



**LSCB**

Bath & North East Somerset  
Local Safeguarding Children Board

# Information Sharing Protocol

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## **Section 1 INTRODUCTION**

This Information Sharing Protocol is an agreement between ALL agencies working together under the remit of the Bath & North East Somerset Local Safeguarding Children's Board to ensure the healthy, well-being and safeguarding of children within Bath & North East Somerset.

The protocol facilitates the lawful and secure sharing of information between partner agencies and designated professionals working to safeguard children and young people. It is a Tier 2 agreement.

The information sharing framework has a number of tiers, set out below. Governance arrangements are indicated in brackets for each tier.

Tier 1: National framework for sharing information – legislation and codes of practice (National Government / ICO)

Tier 2: Commitments contained in this Information Sharing Protocol (Chief Officers, Partnership Boards)

Tier 3: Guidance, training, tools (SIMG, Organisational governance frameworks)

Tier 4: Information sharing agreements (Managers, organisational governance frameworks)

This protocol complies with the Tier 1 Multi-Agency Overarching Information Sharing Agreement for organisations working in the Avon & Somerset Constabulary area and the Tier 1 Info Sharing Core Principles v.6 2012 signed up to by members of the IM&T Consortium. It aligns with all other protocols to which agencies may already be signatories and does not in any way supersede those existing agreements.

It is not intended that this document be definitive or exhaustive, it is recognised that as policy develops and implementation arrangements mature, this protocol will need to be reviewed and amended in light of new information sharing requirements to ensure that it is 'fit for purpose'.

As this protocol aims to provide a set of guiding principles for information sharing within the context of the Local Safeguarding Children's Board to which partners can sign up, its purpose is not to be specific. It is a key principle of this agreement that this protocol should be underpinned by a series of specific data sharing agreements that detail the specific data/information sharing requirements between agencies.

## **Section 2 BACKGROUND**

Many agencies and organisations provide support to children and young people as they grow up. At times a single agency working with an individual may identify a range of issues that need to be addressed, some of which are outside of its scope or expertise. Conversely, more than one agency could become involved with an individual but be unaware of each other's involvement.

The need to safeguard and the desire to promote the welfare of children and young people is at the heart of joined-up service delivery with a preventative focus. A positive commitment to inform sharing between workers and agencies, taking full advantage of the opportunities set out under statute, is the only way to ensure that all children and young people are provided with the most appropriate support as and when they need it.

Information sharing is the key to improving outcomes for children and is essential to enable early intervention and preventative work for safeguarding children. In many cases, it is only when information is brought together from a variety of sources that it is identified that a child is seen to be vulnerable, in need or at risk of harm. The appropriate sharing of information between agencies and workers is therefore crucial for the early identification of children and families who may be in need of support and services before the problems become serious, and also assists in the process of assessing the levels of concern and potential risk.

In many instances failure to pass on information that might have prevented a child suffering harm, can be far more serious and dangerous than an incident of unjustified disclosure. Fear about sharing information cannot be allowed to stand in the way of the need to promote the welfare and protect the safety of children, therefore it is important that information sharing is carried out appropriately and that worker and partner agencies are all aware of and confident in their information sharing responsibilities and duties.

### **Section 3 PURPOSE OF THE PROTOCOL**

Effective safeguarding systems are those where all professionals share appropriate information in a timely way and can discuss any concerns about an individual child with colleagues and local authority children's social care

3.1 The protocol has been developed to:

- Define the specific purposes for which the signatory agencies have agreed to share information between themselves and with the Bath & North East Somerset (B&NES) Local Safeguarding Children Board (LSCB);
- Set out the legal gateway through which the information is shared, including reference to the Human Rights Act 1998 and the common law of confidentiality;
- Describe the security procedures necessary to ensure compliance with responsibilities under the Data Protection Act 2018 and agency specific security requirements;
- Describe how this will be monitored and reviewed

3.2 This protocol complies with the provision of the Children Act (2004) and related guidance outlined in Working Together to Safeguard Children (2015) and the related guidance outlined in Information Sharing: Advice for practitioners providing safeguarding services to children, young people, parents and carers (March 2015) requiring the B&NES LSCB to have in place arrangements for information sharing between statutory partners, relevant persons and bodies (and service providers acting on their behalf) and with the LSCB to ensure each

LSCB member agency fulfils their functions under the Children Act (2004) and Keeping Children Safe in Education (2015).

