

Liaison and information exchange when criminal proceedings coincide with Chapter Four Serious Case Reviews or Welsh Child Practice Reviews

A Guide for the Police,
Crown Prosecution Service
and Local Safeguarding
Children Boards

May 2014



ASSOCIATION OF
CHIEF POLICE OFFICERS



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This document was produced on behalf of the interested parties by the National Policing Homicide Working Group (Child Death sub group), and updating it will be the responsibility of that body.

1 Parties

1.1 The parties who may benefit from this guidance document are Local Safeguarding Children Boards (LSCBs), lawyers from the Crown Prosecution Service (CPS), and police officers engaged as part of the Serious Case Review (SCR) process or as investigators in child abuse investigations including homicide.

NOTE: In Wales the system is known as a Child Practice Review. For ease of reading, the term SCR is mainly used throughout this document but the guide is compatible with both processes.

1.2 This guidance was originally commissioned following recommendations arising out of two Serious Case Reviews. A multi-agency working group was convened to advise on the content of the document, and this edition of the guidance has been checked and approved by the National Policing Homicide Working Group (HWG), the Director of Public Prosecutions, and Ms Maggie Blyth (Independent LSCB Chair for Hampshire and the Isle of Wight). The guidance was drafted by Dr John Fox (advisor to the HWG Child Death sub group), and Mr Nick Hawkins, Chief Crown Prosecutor.

1.3 The guidance is also supported by the Association of Independent LSCB Chairs: *"The Association of Independent LSCB Chairs recognises the value of this guidance and encourages all LSCBs to refer to it when undertaking SCRs with parallel criminal proceedings."* Sue Woolmore, Association of Independent LSCB Chairs.

1.4 This guidance should be read in conjunction with CPS Legal Guidance which is published on the CPS website:

http://www.cps.gov.uk/legal/s_to_u/serious_case_review/index.html

2 Aim

2.1 The aim of this guidance is to:

- Enhance understanding between the Parties about the process of a serious case review and how it may affect the conduct of a criminal investigation/ prosecution.
- Build on the principles contained in Chapter 4 of the Government Guidance *Working Together to Safeguard Children* (2013) and *Protecting Children in Wales: Arrangements for Multi-Agency Child Practice Reviews* (December 2012) by providing a suggested operational framework for requesting a delay in all or part of the SCR Process, or an alteration to the planned activity of the SCR Review Team.
- Provide a suggested framework between the parties for the sharing and exchange of relevant information generated by serious case reviews and a criminal prosecution.

Note: This is not a protocol. The material in this document is not intended to be prescriptive and those using it should tailor it to suit the unique requirements of the situation they are dealing with and the resources that are available to them. However, it may be of interest that the previous edition of this document was cited at a pre trial disclosure hearing in the case of R v Rees and others at Bristol Crown Court, by a High Court Judge Mr Justice Maddison, who referred to several sections of the Guidance and commented, "In my view, the Guide is a helpful document" with "eminently sensible" suggestions.

2.2 The parties using this guidance should recognise that both criminal proceedings and serious case reviews are important processes which should be carried out as expeditiously as possible and ideally without one adversely affecting the other. Both processes are crucial to the effective safeguarding of children.

- 2.3 There is a statutory requirement for Serious Case Reviews and Child Practice Reviews to be carried out in certain circumstances and it is important that those working within the criminal justice sector understand the mandatory nature of these reviews and the timescales set by Government for their completion.

3 The legal context

- 3.1 Local Safeguarding Children Boards (LSCB) are set up by local authorities in accordance with a statutory requirement in the *Children Act 2004*. They are the key statutory mechanism for agreeing how the relevant organisations will co-operate to safeguard and promote the welfare of children, and for ensuring the effectiveness of what they do. *Section 13 Children Act 2004*, specifies the agencies (such as Police, Health Authorities, etc) which are required to co-operate in the establishment and work of an LSCB.
- 3.2 *The role and function of an LSCB is set out in law by The Local Safeguarding Children Board Regulations 2006, Statutory Instrument 2006/90. Regulation 5 requires the LSCB to undertake a SCR when certain criteria are present. Procedures for carrying out SCRs are set out in Chapter 4 of Working Together to Safeguard Children (2013) and the legal position is explained thus:*

Regulation 5 of the Local Safeguarding Children Boards Regulations 2006 sets out the functions of LSCBs. This includes the requirement for LSCBs to undertake reviews of serious cases in specified circumstances. Regulation 5(1) (e) and (2) set out an LSCB's function in relation to serious case reviews, namely:

Regulation 5 (1) (e) undertaking reviews of serious cases and advising the authority and their Board partners on lessons to be learned.

