

INFORMATION SHARING & CONFIDENTIALITY

1 JUSTIFICATION FOR SHARING

- 1.1 Research and experience has demonstrated that to keep children safe from harm it is essential that professionals maximise the potential for safe partnership with parent/s and share relevant information across geographical and professional boundaries.
- 1.2 Information relevant to child protection will be about:
 - Health and development of a child and her/his exposure to possible harm
 - A parent/carer who is unable to care adequately for a child
 - Other individuals who may present a risk of harm to the child
- 1.3 It is the duty of professionals, whether they are providing services to adults or children, to place the needs of the child first.
- 1.4 The consent of a person under the age of eighteen is as significant as that of an adult where s/he is the subject of information, provided s/he has sufficient understanding (so called Fraser competence) to provide it. If a member of staff is in doubt about a child's competence s/he should seek legal advice.
- 1.5 Where a child does not have capacity to consent, it should be sought, if it does not place her/him at additional risk, from a person with parental responsibility for that child.
- 1.6 Each case will depend on its own facts and legal advice should always be sought from agencies' own legal advisers where the professional is concerned about the legality of sharing information.

2 RELEVANT LAW

- 2.1 The main sources of relevant law with respect to information sharing and confidentiality in child protection are the:
- Common law
 - European Convention on Human Rights (via its introduction into English law in the Human Rights Act 1998)
 - Data Protection Act 1998
 - Crime and Disorder Act 1998
 - Criminal Justice and Court Services Act 2000
 - Children Act 1989
 - The Caldicott Standards (applicable to health and SSD)

Common Law (2.2 – 2.5)

- 2.2 *Working Together to Safeguard Children* (paragraph 7.32 - 7.3.3) confirms that the 'Common Law Duty of Confidence' requires that personal information about children and families kept by professionals and agencies should not generally be disclosed without the consent of the subject.
- 2.3 **It is lawful to disclose such confidential information if it appears necessary to do so to safeguard a child in the public interest i.e. the public interest in protecting children may override the public interest in maintaining confidentiality.**
- 2.4 Disclosure must be justifiable in accordance with the facts of each case and a blanket approach is unlawful. Disclosure without consent should be the exception rather than the rule.
- 2.5 All agencies have the power to disclose to a third party, allegations of abuse of children if they genuinely and reasonably believe that it is desirable to do so to protect children. Disclosure in these circumstances requires a co-ordinated, well-informed approach and legal advice should be considered.

European Convention on Human Rights (2.6 – 2.8)

2.6 Article 8 of the above Convention states that:

- Everyone has the right to respect for her/his private and family life, home and correspondence

2.7 There are certain situations when Article 8 enables professionals to disclose information without consent - e.g. to:

- Safeguard a child
- Protect her/his health or morals
- Protect the rights and freedoms of others or
- Prevent disorder or crime

2.8 The principle of 'proportionality' applies to sharing confidential information i.e. when disclosing information without consent one must limit the extent of the disclosure to that which is absolutely necessary to achieve the aim of disclosure (e.g. child protection). **Agencies should record the basis of the proportionality test and the extent to which information was disclosed.**

Data Protection Act 1998 (2.9 – 2.10)

2.9 The Data Protection Act 1998 requires that personal information is:

- Obtained and processed fairly and lawfully
- Processed for limited purposes and not in any manner incompatible with those purposes
- Accurate and relevant
- Held for no longer than necessary
- Kept secure
- Only disclosed if specific conditions set out in the Act are satisfied

- 2.10 Consent to disclosure is not always necessary under the Data Protection Act 1998. The Data Protection Act 1998 does allow disclosure of information, without the consent of the subject in certain circumstances, e.g. where 'sensitive data' such as personal health information, needs to be disclosed to prevent or detect any unlawful act or is necessary for legal proceedings.

For more detailed information see 'www.dataprotection.gov.uk'.

Crime & Disorder Act 1998 and Criminal Justice & Court Services Act 2000 (2.11)

- 2.11 The Crime & Disorder Act 1998 and Criminal Justice and Court Services Act 2000 (Sex and Violent Offenders) both establish requirements upon individuals and agencies to pass knowledge and physically exchange information in order to reduce crime, create safer communities and protect the public.

Children Act 1989 (2.12)

- 2.12 S. 27 Children Act 1989 also imposes a duty on public bodies, i.e. all agencies, to assist Social Services in the exercise of their functions e.g. child protection if requested to do so and if it is not prejudicial to the discharge of their own function. Further, s.47 provides the duty for police and Social Services to investigate children at risk of significant harm and S.17 provides the power for agencies to share information in respect of children in need.

The Caldicott Standards (2.13 – 2.17)

- 2.13 For NHS and councils with social services responsibilities, the Caldicott principles and processes provide a framework of quality standards for the management of confidentiality and access to personal information under the leadership of a Caldicott Guardian.
- 2.14 This includes 'Safe Haven' principles on the secure storage and transfer of confidential information.

