

Providing Notes to “Authority”

Frequently Asked Questions

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Do I have to provide notes to the police if they ask?

You do **not** have to provide notes to the police following a simple request. In fact, you do not have to answer any police questions; therefore, you do not even have to confirm the existence of notes.

Generally speaking the best approach to a police request for records is to say nothing and seek legal advice.

When would I be required to provide information to the police?

If the police attend with a warrant to search your premises then you must provide the information contained within the warrant.

The first step is to look at the warrant to ensure that it has been properly issued by the Court. If the police are attending your professional address, then the warrant should have been made in accordance with section 9 of the Police and Criminal Evidence Act 1984 (**PACE**). If the warrant has been issued under section 8 of PACE it may **not** have been legally issued. Do not allow the police to enter and seek immediate legal advice.

If the warrant has been legally issued, and the address is correct (always check the address), you must allow the police to enter and you must assist the police in accessing the information detailed within the warrant (notes, records, etc.). You are not required to provide anything not mentioned within the warrant, and the police are not permitted to take additional material. For example, notes relating to another individual could not be taken even if the police assert that these are relevant to the investigation. The police would need to apply for another warrant for this material.

Are there any other ways the police can require me to produce notes?

The police can apply to the court to issue a summons for your attendance under section 97 of the Magistrates' Court Act 1980, and section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965.

The summons will require you to attend Court on future date and time with specified material. The summons will not require you to act immediately, so upon receipt of the summons it is advisable to take legal advice.

Do not ignore a summons. While you are not required to act immediately, if you do not attend at the specified time then the Court can issue a warrant for you to be arrested and brought to court.

Other than a summons can a Court require me to provide information?

The Court has various powers to require the production of documentation, and these will vary depending upon the kind of Court (Magistrates Court, Crown Court, Family Court, High Court) and the information required (practise notes, financial information, etc).

With **very** few exceptions (see warrant, above), any order from the Court will provide time to comply. Don't panic, seek advice. More often than not the Court will only require the provision of documents, rather than for you personally to provide evidence, and it would be extremely rare for a Court to require you to provide "a report" or for you to act as an expert witness.

What about a Coroner's Court?

A Coroner can require the provision of documentation **and** require a witness statement, by issue of a notice under Coroners and Justice Act 2009 c. 25, s.32 and Schedule 5. The notice will specify the extent of the documentation to be produced. This does not need to be examined within the inquest, in public, so provision to the Coroner does not necessarily mean that confidential notes will be seen or heard by anyone other than the Coroner.

The Coroner can require you to give evidence as a witness of fact **and/or** as an expert. This is very different from other Courts (like the Family Court), which will rarely, if ever, require you to provide expert evidence.

There is a discretion for the Coroner to pay for expert evidence, and an expert can reasonably refuse to prepare and produce a written expert opinion from nothing without a proper fee for the work (See: *Seyfang v GD Searle & Co [1973] Q.B. 148*; *Lively Ltd v City of Munich [1977] 1 Lloyd's Rep. 418*; *Brown v Bennett, The Times, 2 November 2000*).

If a report already exists, then this can be required by the Coroner without a fee.

Failure to abide by a Coroner's notice can result in a fine of up to £1,000. There is no further penalty for refusing to abide by a Coroner's notice. A Coroner can apply to the High Court for a summons and refusal can be punished as contempt of Court; however, this would again be an exceptional course.

What if a solicitor asks me to write a report?

A solicitor **cannot** require you to give expert evidence.

If you choose to give expert evidence then you should consider your ethical position. Consider taking legal advice as expert witnesses are liable to pay damages if their conduct is considered to be negligent.

Can a solicitor require me to give evidence?

No, a solicitor cannot require you to give evidence. As with the police, a mere request from a solicitor can be ignored, and potentially should be ignored without taking legal advice.

A solicitor could (potentially, but it is unlikely) make an application for a Court summons with which you would need to comply in the same way as if the police applied for a summons (see: above).

What if the solicitor has a specific request or authority from the patient?

Think about this as a request from the patient. It has no greater or lesser authority than if the patient had made the request to you directly. Use your professional judgement and respond accordingly.

What about the Information Commissioners Offices? Don't I have to provide information if there is a request from a patient?

The patient's "*Right to Access*" begins by notifying the patient about how their personal data is being processed rather than providing information to them. You are required, under a right to access, to provide copies of "*personal data undergoing processing*" but this is very different to providing a solicitor with a witness statement. There is no requirement for you to act as a witness for a patient.

The Information Commissioners Office (ICO) is in charge of compliance with the Right to Access, **not** a solicitor instructed by the patient. Do not be scared of the ICO. The ICO provides [guidance on compliance with a right to access](#) which will

provide assistance on compliance. Regardless, the ICO would likely be sympathetic to strong ethical objections based upon reasoned professional judgement.

If the provision of personal data to the patient (or their solicitors) could involve disclosing information relating to another individual then you may be permitted to restrict the right to access.

Decide on whether and to what extent your professional judgement allows you to comply with a patient request made through a solicitors. If, ethically, there are no concerns then you can comply with a patient request. If you are ethically unsure, or you do not believe the "correct approach" is to comply, then seek legal advice. The first consideration should be your ethical/professional judgement.