Regulation 5 (2). For the purposes of paragraph (1) (e) a serious case is one where:

- *abuse or neglect of a child is known or suspected; and*
- *either — (i) the child has died; or (ii) the child has been seriously harmed and there is cause for concern as to the way in which the authority, their Board partners or other relevant persons have worked together to safeguard the child.*

*Cases which meet one of these criteria **must always** trigger a Serious Case Review (or in Wales a Concise or Extended Child Practice Review - see *The Local Safeguarding Children Boards (Wales) Regulations 2006 as amended 2012*).*

- 3.3 Since the unlawful killing of a child is likely to include elements of abuse or neglect it follows that where the police are investigating a potential homicide involving a child, it should be anticipated that the LSCB will be legally required to carry out a parallel serious case review.

4 The process of a Serious Case Review

- 4.1 The Government no longer prescribes detailed methodology for conducting a serious case review but rather advises that the LSCB can use any methodology, including a 'systems type review'. There are however some broad stipulations set out in *Working Together to Safeguard Children* (2013). These include the principles that:

- reviews of serious cases should be led by individuals who are **independent** of the case under review and of the organisations whose actions are being reviewed
- professionals should be involved fully in reviews and invited to contribute their perspectives
- families, including surviving children, should be invited to contribute to reviews
- final reports of SCRs **must be published**

- 4.2 The term 'systems review' was introduced into safeguarding practice in 2011 when Professor Eileen Munro produced a report called *A Child Centred System* for the Coalition Government. The essential requirement with systems methodology is that all front line professionals must be consulted and allowed to express their views about the context within which they were working, so that the WHY question can be answered more fully. Most systems type reviews will offer these front line professionals two or more opportunities to come together in a large, managed meeting, to discuss their involvement with the child and family. These meetings might be referred to variously as Learning Events, Practitioner Events or Case Group Meetings, but whatever the term used, they are an essential part of conducting a systems type review.
- 4.3 To help manage every Serious Case Review, a Panel of senior people from within the relevant agencies will usually be formed. Depending on the methodology being employed this grouping might be called a Serious Case Review Panel, a Reference Group or a Review Team, and they will usually read and have access to all material and reports produced by the Review. The group will always include a senior police officer, but this officer will not be directly involved in the management of any parallel criminal investigation.
- 4.3 One or two safeguarding experts, who are independent of the case, will be appointed to conduct the review and ensure it is robust and transparent, thereby maintaining the confidence of the public and family members. These Independent Reviewers will chair any SCR meetings, will analyse agency practice and ultimately provide the Overview Report and recommendations.
- 4.4 Individual agency reviewers may also conduct an Individual Management Review (IMR) or Agency Review within their agency, normally by examining all documentation and interviewing relevant staff. A report, together with recommendations, will be produced by each of these agency reviewers, and this will be part of the material considered by the SCR Panel and will help inform the Overview Report. In some types of 'systems

review' the independent lead reviewers will directly conduct all interviews with professionals and family members.

- 4.5 The agency reviewers will usually be senior professionals from within the agency concerned, such as a consultant paediatrician or a police chief inspector. Although in the context of this guidance any interviews with staff take place under the auspices of the SCR, such discussions would be no more or less than one would expect from management in any organisation where there had been a potential failure to adhere to procedures or good practice. This is important to bear in mind when considering a potential request to avoid interviewing certain people.
- 4.6 The Overview Report, is sent to the Department for Education, scrutinised, and published to the public. The main purpose of the whole procedure is to quickly learn lessons, and identify whether there are gaps in the service provided by agencies charged with protecting children, or flaws in practice which could lead to other children being seriously harmed. An Action Plan is prepared which sets stringent timescales for the implementation of recommendations contained in the Overview Report.
- 4.7 In order to achieve maximum effectiveness in the safeguarding of children, the lessons must be learnt and any necessary changes implemented quickly, and those contributing information to the SCR must feel able to be open and honest about what happened.
- 4.8 Because the SCR is a completely independent process, it is not actually possible for the criminal justice agencies to enforce any *demand* that the timescales or methodology be altered. Therefore, if it is proposed to request any disruption of the work being carried out by the SCR, a sophisticated and measured approach, by people who are well informed about the process and the legal position, is likely to be most beneficial to the negotiations.**