3.3 The B&NES LSCB is not a legal entity. Each LSCB member agency that is a signatory to this protocol remains a legal entity in their own right. Nothing in this document shall be deemed as creating a legal partnership, or contractual or principle/agent relationship between any of the LSCB member agencies who are signatories to this protocol.

3.4 The purpose of this protocol is to assist the sharing of information between the LSCB member agencies and the LSCB to enable:

- Each LSCB member agency, to which section 10 of the Children Act (2004) applies, to fulfil its statutory duties to co-operate with each other in the safeguarding and promoting the welfare of children; and
- Each LSCB member agency to co-operate with the LSCB in fulfilling the functions of the LSCB under section 14 of the Children Act (2004)

3.5 This protocol will regulate the processing of data in relation to the areas of work set out in section 2 insofar as each of the LSCB member agencies are involved in the specific areas of information sharing detailed. However, it does not override existing legal safeguards on personal information. The data will be processed solely for the 'purposes' specified and will be accessed only as identified.

#### **Section 4 PURPOSE FOR SHARING INFORMATION**

Fears about sharing information cannot be allowed to stand in the way of the need to safeguard and promote the welfare of children at risk of abuse or neglect. In the same way, the failure to share information must not limit the promotion of services that assist the development of children and their access to services at an early stage. No practitioner should assume that someone else will pass on information which may be critical to keeping a child safe.

Information sharing, Advice for practitioners providing safeguarding services to children, young people, parents and carers (March 2015)

4.1 The purpose of sharing information between agencies and with the LSCB is to ensure agencies individually and collectively can safeguard and promote the welfare of children. Working Together to Safeguard Children (2015) defines safeguarding and promoting the welfare of children as:

- Protecting children from maltreatment;
- Preventing impairment of children's health or development;
- Ensuring that children grow up in circumstances that are consistent with the provision of safe and effective care; and
- Taking action to enable all children to have the best outcomes.

4.2 For LSCB member agencies sharing information between each other, the purpose of sharing information will be for the following reasons:

- Identifying the symptoms and triggers of need, vulnerability, early help, abuse or neglect;
- Undertaking assessments to gather information about children and families, analyse their needs, risks or harm suffered by the children, and decide the support required to improve the children's outcomes to make them safe; and
- Organising support that can be provided through service provision and review this support for its effectiveness in improving children's outcomes to make them safe.
- To deliver early intervention support to families where there is an agreement for agencies to share information. For LSCB member agencies sharing information with the LSCB, the purpose of sharing information will be to allow the LSCB to fulfil its statutory objectives. Section 14 of Children Act (2004) outlines the LSCB's statutory objectives:
- Co-ordinating what is done by each agency represented on the LSCB for the purposes of safeguarding and promoting the welfare of children; and
- Ensuring the effectiveness of what is done by each agency, individually and collectively, for the purposes of safeguarding and promoting the welfare of children.

4.3 Appendix 2 outlines the statutory functions of the LSCB and how the board's objectives will be fulfilled. For most functions, agencies will be sharing de-personalised and/or anonymised data, however for serious case reviews, multi-agency concise reviews, multi-agency audits and child death reviews, agencies will be required to share personal, sensitive and confidential (including medically confidential) data.

## **Section 5   LEGAL FRAMEWORK**

Every LSCB should play a strong role in supporting information sharing between and within organisations and addressing any barriers to information sharing. This should include ensuring that a culture of appropriate information sharing is developed and supported as necessary by multi-agency training. Information sharing, Advice for practitioners providing safeguarding services to children, young people, parents and carers (March 2015)

5.1 As set out under section 1.4 of this protocol, the main legal gateway (or statutory power to share information) for the purposes of this protocol is section 10 of the children Act (2004) that places a duty on all LSCB member agencies to make (information sharing) arrangements to promote co-operation.

5.2 All LSCB member agencies and the LSCB members must adhere to the arrangements laid out in the Education Act 2002 and Education Act 1996. The section 11 duty of the Children Act 2004 mirrors the duty placed by **section 175** of the Education Act 2002 on LEAs and the governing bodies of both maintained schools and further education institutions, to make arrangements to carry out their functions with a view to safeguarding and promoting the welfare of children and follow the guidance in Safeguarding Children in Education (DfES 2004). The guidance applies to proprietors of independent schools by virtue of **section**

**157** of the Education Act 2002 and the Education (Independent Schools Standards) Regulations 2003.

Education Act 1996

**Section 13** of the Education Act 1996 provides that an LEA shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community, by securing that efficient primary and secondary education is available to meet the needs of the population of the area. Details of the number of children in the local authority's area and an analysis of their needs is required in order to fulfil this duty so there may be an implied power to collect and use information for this purpose. **Section 434** (4) of the Act requires LEAs to request schools to provide details of children registered at a school.

