Collecting Without The Password

When evidence is locked away by encryption or withheld credentials, legal and technical strategies are required. This guide explores civil and criminal routes for compelled access, technical limitations, and alternative methods to secure crucial digital evidence. It also covers common mistakes and expert involvement.

e-discovery.uk, Computer Forensics Lab. Published 2026-08-31.
https://e-discovery.uk/library/collecting-without-the-password

ACCESS & COMPULSION · A GUIDE FOR UK LAWYERS Collecting Without the Password Locked Devices, Withheld Credentials and the Law of Compelled Access COMPUTER FORENSICS LAB

§ ABOUT THE AUTHOR PREPARED BY COMPUTER FORENSICS LAB E-DISCOVERY TEAM ESTABLISHED 2007 · LONDON ISO 17025-ALIGNED PROCEDURES LOCKED-DEVICE ASSESSMENT COMPELLED-ACCESS SUPPORT CPR PART 35 EXPERT REPORT S FULL CHAIN-OF-CUSTODY DOCUMENTATION

§ CONTENTS In this guide

§ 01 · ORIENTATION Executive summary THE HEADLINE POINT: ALOCKEDDEVICEORWITHHELDPASSWORDISAPROBLEMWITH TWOHALVES: ANHONESTTECHNICALASSESSMENTOFWHATCANACTUALLYBE ACCESSED, ANDALAWFULLEGALROUTETOCOMPELOROBTAINTHEKEY, CHOSENFOR THE CIVIL OR CRIMINAL C ON TEXT, BECAUSESELF - HELPACCESSCANBEACRIMEAND MODERNENCRYPTIONISOFTENGENUINELYUNBREAKABLE

§ 02 · FIRST PRINCIPLES The problem in plain English: the evidence is there but locked away

§ 03 · WHATCANANDCANNOTBEACCESSED What can and cannot be accessed technically

§ 04 · THECIVILROUTES The civil routes: disclosure orders, unless orders and inference

§ 05 · THECRIMINALROUTE The criminal route: the statutory notice regime for keys

§ 06 · REACHINGAROUNDIT Reaching the evidence another way: the estate around the locked device

§ 07 · DEPLOYMENT Deployment: choosing the route and the consequences of refusal

§ 08 · THEWIDERMAP Source architecture: where else the evidence lives QUESTION

COUNTERPART LOCKED CLOUD RECOVERY- SERVER-SIDE COMPULSION DEVICE BACKUP KEY STORE PLATFORMS ROUTE SYNCED / COPIES

§ 09 · IN THE WILD Worked examples EXAMPLE1 · THEUNBREAKABLEPHONEANDTHEBACKUPTHATWASNOT EXAMPLE2 · THEUNLESSORDERANDTHESUDDENRECOLLECTION EXAMPLE3 · THECORPORATEDEVICETHATWASNEVERREALLYLOCKED

§ 10 · WHEREITGOESWRONG Common mistakes and technical limitations Common mistakes Technical limitations

§ 11 · INTERROGATORIES & DRAFTING AIDS Questions to ask · Suggested wording Ask your client Ask your opponent (or the reluctant party) Ask your e Discovery / forensic provider

§ 12 · QUICK CONTROL Checklist and red flags · When to involve a digital forensic expert The locked-access checklist Red flags When to involve a digital forensic expert

§ 13 · COMMON QUESTIONS Frequently asked questions Can you just crack the password on a locked phone? Can a civil court make someone hand over their password? Is there a law that forces someone to decrypt data? Can we just try to guess the password or get into the account ourselves? The device is locked and encryption is unbreakable. Is the case lost? The employee returned a locked company laptop. What now?

§ 14 · REFERENCE Glossary Sources and authoritative references 31 · CPR Part 35: justice.gov.uk, Part DISCLAIMER

§ HOW A SPECIALIST LABORATORY CAN ASSIST Working with Computer Forensics Lab Speak to a forensic examiner, not a salesperson. INSTRUCTTHELAB NEWENQUIRIESEMAILE - DISCOVERY

Questions and answers

Can you just crack the password on a locked phone?

Sometimes, and often not: weak passwords and older devices may yield, but a modern phone with a strong passcode has sound encryption that brute force will not open in any useful time (§3). The honest assessment comes first, so effort is not wasted. And frequently it is unnecessary: the data may sit in an unlocked backup or a synced copy the lock does not guard (§6, Example 1).

Can a civil court make someone hand over their password?

Yes: a party's disclosure obligation can require them to provide the passwords and keys needed to access relevant material within their control, and the court backs this with unless orders (comply or be struck out) and adverse inferences (§4). Access is usually ordered on terms that an independent examiner opens the device and discloses only the relevant material, which protects privilege and privacy and makes compliance acceptable (Example 2).

Is there a law that forces someone to decrypt data?

In the criminal and investigatory context, yes: Part III of the Regulation of Investigatory Powers Act 2000 lets the authorities serve a notice compelling a key or the intelligible form of protected information, and failure to comply is itself an offence (§5). But it is a tool for the authorities on statutory conditions, not for private civil litigants, who use the disclosure-order routes of §4 instead.

Can we just try to guess the password or get into the account ourselves?

No: unauthorised access to a device or account is a criminal offence under the Computer Misuse Act 1990 (§7), and self-help access poisons the evidence and exposes whoever attempts it. Use the lawful route: the recovery key the or g an is at i on holds, the accessible backup, or a court order compelling the key. However tempting the shortcut, it is a crime and it ruins the case.

The device is locked and encryption is unbreakable. Is the case lost?

Rarely: the lock guards the device, not usually the data (§6). Cloud backups, synced copies on other devices, organisational recovery keys, server-side mailbox and SaaS data, and counterparts' copies frequently hold the same material unlocked (Example 1, Example 3). Map the estate first; the locked device is often needed only for deleted or local-only residue, and even a refused key becomes adverse-inference evidence (§7).

The employee returned a locked company laptop. What now?

Check for the recovery key before anything else (§3, §6): managed corporate devices are almost always encrypted through a platform that holds a recovery key, so the employer can open its own device without compelling the former employee at all (Example 3, guide 118). If it is genuinely unmanaged, then the estate reach- around and, if needed, a disclosure order follow. But in most corporate cases the "locked" device is open with a key you already hold.