5 Timescales for a Serious Case Review

- 5.1 The statutory guidance described above, prescribes strict timescales within which a Serious Case Review has to be commenced and completed. These timescales are monitored by a Government appointed national panel of independent experts. During their scrutiny, the Department for Education may be critical when these timescales are not adhered to, and this can have ongoing repercussions for the constituent agencies of the LSCB.
- 5.2 Although there is scope for extending the timescale in some circumstances, *Working Together to Safeguard Children* (2013) states that '*...the LSCB should aim for completion of an SCR within six months of initiating it. If this is not possible (for example, because of potential prejudice to related court proceedings), every effort should be made while the SCR is in progress to: (i) capture points from the case about improvements needed; and (ii) take corrective action*'.
- 5.3 In order to comply with the principles set out in the statutory guidance the review team will often need to interview or otherwise involve a range of professionals involved in providing a service to the family, as well as the people who had care of the children such as the family and significant others. Some of these people may be potential witnesses or even defendants in a future criminal trial.
- 5.4 There is a presumption that even when criminal proceedings are ongoing, the work of the Review will go ahead in accordance with the Government timescales unless there are special circumstances which would require some compromise. If there are clear reasons put forward by the Police or CPS in discussion with the SCR Independent Reviewer it may be possible to negotiate a delay in final completion of the SCR, or some restriction of its scope such as consideration being given to not interviewing or involving specific people who may be key witnesses or defendants in criminal proceedings.

6 Seeking learning from potential prosecution or defence witnesses

- 6.1 The fact that someone has made a witness statement to the police, or even the fact that someone has been interviewed as a suspect or is charged with an offence, would not, as a matter of course, preclude the SCR Team from seeking to obtain from them any learning which could help protect children at the time or in the future. This may involve a personal interview, an invitation to a practitioners event, or a request for a contribution to the SCR in writing. However, this guidance suggests that if interviews are conducted with people who may be involved as witnesses or defendants in criminal proceedings the Police and CPS should be informed so that they can discharge their disclosure duties (*see Section 8*).
- 6.2 As discussed above, a key requirement of a 'systems' type review is to hold one or more events whereby practitioners can meet in a managed forum and discuss their involvement with the family. The introduction of these meetings since 2011 has caused some concern within the criminal justice agencies, because there is a feeling that the evidence of some witnesses may be in some way tainted if they are allowed to meet with fellow witnesses at such an event. It is right that these genuine concerns are acknowledged but there is also a need to thoughtfully consider whether there are any real grounds for concern.
- 6.3 The police and CPS are used to gathering and presenting evidence for criminal cases, and generally seek to avoid witnesses giving multiple accounts of events, unless it is for clarification. However, there are many statutory bodies and ad hoc groups (such as a SCR team) that have a legitimate need, and indeed duty, to gather evidence with the purpose of ascertaining facts, learning lessons and preventing future harm. Examples could be the Health and Safety Executive, The Maritime Accident Investigation Bureau and HM Forces Service Inquiries. Each has procedures for gathering evidence, including in some cases asking potential suspects to answer questions under compulsion. Some of this evidence can never be used by the prosecution (e.g MAIB interviews

under compulsion) whilst other material, may be considered third party material that may be disclosable (see section 8 below).

- 6.4 It is important that a measured and sophisticated approach is taken when classifying 'witnesses'. There are many people who might be asked to provide a witness statement but there is little likelihood that they would ever be called to give evidence. For example, a nurse may have carried out a small act such as taking a blood sample from one place to another within a hospital. They would be classed as a continuity witness to prove the integrity of that particular exhibit but would not be a key witnesses to the event and probably would never be called to give evidence in any trial. It is unlikely that the presence of such witnesses at a practitioners event or an interview with a reviewer would make a difference to the criminal case so it is unhelpful and disproportionate for the criminal justice agencies to simply seek to exclude *anyone* who could be a potential witness from contributing learning to a serious case review. A measured, well thought out approach is therefore required, with individual consideration being given to why it might be desirable for a particular individual to be excluded from the SCR learning process.
- 6.5 In general terms it is not unusual for potential witnesses to meet whilst criminal proceedings are pending. For example if a criminal assault occurred in a nightclub, everyone in the club might be considered a potential prosecution witness but there is no way of stopping them meeting up either in the club or elsewhere during the many months before a trial. In respect of professional witnesses, several police officers on a particular shift or team may all attend an incident and later make witness statements but it would not be considered necessary to transfer them all to different police stations in case they speak to each other before the trial. Doctors and nurses in a hospital who have treated a victim of crime may be required to attend court, yet they would not be expected to transfer to a different ward within the hospital or be excluded from ward staff meetings pending a trial. In fact, compared to many situations, if managed carefully it could be argued that a systems review practitioners event is actually a very controlled and safe environment for professional witnesses to meet