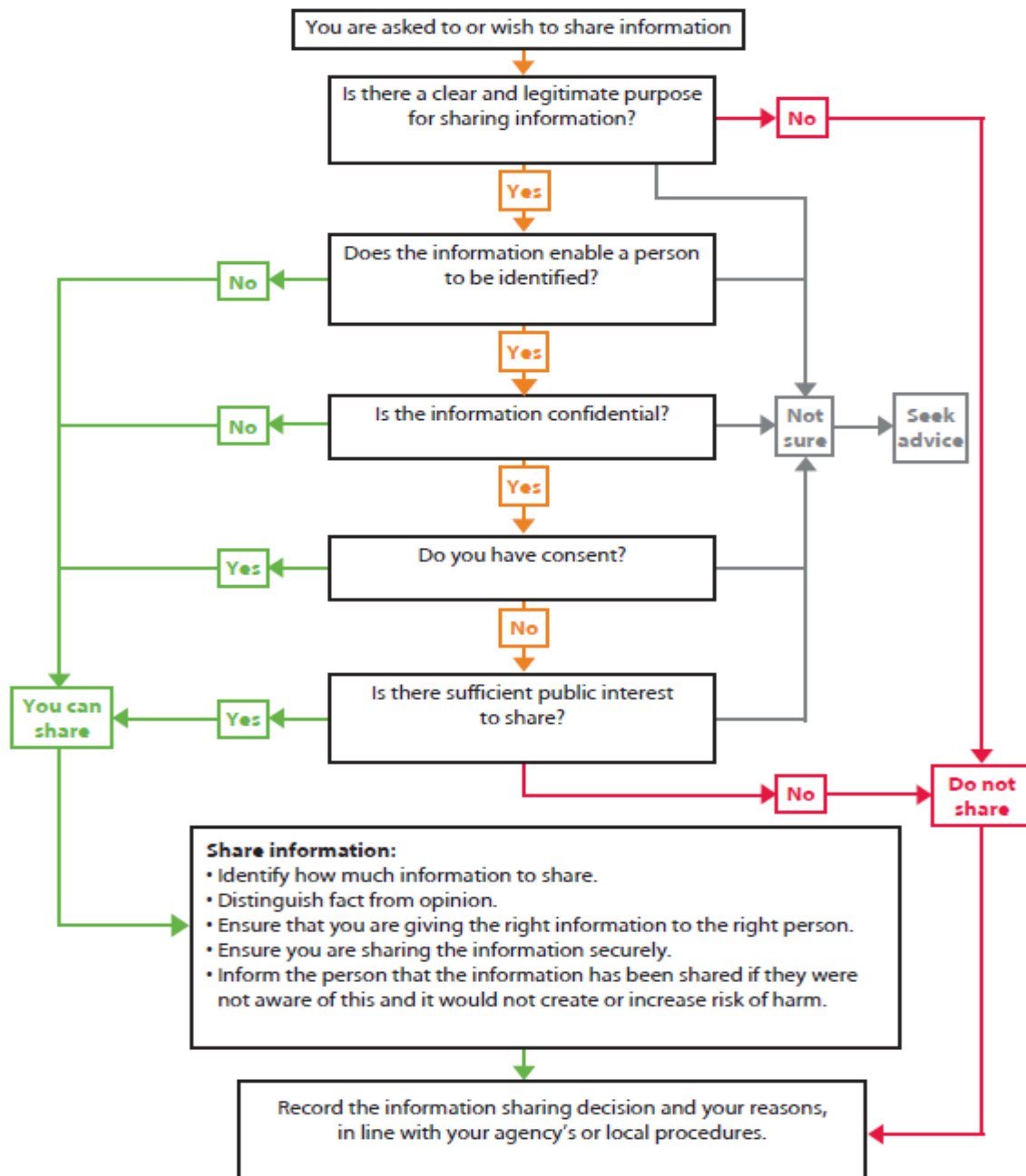
5.3 In applying section 10 of the Children Act (2004), all LSCB member agencies and the LSCB must also adhere to the arrangements outlined in the Data Protection Act (2018) and Human Rights Act (1998).

