more easily with Ofsted in order to inform their regulation and inspection activity as indicated earlier in this section.

Annex 1, provided by the police, contains examples of appropriate use of this information.

The Office of the Children's Commissioner

For the Office of the Children's Commissioner, this information will enable it to plan for visits to children in establishments under existing powers of entry under the Children Act

³ Information may be disclosed to probation service providers under section 14 of the Offender Management Act 2007 or section 325(4) of the Criminal Justice Act 2003 in the case of offenders subject to the Multi-Agency Public Protection Arrangements (MAPPA).

2004. It will also be consistent with the future role of the Office of the Children's Commissioner under the Children and Families Bill to promote the rights of looked after children.

Local Authorities

Local Authorities will use this information to enable them to carry out their on-going responsibilities to safeguard and promote the welfare of children in their area and to be able to effectively exercise other powers and duties required by regulations, National Minimum Standards and statutory guidance in respect of children's homes in their area.

Secretary of State for Education

The Department for Education will use this data to provide government ministers with information about the distribution of children's homes and how children's homes location affects capacity to respond to the needs of looked after children at national and local levels. The information will also be used to contribute to better informed policies concerning the welfare of looked after children who rely on children's homes placements.

Data Protection and the meaning of the term 'personal data'

The names and addresses of children's homes constitute 'personal data' within the meaning of section 1(1) of the Data Protection Act 1998. Personal data is data which identifies an individual. Any data which, if combined with other information in the possession of a party receiving the data or information in the public domain, leads to a situation where there is more than a remote possibility that an individual can be identified will also be personal data.

Once personal data have been disclosed by HMCI, each local authority, the OCC, the Secretary of State for Education and the police will become the 'owner' (or data controller) of the information and will have to comply with the requirements of the Data Protection Act 1998 and any other relevant common law or statutory obligations regarding the processing of personal data and confidential information. Appropriate technical and organisational measures must be taken against accidental loss or destruction of, or damage to, personal data. An individual whose personal data is lost or destroyed can complain to the Office of the Information Commissioner.

Processing of personal data

Personal data must be processed lawfully, fairly and in accordance with the requirements of the Data Protection Act 1998. Any individual who suffers unwarranted harm or distress may apply to the Office of the Information Commissioner for damages.

It is recognised that the Data Protection Act (section 29) may, without the knowledge of the individuals concerned, permit the police to process any personal data they hold where this is 'necessary' to prevent or detect crime or to apprehend or prosecute offenders. Police forces will be aware that processing of information for this purpose may be inconsistent with a central principle of this protocol, that looked after children should not be inappropriately targeted in enquiries into crimes.

Public authorities which may receive information in accordance with regulation 7 of the Registration Regulations will be expected in particular to take reasonable steps to:

- put arrangements in place to avoid the inappropriate targeting of children's homes or the identification of individual children living in children's homes, and
- ensure that there will not be any detriment to the safety, rights or welfare of any child living in a children's home resulting from the sharing or use of the disclosed information.

They should also ensure that any processing of this data, beyond the uses documented in this protocol, is authorised at a senior level and effectively monitored within each public authority. Public authorities should ensure that any such monitoring is transparent, so that the public can obtain on request details of how frequently this data has been processed beyond its intended uses.

The right to redress

It is agreed that systems should be put in place or maintained to ensure that an appropriate complaints mechanism will cover cases where a children's home or individual child may feel that they have been unfairly targeted, or that their safety, rights or welfare have been damaged or infringed as a result of unfair or inappropriate use or sharing of this information. Individuals (including children) will be informed about how to make representations to the service concerned and about their right to complain to the Information Commissioner.

Equality

Those party to this joint framework believe in safeguarding all children and that children in children's homes should not be treated any differently to other children in the community in their day to day lives.

Partners

The following organisations that the amended regulations affect are party to this joint framework:

Association of Chief Police Officers (ACPO)

Department for Education (DfE)

His Majesty's Chief Inspector for Education, Children's Services and Skills (HMCI)

Office of the Children's Commissioner (OCC)

In addition to the organisations listed above, the following individuals and organisations contributed to the drafting of this joint framework.

Child Exploitation and Online Protection Centre (CEOP)

Independent Children's Home Association (ICHA)

Leicestershire Police

Association of Directors of Children's Services (ADCS)

National Offender Management Service (NOMS)

UK Missing Persons Bureau

Office of the Children's Rights Director

Wayne Gates, Registered Manager, Rochdale MBC

West Mercia Police

Wiltshire Police

Date of commencement

This protocol commences on 1 April 2013. It will remain in force until such time as it is revoked by the parties.

The protocol will be reviewed after 6 months and may otherwise be reviewed at any time at the request of any of the signatories.

Annex 1: Examples of good practice and appropriate use by police

Example 1

The police establish from information requested and subsequently disclosed to them by Ofsted that a new children's home has been registered in their area. Local police officers visit to introduce themselves and attempt to establish good working relationships with staff. They outline local procedures regarding the reporting and investigation of missing children, and leave their names and contact details. During their visit they also inform the home of current concerns they have about risk of sexual exploitation within the local area and how this is being addressed.

Following this visit a child is placed in the home who has a history of running away from their previous placement. The safety plan, drawn up as part of the child's care plan, outlines how the children's home will respond to any future missing episodes. Two weeks later the child goes missing, and given the concerns outlined in their safety plan, and the working relationship the home has established with the police, local officers are notified, know the potential risks faced by the child and are able to locate and return him/ her safe and well.

The police update their intelligence and missing person systems with the information of this incident, so should the child ever go missing, officers are aware of their vulnerability, and of the approach that the children's home takes to safeguard that young person.

Example 2

Police investigating a child sexual exploitation enquiry have identified details of middle aged men and vehicles that have been making visits to a local children's home. The occupants have been attempting to entice the children into their vehicle with cigarettes and alcohol.

Basic descriptions of the men and their vehicles have been established and the police inform all children's homes in the area of these descriptions, with instructions about what to do if observed.

They are now able to do this as they have requested disclosure from HMCI who have provided the police with the names, addresses and telephone numbers of the children's homes in their area.

Example 3

Police forces requesting information from HMCI's register of children's homes receive information which enables them to monitor missing and absences patterns and trends in local areas as part of their multi-agency safeguarding work.

Example 4

Having requested the relevant information from HMCI's register of children's homes, the police are able to disclose to children's homes, information about local known dangerous offenders⁴ who are targeting children in the area. The police are also able to share information on the location of children's homes with probation service providers in connection with the resettlement and management of offenders in the community. The information is able to help probation service providers put in place suitable measures to manage the risk of harm an offender may pose in order to safeguard children in the area. These measures may include restrictions on where the offender is allowed to live, prohibiting contact with children and exclusion from defined areas.

⁴ In cases where the offender is being managed under the Multi-Agency Public Protection Arrangements (MAPPA), any disclosure of information must be done in liaison with the probation service provider and in accordance with the national MAPPA guidance.



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