6.6 Whereas it is an important principle that those attending such a meeting do not feel inhibited about speaking openly about their involvement with the family and the context within which they were working, it might be helpful to offer the following suggestions for the conduct of a practitioners learning event when there are parallel criminal proceedings:

- The meeting should be chaired and moderated by an Independent Reviewer.
- The police Senior Investigating Officer (SIO) should be invited to attend or send a representative such as the Disclosure Officer (see Section 8 for an explanation of this role).
- The delegates should be reminded at the beginning of the meeting that the SCR is set up to learn lessons about services provided to the child and family, and that nothing should be discussed which relates to culpability of any suspects or defendants or the circumstances surrounding the criminal case itself.
- There should be a professional minute taker and the fullest possible notes taken about who attended the meeting and what each delegate said.
- These notes should be made available to be viewed by the police SIO or their representative.
- Delegates should be notified that notes from the meeting could be viewed by the police and assessed for relevance in the criminal case.
- Providing it is supported by cogent reasoning, a written request by the SIO/CPS to withdraw, or not issue, an invitation to a particular key witness or witnesses, should be considered favourably by the SCR Independent Reviewers. If agreed to, such an arrangement should not compromise the learning gained by the SCR so for example, such people excluded from a practitioners event could perhaps be offered a one to one interview with a member of the review team.
- In order for the police to judge whether the presence of a particular individual at a practitioners event might be of concern, it would be helpful for the SCR administrators to provide them with a list of proposed delegates at a practitioners event.

- 6.7 The Children Act 1989 reinforced the principle that the welfare of the child is of paramount consideration. Delaying or restricting the work of a Serious Case Review, and the learning it achieves, should be seen as a grave step which may prejudice the welfare of children. Provided the learning obtained by the SCR would not be significantly reduced however, every effort should be made to avoid the SCR adversely affecting the criminal case (which is in itself an important process for safeguarding children in the future).
- 6.8 Sometimes a criminal investigation may commence but, because the Police are still gathering evidence, it is several weeks or even months before a suspect is charged. In such cases the CPS may not be actively involved, and any request to restrict the progress of a Serious Case Review should be made by the Senior Investigating Officer in a meeting with the SCR Independent Reviewers. If the SCR Independent Reviewers become aware that criminal proceedings are ongoing, yet no contact has been made by the SIO, it might be good practice for them to make contact with the SIO to begin dialogue about how the two processes should take account of each other.
- 6.9 The reasons why the SIO believes that the proposed timescale and/or activity planned by the SCR Team is likely to compromise the criminal investigation or future prosecution should also be put in writing. If possible, whether or not anyone has been charged, the CPS should be asked for their view as to whether any potential future prosecution is likely to be adversely affected by the work carried out as part of the SCR.
- 6.10 In cases where a prosecution has commenced and the CPS are actively involved, the Chief Crown Prosecutor should endorse in writing, any request to amend the planned activity of a SCR.
- 6.11 Such a request from either the Police SIO or CPS should be restricted to specific matters which may have a direct adverse bearing on the criminal case and could include, for example, a request to delay an interview with a named parent until after a bail return date when the Police are planning their own further interviews.