5.4 To help agencies determine and decide where information shared, between LSCB member agencies and within the LSCB, fulfils all legal requirements (Data Protection Act (2018) and Human Rights Act (1998), the flowchart on page 8 should be used to help inform decision making.

5.5 In addition to the legal power under section 10 of the Children Act (2004), individual member agencies and their partners also have other responsibilities to share information that satisfies the public interest test outlined in the flowchart in page 7. The list below is not exhaustive but covers the main LSCB member agencies:

- Section 27 of the Children Act (1989) places a duty on the a variety of agencies to share information with children's social care; where the information is shared to immediately protect a child suffering significant harm, or is likely to suffer significant harm (under section 47 of the Children Act 1989) then it is likely to meet the public interest test to share without consent;
- Section 82 of the NHS Act (2006) places a duty to co-operate upon NHS bodies and local authorities to secure and advance the health and well-being of the population;
- Section 17 of the Crime and Disorder Act (1998) sets out the power for a range of agencies to share information for the purposes of preventing crime and disorder;
- MAPPA arrangements cover sharing information for managing sexual and violent offenders;
- MARAC arrangements sharing information for multi-agency provision of services for victims of domestic abuse to help reduce their victimisation;
- The Mental Capacity Act (2005) and associated Code of Practice;
- Care Act 2014 and associated guidance and
- Keeping Children Safe in Education (2015)

# Flowchart of key questions for information sharing





## Section 6 APPLICATIONS

Effective sharing of information between professionals and local agencies is essential for effective identification, assessment and service provision. Information sharing, Advice for practitioners providing safeguarding services to children, young people, parents and carers (March 2015)

### 3.1 Each signatory to this protocol undertakes:

- To comply with the provisions of the Data Protection Act 2018;
- To comply with the provisions of the Human Rights Act 1998 and the European Convention on Human Rights;
- To uphold the requirements of the common law duty of confidentiality;
- To comply with any other relevant legislation governing the exchange of information;
- To process only de-personalised data in any circumstance where the purpose can be achieved without the disclosure of personal data;
- To ensure that where de-personalised data is processed, it will not be matched, merged or correlated in any way which could result in the identification of an individual without the prior consent of the originator and the implementation of necessary safeguards to protect the rights and freedoms of their individual;
- To process personal, sensitive and/or confidential (including medically confidential) data with explicit and informed consent of the data subject, unless the public interest is satisfied to share data without consent;
- To use data only for the specified purpose for which it is intended to be processed;
- To process only data that is sufficient and relevant, and not excessive, to the specified purpose for which it is intended to be processed, to be determined on a case-by-case basis;
- To process information lawfully in each case;
- To process information fairly and objectively in each case;
- Only to process information where it is necessary for the specified purpose for which it is intended and cannot be achieved by any other means;
- To process information proportionately to each case;
- To retain data no longer than is necessary in the circumstances for each case and to securely dispose of data that is no longer requires;
- To collect, process, store and disclose all data in accordance with this protocol and relevant legislation;
- Not to process information for any purpose other than that set out in this protocol (the safeguarding and promoting the welfare of children);
- To restrict the processing of data to any employees (nominated persons of the signatories to this protocol) involved in pursuance of this specified purpose (as outlined in 4.2 & 4.3) for which the data is intended to be processed;
- To take all reasonable steps to ensure that any employees (nominated persons of the signatories to this protocol) involved in the processing of

data in pursuance of the specified purpose, are aware of their responsibilities to ensure the lawful processing of data;

- Not to further process information received under this protocol in any manner incompatible with the purpose for which the information was originally intended and without the written agreement of the originating signatory. Information required will, under normal circumstances, be requested from the originating signatory. Secondary disclosure will be kept to an absolute minimum. Where secondary disclosure does take place, the originator must be informed in order that any error can be rectified;
- To provide data required to be exchanged, in the correct manner, with the correct and agreed time limit; and
- To work in partnership and give reasonable assistance to other signatories to this protocol to enable statutory obligations to be fulfilled.

6.2 This protocol and associated documents shall be subject to disclosure under the provisions of the Freedom of Information Act (2000). Any 'request for information' received by signatories in relation to the protocol should be responded to directly by the signatory within 20 working days in accordance with the legislation. The Safeguarding Unit should be informed of such 'requests for information' by the signatory as soon as practicable

## **Section 7 SECURITY OF DATA**

*Information Sharing: Guidance for practitioners providing safeguarding services (2015)* supports frontline practitioners, working in child or adult services, who have to make decisions about sharing personal information on a case by case basis. The guidance can be used to supplement local guidance and encourage good practice in information sharing. Working Together to Safeguard Children (2015)

7.1 Each LSCB member agency and the LSCB will ensure they have appropriate security arrangements in place and take all reasonable steps to adequately protect the data, both technologically and physically, against unauthorised or unlawful processing, accidental loss or destruction of, or damage to data.

