

# Use of Information from Police Checks

## SCOPE OF THIS CHAPTER

This chapter outlines why a police check may be sought, and how the information received should be treated.

### Contents

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- [1. Context](#)
- [2. When should a police check be sought?](#)
- [3. Informing the subject of the police check](#)
- [4. How should a police check be sought?](#)
- [5. Using the results of a police check](#)
- [6. Disclosing the results of a police check](#)

### 1. Context

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When seeking information about an adult through a police check a social worker should be aware that:

- Information (such as conviction, caution, fact that someone has had unsubstantiated allegations made about them) which Children's Social Care obtains about a person is confidential to that person and should not be routinely shared.
- Any decision to share information should be based on a risk assessment of the information provided.
- Unless information needs to be shared as a matter of urgency to safeguard a child or vulnerable adult, the person to whom the information relates should be given notice that Children's Social Care intend to share the information and should have the opportunity to raise any objections. The information which is shared should be proportionate and discussed with the relevant team manager in advance.
- Appropriate recording of the decision and rationale for sharing should be made on the child's case record.

In 2009 the Supreme Court gave guidance on what the police need to consider when deciding what to include in an enhanced criminal record certificate. Paragraph 42 states:

*The issue is essentially one of proportionality. On the one hand there is a pressing social need that children and vulnerable adults should be protected against the risk of harm. On the other there is the applicant's right to respect for their private life. It is of the greatest importance that the balance between these two considerations is struck in the right place.*

Supreme Court R (on the application of L) (FC) (Appellant) v  
Commissioner of Police of the Metropolis (Respondent) 2009 UKSC 3.

## **2. When should a police check be sought?**

When completing an assessment of a situation, often additional information is required from a variety of sources, including information relating to previous (criminal) behaviours of an individual. The gathering of this information is important to ensure that decisions which follow are made on the basis of all the available information.

All agencies have a responsibility to inform Children's Social Care and to share information with other agencies if they are concerned that a child is in need or at risk of harm. This is also the case when Children's Social Care require additional information in the completion of their assessment(s)/enquiries.

Examples of when Children's Social Care may seek information, specifically relating to an individual's criminal history includes, but is not limited to:

- Section 47 enquiries
- Viability/Connected carer assessments
- Contact or caring responsibility for a Looked After Child
- Single Assessment – this should routinely be a non-urgent check of parent/carers

### **3. Informing the subject of the police check**

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Whenever possible the subject should be informed that Children's Social Care intend to carry out a police check, prior to the check being made. This provides the opportunity for the subject to raise any objections to the police check and have these considered.

Where this is not possible, for example there is an urgent safeguarding risk, there should be a discussion with the team manager to ensure that the request is proportionate.

Any request should be made on the basis that there is a credible risk to a child and should not be carried out as part of routine practice.

The subject of the check should be informed:

- Why the check is necessary
- What information will be sought
- Where the information will be recorded
- Who will have access to the information
- What will happen when the information is received

The leaflet **Police Checks** should be shared with the subject.

Legislation supporting the police check process includes:

- Data Protection Act 1998
- Human Rights Act - Article 8
- Crime and Disorder Act 1998
- Children Act 1989 - Section 47 and Section 17
- Sexual Offences Act 2003 - Interagency risk management

The Police are able to lawfully share information with Children's Social Care providing that the information disclosed is accurate, proportionate, relevant and necessary, and that the request is under relevant and necessary and shared on the basis that this is to support decision making relating to the welfare or the safeguarding of a child.

Information is provided by the Police on the strict understanding that it is confidential in nature, will only be used for the purposes of a child

protection or child in need assessment and that it may not be passed on to any third party without express permission of the Police. If there is a view upon receiving the information that this should be shared, this should be discussed with the Child Protection Unit, Durham Constabulary in the first instance.

#### **4. How should a police check be sought?**

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Before a request for Police information is made, the request should be discussed with, and agreed by the relevant team manager. As part of this decision there will need to be a clear rationale and risk assessment, which is documented on the child's case record.

Requesting Police information should not be standardised practice in all cases and should be based on the need of each situation individually.

When submitting a police check, the subject of the check should be informed that Children's Social Care are seeking information relating to them from the Police. This should be discussed with the subject in advance, and where possible, the subject provided with the opportunity to object to the police check taking place.

Any objection should be considered as part of the risk assessment process. Where a decision is taken to make a request for a police check, the reason and rationale for that decision, taking into account any objection, should be recorded on the Child's case record.

Once agreed that gathering this information is required there should be a decision in relation to how urgent the information is needed. There is a process for an urgent request and for a non-urgent request.