- 6.12 Much useful work to understand and learn from the case can often proceed without risk of contamination of witnesses in criminal proceedings so it is not good practice for example, that the CPS or SIO make a blanket request that '*anyone who may become a prosecution witness should not be seen or spoken to by the Agency Reviewer*'. As highlighted above, many professionals provide witness statements to the Police but often they do not end up giving evidence at court as witnesses. It could be considered disproportionate to seek to prevent a senior official interviewing a colleague from their own agency with a view to learning lessons about their practice and procedure, unless there was a serious risk that their duty as a key prosecution witness could be compromised.
- 6.13 A sophisticated and measured approach therefore should be taken by the prosecution team, but a reasonable request in writing, with cogent reasons, should be treated favourably by the SCR Independent Reviewers.
- 6.14 The Independent Overview Report Author should make reference to any request for disruption to the planned work of the SCR Team, and include a copy of the written request as an appendix to their Report so that Department for Education officials can clearly understand the reasons why this was considered necessary.
- 6.15 Ultimately, if agreement and compromise cannot be reached between the SIO, CPS and SCR Independent Reviewers, the final decision whether or not the activity or timescales of the SCR should be altered, should be made by the Chair of the LSCB. The LSCB Chair will hold a strategic view of safeguarding in their local area including the need for continued co-operation between agencies once the SCR is concluded, but they will also recognise that to overrule the judgement of the Independent Reviewers, would be an exceptional and serious decision.

7 Terms of Reference

- 7.1 Every Serious Case Review is carried out strictly in accordance with Terms of Reference (ToR). The scope, and relevant time, which the Review will cover, will be set out in these ToR. In any case where a criminal investigation/prosecution is going to run parallel to a SCR, it may assist the SIO to be made aware of the ToR and if possible have the opportunity to express any views on the content before they are finalised.
- 7.2 To achieve this, an early action at the commencement of any child homicide investigation could be a request to the Police LSCB delegate that they should notify the SIO if the LSCB Chair decides to commission a SCR.
- 7.3 Upon receipt of such notification, the SIO should make contact with the Police SCR Panel member to express an interest, and to inform them that a parallel criminal investigation is underway. If there is no police officer on the SCR Panel or Reference Group then direct contact should be made with the Independent Reviewers, and the Police LSCB delegate may facilitate this.
- 7.4 The SIO should ask to meet the SCR Independent Reviewers before the terms of reference are finalised, in order to make any reasonable representations. Sometimes the ToR may already be agreed before the Independent Reviewers have been appointed in which case it is important that police are automatically involved via the LSCB SCR Panel/standing SCR committee at the drafting stage. A request to change the ToR in any material way should not be made without good reason and, if agreement cannot be reached, the request should be passed to the LSCB Chair who, ideally after consultation with the Police/CPS LSCB delegate(s), may make a final decision.

8 Disclosure and sharing of material generated by the SCR

Note: When involved in any liaison or negotiation concerning the sharing and exchange of information the Parties should have regard to Rule 1.1 of the Criminal Procedure Rules 2010 which sets out the overriding objective that criminal cases be dealt with justly.

- 8.1 A Serious Case Review will usually involve the interviewing of staff members as well as significant people who knew the subject child. The material generated from this activity, including interview notes or the Reports from each contributing agency, may contain information which is of relevance or importance to any parallel criminal proceedings. An earlier edition of *Working Together to Safeguard Children* (2010) suggested that LSCBs should consider their responsibility to 'provide relevant information to those with a legitimate interest'.
- 8.2 The Criminal Procedure and Investigations Act 1996 (and the accompanying Code of Practice) and the Attorney General's Guidelines on the disclosure of information in criminal proceedings govern the disclosure of unused prosecution material to the defence. References to unused material are to material that may be relevant to the investigation that has been retained but does not form part of the case for the prosecution against the accused.
- 8.3 The Code requires the police to record and retain material, obtained during a criminal investigation, which may be relevant to the investigation. The CPIA defines what is meant by a '*criminal investigation*' and a Serious Case Review does not fall within the scope of that definition. However, any material generated by a SCR is third party material and police officers and prosecutors must have regard to whether relevant material may exist in relation to other linked investigations or prosecutions. Reasonable enquiries must be carried out by the police to establish whether such material exists and, if so, whether it may be relevant to the criminal prosecution.