7.2 Agencies and LSCB will conduct regular audits of security arrangements to ensure they are effective and in compliance with the provisions of the Data Protection Act (1998).

## **Section 8 MONITORING, REVIEW AND VARIATION OF THE PROTOCOL**

8.1 The signatories will consider varying the protocol as a result of change in:

- Practice/procedures;
- Signatories;
- Legislation/Guidance; and/or
- Information commissioner rulings/case law.

8.2 The signatories can seek a review to ensure that:

- The processing of information is contributing to the achievement of the purpose of the protocol;
- Security arrangements remain adequate and any breaches are being acted upon;
- Time limits for the processing of information are being adhered to where appropriate;
- Confidentiality requirements are being met ; and/or
- Member agencies are working together to ensure that the flow of information between agencies and with the LSCB, in pursuance of the co-operating objectives, is not restricted by uncertainty and inconsistency in decisions to share information between agencies.

8.3 LSCB member agencies may propose changes to this protocol or its appendices at any time by submitting a suggested revision to the Independent Chair of the LSCB in writing, so that the impact of proposed changes can be assessed, consulted upon, and agreed.

8.4 This agreement will be reviewed every 12 months irrespective of the above.

8.5 It is the responsibility of each LSCB agency signatory to the protocol to ensure that they have the latest version of the protocol.

## **Section 9 AGREEMENT**

We the undersigned agree that the agency that we represent will adopt and adhere to this information sharing agreement:

<b>Agency</b>	<b>Name</b>	<b>Designation</b>	<b>Signature</b>	<b>Date</b>
Police Service				
Council Children's Services				
CCG				
Insert other boxes and names for the signatories to this agreement				

## **Appendix 1 STAUTORY LSCB PARTNERS, RELEVANT PERSON AND BODIES**

Section 13 of the Children Act (2004) sets out that the LSCB must include at least one representative of the local authority and each of the other Board partners as set out below. Board partners who must be included in the LSCB are;

- District Councils in local government areas which have them;
- The Chief Officer of Police;
- The Local Probation Trust (including appropriate representation by the Trust of Community Rehabilitation Companies);
- Youth Offending Service;
- NHS England Area Team;
- Clinical Commissioning Group;
- NHS Trusts and NHS Foundations Trusts (including appropriate representation of hospitals, establishments, facilities and services situated in the local authority area CAFCAS);
- The Governor or Director of any secure training centre in the area of the authority; and
- The Governor or Director of any prison in the area of the authority which ordinarily detains children;
- The Local Authority must also take reasonable steps to representation from the following persons and bodies:
  - The Governing body of maintained schools
  - The proprietor of non-maintained special schools
  - The proprietor of a city technology college, a city college for the technology of the arts, or an academy;
  - The governing body of a further education institute, the main site of which is situated in the Authority's area; and
  - Two lay members representing the local community

## Appendix 2            LSCB FUNCTIONS

Section 14 of the Children Act (2004) outlines the LSCB's statutory objectives as:

- Co-ordinating what is done by each agency represented on the LSCB for the purposes of safeguarding and promoting the welfare of children; and
- Ensuring the effectiveness of what is done by each agency, individually and collectively, for the purposes of safeguarding and promoting the welfare of children.

The LSCB regulations (2006) set out the statutory functions of the LSCB in relation to meeting the objectives above. From the 6 regulations set out in the 2006 document, the appropriate ones are listed below for the purposes of this Information Sharing Protocol.