Social workers should complete **the Durham Constabulary Request for Information form:**

- **For urgent and immediate safeguarding issues** the form should be submitted to [requestforchecks@durham.pnn.police.uk](mailto:requestforchecks@durham.pnn.police.uk)
- For **non-urgent safeguarding issues** the request should be submitted to [disclosure@durham.pnn.police.uk](mailto:disclosure@durham.pnn.police.uk)

Results which are shared with Children's Social Care relate to information which is considered relevant. This would include offences relating to violence, sexual offences, drugs/alcohol or offences relating to children. The response would not routinely include information relating to shoplifting, driving offences etc. unless they were considered to be relevant to the nature of the requested information.

Information is collated using the Police National Computer (PNC) as well as more specific local searches. Information may be redacted and will be triaged by police colleagues to include relevant information only. If relevant this will also include spent conditions. A spent conviction is a conviction which, under the terms of Rehabilitation of Offenders Act 1974, can be effectively ignored after a specified amount of time. The amount of time for rehabilitation depends on the sentence imposed, not on the offence.

## **5. Using the results of a police check**

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The results of a police check will be sent to the requesting social worker directly. Urgent requests are processed with a target of 24 hours (often immediately). Non-urgent requests are usually returned within 3 working days.

When Police information is received there should be a discussion between the social worker and the relevant team manager in relation to how this information will be incorporated into care planning for the child.

Outcomes of police checks should be recorded on the case record.

Children and their families should be told what types of information/data is contained in their case records.

In particular, they should be helped to understand what data is collected on them, how it is used, who it might be shared with and how long it will be kept for. The most common way to provide information to data subjects on what data is collected and how it is used is through a Privacy Notice. Privacy Notices must be easily accessible to children, young people and their families, and should be shared with relevant people.

See: **Durham County Council's privacy notices and data protection and Subject Access Request Procedure.**

## **6. Disclosing the results of a police check**

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Sharing of information at this stage should be limited to Children's Social Care and the subject of the information – unless there is an overarching need to share the information with others in order to keep a child safe.

Where there is a plan to share the results of the police check the subject should be informed. This will also provide an opportunity for the subject to raise any objections to the proposed sharing. If there is an objection this should be considered with the team manager in the final decision making on sharing. If necessary discussion can take place with a legal advisor in relation to the proportionality of sharing the information.

There is a general presumption that any such disclosure will be on a need to know basis, so staff should always weigh up whether information needs to be disclosed and if so, to whom.

Unless you are dealing with an urgent situation, where there is a risk of imminent harm to the child or vulnerable adult, you should not disclose without informing the subject.

You should inform the person that you propose to disclose the information after 7 days – this gives the subject the opportunity to object, possibly by applying to court, and may also provide them with an opportunity to disclose the information themselves (e.g. informing partner of previous convictions or allegations) rather than waiting for a social worker to do so.

Any decision to share personal information about the subject must be:

- Fair – the decision to share information without consent will be based on necessity and not just on convenience or desirability and will seek to balance the rights of the subject against any wider considerations that may be relevant.

- Lawful – the organisation seeking to share information must have a relevant statutory power to be able to do this, for example: Children Act 1989.
- Justified – it must meet one of the conditions under Schedules 2 (and 3 for sensitive personal information) of the Data Protection Act 1998 . The most common are: To comply with a legal obligation (OR) To protect the vital interests of the subject. "Vital interests" means life or death circumstances and can involve some mental health situations, child or adult protection situations, potential physical assault, sexual offences or arson.

In addition to the need to comply with the Data Protection Act 2018 there is a need to ensure that decisions to share are consistent with either Article 8 of the Human Rights Act or the Common Law Duty of Confidentiality.

Article 8 of the Human Rights Act states that "everyone has the right to respect for his private and family life, his home and his correspondence. "A number of exceptions to this right are detailed in the Article. These exceptions need to be in accordance with the law and "necessary in a democratic society" and are as follows:

- In the interests of national security or public safety
- For the prevention of disorder or crime
- For the protection of health or morals
- For the protection of the rights and freedoms of others

These are broad definitions and their specific application will only be determined over time on the basis of case law.

To justify use of any of them it is necessary to show proportionality; that a fair balance has been struck between the rights of the subject and the relevant justification.

Sharing personal information will be proportionate if:

- The purpose justifies infringing the right to privacy
- The measures taken to meet the purpose are rational and fair

- The means used to share are no more than is necessary to accomplish the purpose

Where information is disclosed, then full details will be recorded on the child's case file including the reasons and rationale for the decision to disclose, the person who authorised the disclosure, any advice received prior to disclosure and the person(s) to whom the information was disclosed.

Only in circumstances where there are justifiable concerns for the safety of staff or other people will the decision not to inform the subject of the relevant disclosure be taken. In these circumstances, the person making the decision will document the reasons in the case record.