- 8.4 Relevant material is defined in the Code as anything that appears to an investigator, or the officer in charge of an investigation, or the disclosure officer, to have some bearing on any offence under investigation or any person being investigated or on the surrounding circumstances, unless it is incapable of having any impact on the case.
- 8.5 Police investigators must alert the Prosecutor to the existence of relevant material that has been retained in the investigation. Revelation of relevant material to the Prosecutor is by means of sensitive and non-sensitive disclosure schedules. Revelation to the Prosecutor does not mean automatic disclosure to the defence, although the existence of non-sensitive material and general nature of it *will* be disclosed to the defence by means of the non-sensitive unused material schedule.
- 8.6 If material relevant to the investigation comes to the knowledge of the investigator and is then obtained from a third party (such as the LSCB), it will become unused material or information within the terms of the Code. It will have to be recorded on the appropriate schedule and revealed to the prosecutor in the usual way. Throughout the proceedings, the prosecution is under a continuing duty to keep under review whether material should be disclosed to the defence.
- 8.7 The CPS should initially treat all SCR generated material as 'sensitive' material, and as such it should not appear on any schedule provided to the defence.** Material placed on the sensitive schedule would be reviewed by the prosecutor and could later be transferred to the normal unused schedule if it was appropriate to do so.
- 8.8 The prosecution is also under a statutory duty to disclose any material that could reasonably be considered capable of undermining the prosecution case against the accused or of assisting the case for the accused (subject to public interest immunity). This will include any material casting doubt on the reliability of a prosecution witness. If, for example, during the SCR process an Individual Management Review reveals that a professional (who is also a key prosecution witness) has falsified their case records, and part of their criminal case testimony will rely upon their recorded notes, the information obtained for the SCR may

cast doubt on their reliability as a witness and it would be unjust for the defence team not to be made aware of this. Before any disclosure is made by the CPS to the defence, a discussion should be held with those conducting the Serious Case Review and a suggested controlled process is outlined later in this section.

- 8.9 In addition to potentially relevant material obtained as a result of interviews with professionals, a key principle set out in the statutory guidance for SCR's is that parents, carers and significant family members will be interviewed or otherwise engaged during the SCR to seek any learning from them. A failure to do this, without good reason, will undoubtedly attract criticism in the evaluation of the SCR process because there is strong evidence that family members are sometimes able to provide the best insight into the matters with which the SCR is concerned.
- 8.10 When criminal proceedings are ongoing, it is sensible for the police SIO to be informed that the SCR intends to invite family members to contribute to the learning and for there to be a discussion about the timing of such interviews, and at what stage they might contribute to the SCR process. Although there is a presumption that all relevant people will be engaged at some point, it is likely that an SIO would want to make representations that SCR based interviews with those charged or on bail did not take place until any criminal trial was concluded. In such circumstances, the SIO should write to the Independent Reviewers setting out the reasons why the interview(s) could compromise criminal proceedings. If the request was agreed, the letter could be included in the Overview Report as supporting evidence to the DfE that the decision not to seek learning from these people was based on sound reasoning.
- 8.11 Whilst criminal cases are dealt with as quickly as possible, if there is complex medical evidence the case may not be resolved within the 6 months allowed for the SCR to be completed. There may be some circumstances where the LSCB, in carrying out its statutory duty to conduct the SCR, considers it would not be appropriate to wait for the conclusion of the criminal proceedings to gather all possible learning about how best to safeguard children. If, prior to charge or conclusion of a trial,

interviews *are* undertaken by those engaged in the SCR with people who are either suspects or have been charged with a criminal offence, the following suggestions might provide a helpful basis for negotiations between the SCR Independent Reviewers and the Criminal Justice Agencies:

- Before the interview, the suspects are asked to contact their legal representative to get advice on what impact the SCR interview might have on their case preparation.
- The interview is recorded either digitally or by a full written note.
- The conversation does not include any areas concerning criminal culpability or the actual incident which led to the criminal investigation.
- The SIO or the disclosure officer should be allowed to view the interview record in case the suspect has made other disclosures or given alternative accounts, as this could potentially be admissible evidence.
- The interviewee should be told that the record of the interview may be seen by the police.

8.11 In relation to third party material, the CPIA Code of Practice makes reference - *If the officer in charge of an investigation believes that other persons may be in possession of material that may be relevant to the investigation he should inform them of the existence of the investigation and to invite them to retain the material in case they receive a request for its disclosure. He should inform the prosecutor that they may have such material. However, the officer in charge of an investigation is not required to make speculative enquiries of other persons; there must be some reason to believe that they may have relevant material.*

8.12 Serious Case Reviews primarily focus on the working together arrangements between safeguarding agencies in the months or years before the child was harmed. There is therefore no general requirement for the SIO to write to the LSCB Chair inviting them to retain all material generated by the SCR, and it would be 'speculative' for them to do so

without good reason. However, it is likely that some of the material generated will be relevant to the criminal investigation in the sense that it is capable of having some bearing on the offence under investigation, or any person being investigated, or on the surrounding circumstances of the case.