- Regulation 5 (1) (a) – Developing policies and procedures for safeguarding and promoting the welfare of children in relation to:
  - i. The action to be taken where there are concerns about a child's safety or welfare, including thresholds for intervention;
  - ii. The training of person who work with children, or in services affecting the safety and welfare of children;
  - iii. The recruitment and supervision of persons who work with children;
  - iv. The investigation of allegations concerning persons who work with children;
  - v. The safety and welfare of children who are privately fostered;
  - vi. The co-operation with neighbouring children's services authorities and their Board partners;
- Regulation (1) (b) – Communicating to persons and bodies in the area of the authority the need to safeguard and promote the welfare of children, raising their awareness of how this can best be done, and encouraging them to do so;
- Regulation 5 (1) (c) – Monitoring and evaluating the effectiveness of what is done by the local authority and their Board partners, individually and collectively, to safeguard and promote the welfare of children, and advising them on ways to improve;
- Regulation 5 (1) (d) - Participating in the planning of services for children in the area of the authority;
- Regulation 5 (e) – Undertaking reviews of serious cases and advising the local authority and their Board partners on lessons to be learned;
- Regulation 5 (3) – LSCB may also engage in any other activity that facilitates, or is conducive to, the achievement of its objectives;
- Regulation 6 (1) (a) – Collecting and analysing information about each child death to enable the Child Death Overview Panel (CDOP) to review any public health or safety or welfare concerns arising from a particular death, or from a pattern of deaths in the area;
- Regulation (1) (b) – Putting in place procedures for ensuring that there is a co-ordinated response by the local authority and their Board partners and other relevant persons to unexpected child death.

### **APPENDIX 3            SEVEN GOLDEN RULES OF INFORMATION SHARING**

- 1 Remember that the Data Protection Act 2018 and human rights law are not barriers to justified information sharing, but provide a framework to ensure that personal information about living individuals is shared appropriately.
- 2 Be open and honest with the individual (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so.
- 3 Seek advice from other practitioners if you are in any doubt about sharing the information concerned, without disclosing the identity of the individual where possible.
- 4 Share with informed consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, there is good reason to do so, such as where safety may be at risk. You will need to base your judgement on the facts of the case. When you are sharing or requesting personal information from someone, be certain of the basis upon which you are doing so.
- 5 Consider safety and well-being: Base your information sharing decisions on considerations of the safety and well-being of the individual and others who may be affected by their actions.
- 6 Necessary, proportionate, relevant, adequate, accurate, timely and secure: Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those individuals who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely (see principles).
- 7 Keep a record of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

**The principles**

The principles set out below are intended to help practitioners working with children, young people, parents and carers share information between organisations. Practitioners should use their judgement when making decisions on what information to share and when and should follow organisation procedures or consult with their manager if in doubt. **The most important consideration is whether sharing information is likely to safeguard and protect a child.**

**Necessary and proportionate**

When taking decisions about what information to share, you should consider how much information you need to release. The Data Protection Act 1998 requires you to consider the impact of disclosing information on the information subject and any third parties. Any information shared must be proportionate to the need and level of risk.

**Relevant**

Only information that is relevant to the purposes should be shared with those who need it. This allows others to do their job effectively and make sound decisions.

**Adequate**

Information should be adequate for its purpose. Information should be of the right quality to ensure that it can be understood and relied upon.

**Accurate**

Information should be accurate and up to date and should clearly distinguish between fact and opinion. If the information is historical then this should be explained.

**Timely**

Information should be shared in a timely fashion to reduce the risk of harm. Timeliness is key in emergency situations and it may not be appropriate to seek consent for information sharing if it could cause delays and therefore harm to a child. Practitioners should ensure that sufficient information is shared, as well as consider the urgency with which to share it.

**Secure**

Wherever possible, information should be shared in an appropriate, secure way. Practitioners must always follow their organisation's policy on security for handling personal information.

**Record**

Information sharing decisions should be recorded whether or not the decision is taken to share. If the decision is to share, reasons should be cited including what information has been shared and with whom, in line with organisational procedures. If the decision is not to share, it is good practice to record the reasons for this decision and discuss them with the requester. In line with each organisation's own retention policy, the information should not be kept any longer than is necessary. In some circumstances this may be indefinitely, but if this is the case there should be a review process.

## **Appendix 5                    RELEVANT LEGISLATION/GUIDANCE**

- Children Act 1989 (Sections 17, 27 and 47)
- Local Government Act 2000 (Section 2)
- Crime and Disorder Act 1998 (Section 115)
- Data Protection Act 1998 (Part IV)
- Data Protection Act 2018 (Part VII)
- The General Data Protection Regulations (GDPR)
- Keeping Children Safe in Education (2015)
- Learning & Skills Act 2000
- Education Act 2002 (The section 11 duty of the Children Act 2004 mirrors the duty placed by section 175 of the Education Act 2002, section 157)
- Education Act 1996 ( Section 13, Section 434 (4))
- Children Act 2004 (Section 11) Obtain assistance for the local authority from other agencies in order for the local authority to perform its functions of providing services to children and families under Part III, Section 27, of the Children Act 1989.
- Prevent or reduce crime and identify and apprehend offenders or suspected offenders (Section 115, Crime and Disorder Act 1998).
- Co-operate to safeguard children, improve well-being and promote their welfare (statutory guidance under Section 11 of the Children Act 2004)
- Section 14 A of the Children Act 2004 which was inserted by section 8 of the Children, Schools and Families Act 2010.
- Working Together to Safeguard Children (2015)
- Information Sharing: Advice for practitioners providing safeguarding services to children, young people, parents and carers (2015)
- Mental Capacity Act 2005
- Mental Health Act 1983 and amended in 2008
- Care Act 2014



## **Appendix 6                    CONFIDENTIALITY AND CONSENT GUIDANCE**

Many of the data protection issues surrounding disclosure can be avoided if the informed consent of the individual has been sought and obtained. Consent can be given verbally or in writing but must be freely given after the alternatives and consequences are made clear to the person from whom permission is being sought. It is envisaged that consent will be obtained at the stage when the individual is first in contact with services, and will be revisited whenever requested or if their circumstances change.

In circumstances where the child or young person is deemed to lack the capacity to give consent, organisations will have to operate within the framework of the Mental Capacity Act 2005. Under the Act all decisions must be made in the best interests of the person who lacks capacity. The Act is accompanied by a Code of Practice that provides details on how to determine what is in someone's best interests. Guidance will need to be provided to staff and other agents to enable them to comply with this. Establishing the need for consent in order to share personal information about children, young people and their families, each participating organisation will need to consider their statutory powers and the relevant legislation and service specific guidance which will dictate when and in what circumstances consent is required to be obtained. The consent of the individual will normally be required to share information. This consent must be established for each episode of care or at the point of contact with a new service. There will be circumstances where consent is not required or cannot be given, and these are referred to below.

### **What should be considered before consent to share is sought?**

Be sure you are complying with legislation and that your intention to share personal information is justifiable in the circumstances. Consider the intended and unintended outcomes of the disclosure. Be sure you are authorised to share the information (once consent is obtained if required) and that there isn't someone else designated as responsible for managing this particular disclosure of personal information. If in doubt, consult your senior.

Be sure that what you are doing is proportionate to the purpose, i.e. that you couldn't achieve it by sharing less or no personal information, and that it is necessary, i.e. that the end result cannot be achieved in some other way.

### **When should individuals be informed about the uses of their information?**

Individuals should be informed on first contact with a service, and whenever their circumstances change.

### **How should individuals be informed?**

Individuals should be provided with sufficient information to ensure they are aware of all the uses and potential uses/disclosures of their personal information. Information leaflets and posters should also be distributed as appropriate throughout the organisations to inform service users their representatives/carers and other members of the public. It is important to ensure that information is available in appropriate languages, large print, braille, on tape, etc to meet the diverse needs of

service users and that the Information Standard is met. It is also important to consider the most appropriate time to share the information, i.e. information sharing issues should be considered during referral and assessment stages rather than waiting until a multi-agency response to service delivery is required. Any specific practitioner guidance should stipulate the most appropriate times to raise awareness with service users.

### **Can a child give consent?**

Children have the same rights in respect of their own personal data as adults, and the same rights of privacy. Whether a child can give valid consent for the disclosure of their information will depend on the legal capacity of children as defined by the law in the relevant country. There is no minimum age in English law. However current practice accepts that, provided a child is considered capable of giving consent, a child of or over the age of 12 years shall be considered to have 'legal capacity'. This does not rule out receipt of valid consent from a child of a younger age, as each case should be considered on its merits on an individual basis. When consent is sought from a child it will need to be judged whether the child has the capacity to understand the implications of the consent and of the information provided as a result of that consent. If the child does understand then their consent will be dealt with in the same way as that of an adult. If a parent or legal guardian gives consent on behalf of a child, assurances should be received that the child has authorised the action and that their consent was not obtained under duress or on the basis of misleading information. In cases where children are considered incapable of understanding or exercising their rights, for instance because they are too young or suffer from a severe mental disorder, then consent may be given by parents or other persons who are legally able to act on their behalf. Consent provided in this way will only be complied with when assurances are received that they are acting in the best interests of the child.

### **How will consent be gained?**

An individual and/or their authorised representative will be asked to indicate consent to the use of information, which will be recorded manually and/or electronically in the service user record. They may also be asked to provide a signature if they are present and able to do so.