8.13 Where the SIO has reason to believe that the SCR Team is likely to have obtained relevant material during the course of their work he or she should instruct the Disclosure Officer to write to the LSCB Chair informing them of the criminal investigation and inviting them to retain the material concerned. This presupposes that the SIO has taken proactive steps to establish that a SCR is taking place.

8.14 A SCR will generate many hundreds of pages of documents and it is unreasonable and disproportionate for a blanket request to be made covering all the material, so the letter should stipulate the particular material, or type of material, which the SIO believes may be of relevance to the investigation.

8.15 Although the SCR is a confidential process, the LSCB Chair should, after consultation with the SCR Independent Reviewers and the Police LSCB and SCR Panel members, treat favourably any request by the SIO for them or their Disclosure Officer to view the material which it is felt *may* be of relevance, so that an informed judgement on its *actual* relevance can be made. This could include for example, the Disclosure Officer attending the LSCB Business Office to read the section of an IMR Report which deals with the work of a particular professional who is also a prosecution witness.

8.16 Should the Disclosure Officer feel that the material is indeed relevant to the criminal investigation, they will inform the CPS of its existence. The CPS should treat all material disclosed by the LSCB as sensitive material.

8.17 Where any SCR material reviewed by the CPS falls within the statutory disclosure tests under the CPIA, the CPS should write to the LSCB Chair setting out the reasons why the material falls to be disclosed and informing them of that decision. Upon receipt of that notification, the

LSCB Chair, having consulted the SCR Independent Reviewers, should be given an opportunity to make any representations in writing to the CPS on the issues of disclosure. The CPS should not disclose any material to the defence unless by agreement with the LSCB Chair or by order of the court following a public interest immunity application.

- 8.18 Before the LSCB Chair makes any agreement with the CPS about disclosure of SCR based material to the defence, they should also take into account the views of any specific agency which may be affected by such a decision. If for example, part of a School's IMR Report was under consideration for disclosure, the SCR Panel member representing Education should be given time to consider the implications and consult senior colleagues if necessary. Consideration needs to be given to who actually 'owns' the material (the agency concerned or the LSCB).
- 8.19 If the LSCB Chair agrees with the CPS to disclose material identified by the CPS which falls within the statutory disclosure test under the CPIA, the CPS will disclose the material to the defence.
- 8.20 If the LSCB asserts public interest immunity and objects to disclosure to the defence, and if the CPS agrees, they will make a public interest immunity application to the court as soon as is reasonably practical. The CPS should notify the LSCB Chair of the date and venue of the public interest immunity application and inform them of their rights to make legal representations to the court. The LSCB Chair should immediately inform the LSCB legal advisors or Local Authority legal services branch who can then liaise with the CPS about the PII proceedings.
- 8.21 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 confidentiality of information, the disclosure of which would be damaging to the public interest. It is undoubtedly in the public interest that SCRs are undertaken, and the learning achieved largely depends upon the willingness of front line professionals to be frank and open. A level of confidence that the information they give will not normally be used for other purposes without their permission is therefore crucial. 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.

- 8.22 If a refusal is made by the LSCB Chair for the Disclosure Officer to read the material in question (see 8.15 above), then the CPS should be informed by the police of their belief that the LSCB may be in possession of relevant third party material.
- 8.23 Where it appears to the Prosecutor that the LSCB has material that may be relevant to an issue in the case, the Prosecutor should liaise with the LSCB Chair to discuss the nature of the prosecution case and the reasons why access to the material is sought. If, having received a request from the Disclosure Officer or Prosecutor, the LSCB Chair declines to cooperate, the Prosecutor will consider whether to make an application for a witness summons.
- 8.24 It must be recognised that the Police SCR Panel member is not part of the criminal investigation in their role on the SCR. Neither can it be expected that their depth of knowledge of the criminal case will naturally make them aware when a matter is relevant to the criminal investigation. Despite the fact that the Police SCR panel member may have access to all IMR reports and other material generated by the SCR, the material itself remains third party material. The Police SCR Panel Member is bound by the same terms of confidentiality to the LSCB as all other panel members, but they must comply with the law and it would be impossible for a police officer to ignore Rule 1.1 of the Criminal Procedure Rules 2010 (see note above). Therefore if the Police SCR Panel Member believes that a miscarriage of justice might occur if certain material was not revealed to the CPS, they must act to prevent it.
- 8.25 In most cases relationships will have been developed with LSCBs and constituent agencies such that they trust the police and CPS to manage unused material in a fair and professional way and therefore the Police SCR Panel Member should first seek the agreement of the SCR Independent Reviewers to inform the SIO so that the Disclosure Officer can view the material in question (see para 8.15 above). If this is refused

they should inform their Assistant Chief Constable of their concerns who will consider the strategic need to promote harmony between the police and other agencies, whilst ensuring the law is complied with. To avoid any misunderstanding occurring in the first place, LSCB standing procedures drawn up for the conduct of SCRs should be clear what the CPIA rules are, and what duties a Police SCR Panel Member has regarding any information in their possession or that they think might exist in another agency.

9 Material from police investigation supplied to SCR

- 9.1 A Police investigation, particularly concerning homicide, will be extremely thorough and this will result in the gathering of a great deal of material. Some of this material may be of value to those seeking to learn lessons about how the child was maltreated or how agencies could have better worked together to prevent maltreatment.
- 9.2 The police investigation for example, may identify individuals who, whilst not otherwise known to the agencies (such as 'anonymous' referrers of child abuse), may be able to contribute to the learning contained within the SCR. Witness statements from neighbours and family may make reference to how the agencies provided services to the child in the weeks leading up to the death, or a statement from the Pathologist may be useful to establish how long before a child's death certain injuries occurred.
- 9.3 There is a general rule that when third parties request information which is gathered by Police it will not be usual to disclose material until the criminal proceedings have been completed. This is to ensure that the criminal trial process and any continuing police enquiries are not prejudiced. The comments of Lord Reid in (*Conway -v- Rimmer* (1968) 1 All ER 874) at page 889 are relevant, "...it would generally be wrong to require disclosure in a civil case of anything which might be material in a

pending prosecution, but after a verdict has been given, or it has been decided to take no proceedings, there is not the same need for secrecy."

- 9.4 Strictly speaking, witness statements are given by witnesses to support a police investigation and the statements should not be used for other purposes unless the individual witnesses have consented to this. After the trial/inquest process there is normally no problem with the witness statements being shared openly as the general information has been released to open court. However, because of the overriding interest in the welfare of children it may not always be appropriate to delay information sharing with a SCR until the criminal proceedings are complete because lessons need to be learnt **immediately** in order to better protect children who may currently be at risk.
- 9.5 If a decision is made to disclose material which is to be used in a criminal case before the conclusion of the criminal proceedings before the Crown Court, there should be no disclosure without informing the Chief Clerk at the Crown Court. Requests for disclosure prior to CPS involvement with the case, or where advice has been sought but no charges brought, should be dealt with by the Police SIO.
- 9.6 If criminal proceedings are underway (i.e. when someone has been charged with an offence), the CPS should be consulted and hold a conference with the Police SIO and SCR Independent Reviewers to discuss what can safely be disclosed to serve the purposes of the SCR, without hindering the criminal investigation. Where the CPS is merely advising on proceedings, or proceedings have concluded, requests can often be directed to the police but a view from the CPS may still be helpful.
- 9.7 At the meeting with the SIO to share the Terms of Reference (see paragraph 7.4 above), the SCR Panel Chair could also ask the SIO to consider how any material gathered during the criminal investigation might assist the learning obtained by the SCR. By knowing the scope and aims of the SCR at an early stage, the SIO may recognise when they have information which may be of relevance and importance in the context of helping to understand how agencies failed to work together to protect the child victim.

- 9.8 There may also be occasions when the SCR Team themselves believe the Police may have specific material which could assist their work, and in such cases the Police SCR Panel member could be asked to approach the SIO for the information. (If there is no Police Panel member then the SCR Independent Reviewers should make the approach).
- 9.9 Even when criminal proceedings have been concluded, wherever possible, attempts should be made to obtain the consent of the maker of any witness statement to its disclosure in connection with the SCR. If consent is not forthcoming, disclosure may still be made (although not before informing the Chief Clerk at the Crown Court) and the witness should be advised by the Police of that fact and the reasons for it.

10 Conclusion

- 10.1 It is possible to manage SCRs and criminal proceedings simultaneously, without one jeopardising the other. In their own way, both processes are important to safeguard and promote the welfare of children, which should always remain the primary consideration.
- 10.2 The learning obtained by a SCR is largely dependent on the willingness of individual professionals and family members to engage in the process. They need to have confidence that any information they give will be treated with respect, and they should be made aware if it could be used for any purpose other than that for which it was intended.

Chart One: Key Decision Points