### **How will consent be kept up-to-date?**

At each new episode of care or point of contact with a new service, or when circumstances change, individuals should be given the opportunity to reconfirm their consent. Each organisation is responsible for keeping personal information accurate and up to date. This applies to personal information relating to staff, service users, and associated individuals, in computer records, manual files and all other media.

### **Other disclosures which can occur without consent:**

- Where the request is accompanied by a Court Order
- For the prevention and detection of crime (Section 115, Crime and Disorder Act (1998))
- Whenever there is judged to be significant risk of harm to self or other people.

### **When should you not seek consent?**

There will be some circumstances where you should not seek consent, for example where to do so would:

- place a child or young person at increased risk of significant harm; or
- place an adult at risk of harm; or
- prejudice the prevention or detection of serious crime; or
- lead to unjustified delay in making enquiries about allegations of significant harm.

Sharing confidential information without consent (and therefore also requesting disclosure of information from other services or organisations) will normally be justified in the public interest:

- When there is evidence that the child is suffering or at risk of suffering significant harm; or
- Where there is reasonable cause to believe that a child may be suffering or at risk of suffering significant harm; or
- To prevent significant harm arising to children and young people or harm to adults, including through the prevention, detection and prosecution of serious crime.

### **Providing operational guidance to staff - In order to support staff, each organisation should have procedures which address the following issues:**

- Explaining the meaning of informed consent
- Establishing the capacity of a person to give consent (see below)
- The circumstances under which information may be disclosed without consent
- Determining who can authorise the disclosure of information without consent and how this authorisation should be requested and recorded
- The procedures for recording and storing consent to share information
- The procedures for recording limitations of consent to share
- Identification of people eligible to seek consent and how their training needs will be assessed and appropriate training provided.

### **Working with individuals who lack capacity**

The Mental Capacity Act 2005 (MCA) provides a statutory framework to empower and protect people with care and support needs who are not able to make their own decisions. It makes it clear who can take decisions, in which situations, and how they should go about this. It also enables people to plan ahead for a time when they may lose capacity.

The MCA has five key principles which emphasise the fundamental concepts and core values of the Act, and which must always be borne in mind when working with or providing care or treatment for people who lack capacity.

The five principles are:

- 1 Every individual has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is demonstrated otherwise. This means that you cannot assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability.

- 2 People must be supported as much as possible to make their own decisions before anyone concludes that they cannot make their own decisions. This means that you should make every effort to encourage and support the person to make the decision for him/herself. If a lack of capacity is established, it is still important that you involve the person as far as possible in making decisions.
- 3 People have the right to make what others might regard as unwise or eccentric decisions. Everyone has their own values, beliefs and preferences which may not be the same as those of other people. You cannot treat them as lacking capacity for that reason.
- 4 Anything done for or on behalf of a person who lacks mental capacity must be done in their best interests. (The MCA Code of Practice will provide guidance on how to go about deciding what is in the best interests of the person you are providing care or treatment for.)
- 5 Anything done for, or on behalf of, people without capacity should be the least restrictive of their basic rights and freedoms. This means that when you do anything to or for a person who lacks capacity you must choose the option that is in their best interests and interferes the least with their rights and freedom of action.

## **Appendix 7 WHEN IS THERE SUFFICIENT PUBLIC INTEREST TO SHARE INFORMATION?**

- Even where you do not have consent to share confidential information, you may lawfully share if this can be justified in the public interest. Where consent cannot be obtained or is refused, or where seeking it is unsafe or inappropriate; the question of whether there is a sufficient public interest must be judged by the practitioner on the facts of each case. A public interest can arise in a wide range of circumstances.
- Where you have a concern about a person, you should not regard refusal of consent as necessarily to mean that you cannot share confidential information.
  
- In making the decision you must weigh up what might happen if the information is shared against what might happen if it is not, and make a decision based on professional judgement.

### **Golden rule**

**Consider safety and well-being:** Base your information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.

### **Other things to consider:**

- A competent adult has the right to make decisions which may put themselves at risk but which present no risk of significant harm to children or harm to other adults. In this case it may not be justifiable to share information without consent.

Taken from Information Sharing; Guidance for Practitioners and Managers (p.21, 2008, HM Government) and public interest is also referred to in the latest version of Information Sharing Advice for practitioners providing safeguarding services to children, young people, parents and carers. (p 4 & 14, March 2015 HM Government)