- 2.15 These Standards have applied to NHS organisations for a number of years and have now been extended into Councils with Social Services Responsibilities in order to provide an effective framework to operationalise the Data Protection Act 1998 and underpin appropriate information sharing.
- 2.16 Health and SSDs must ensure that their information sharing arrangements are compliant with their own local procedures based on the Caldicott Standard (see *Health Service Circular/LAC circular HSC 2002/003/LAC (2002) 2 'Implementing the Caldicott Standard into Social Care'*).
- 2.17 Each health service and SSD will have their own Caldicott Guardian who should be able to provide advice and guidance as required.

3 ADDITIONAL PROFESSIONAL GUIDANCE

DOCTORS

- 3.1 *Working Together to Safeguard Children (1999)* refers to the General Medical Council (GMC) guidance entitled '*Confidentiality: Protecting and Providing Information*' 1995 (subsequently updated in 2000).
- 3.2 '*Confidentiality*' emphasises the importance in most circumstances of obtaining a patient's consent to the disclosure of personal information but makes clear that information may be released without consent to third parties e.g. statutory agencies such as social services and police, in exceptional circumstances if:
- A failure to disclose information may expose the patient, or others, to risk of death or serious harm.
- 3.3 The GMC has confirmed that its guidance refers to information about:
- Third parties who are of direct relevance to child protection, e.g. adults who may pose a risk to a child
 - Children who may be the subject of abuse

- 3.4 Paragraph 39 states: 'If you believe a patient to be a victim of neglect or physical, sexual or emotional abuse and that the patient cannot give or withholds consent to disclosure, [you should share information] where you believe that the disclosure is in the patients best interest'

NURSES & OTHER HEALTH STAFF

- 3.5 The Nursing and Midwifery Council (NMC) has produced a code of professional conduct which contains the advice that disclosure of information may occur:
- With the consent of the patient or client
 - Without the consent of the patient or client when the disclosure is required by law or by order of a court
 - Without the consent of the patient or client when the disclosure is considered to be necessary in the public interest (public interest is defined to include child protection)
- 3.6 The Health Professionals Council which governs therapies and professions allied to medicine has produced a statement on confidentiality and individual professional bodies produce their own, essentially similar guidance.
- 3.7 When in doubt health staff may consult the named professional who may in turn seek advice from the designated doctor or nurse and/or the Caldicott guardian or solicitor of the trust.

WILTSHIRE POLICE

- 3.8 Police are lawfully able to supply information to relevant third parties for defined categories of request.
- 3.9 Care must be taken in all cases to ensure that all information disclosed is accurate, topical, factual, proportionate for the purpose for which it is passed and above all, relevant and necessary to the issue and the individual concerned

- 3.10 The seven categories of request for information which police CPUs can lawfully respond to are those in which:
- A child protection referral is made and a joint investigation under s.47 Children Act 1989 has begun (e.g. during a strategy discussion)
 - The SSD is carrying out a s.47 Children Act 1989 enquiry on a single agency basis
 - SSD are carrying out an initial assessment in order to inform a decision as to the justification for a s.47 enquiry
 - SSD is carrying out a 'child in need' assessment under s.17 Children Act 1989
 - Information is requested as part of an inter-agency risk management meeting set up under the Sex Offenders Act 1997
 - The request relates to a child on the child protection register
 - SSD is faced with the immediate need to place a child with a family member or friend in an emergency
- 3.11 Any request for information that does not fall within these categories must be declined.
- 3.12 Where there is doubt, the Data Protection Officer will be consulted and, where necessary, legal advice sought.
- 3.13 Information will be 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 the express permission of the police.
- 3.14 Outside of the context of a joint investigation, completion of 'information request forms', processed in accordance with police standards, will usually be required.

EDUCATION STAFF

- 3.15 Guidance from the then DfEE (Circular 10/95) states that education staff have a professional responsibility to share information about the protection of children with other professionals, particularly investigative agencies e.g. police and social services.
- 3.16 S. 27 Children Act 1989 also imposes a duty on LEAs to assist Social Services in the exercise of their functions e.g. child protection if requested to do so and if it is not prejudicial to the discharge of their own function.

SOCIAL WORKERS

- 3.17 The British Association of Social Workers (BASW) Code of Ethics [2002] allows for divulging confidential information without consent of the service user or informant when there is clear evidence of serious danger to the service user, worker or other persons.
- 3.18 *Working Together to Safeguard Children* throughout offers helpful additional guidance. Additionally, relevant sections of the Children Act are: see 2.12.

4 PRACTICE REQUIREMENTS FOR INFORMATION TRANSFER

- 4.1 The net result of legislation and professional guidance as summarised above is that professionals may share information without the consent of the subject in order to protect the vital interests of the person and:
- Seeking permission might place the child or another person at serious risk of significant harm
 - Such action might reasonably assist in the prevention or detection of serious crime
- 4.2 It is important that each professional accept responsibility for her/his own referrals and should not seek to provide information to another agency anonymously. Each professional must also appropriately document decisions made.

CHILD PROTECTION REGISTER CHECKS, S.17 & S.47 ENQUIRIES

- 4.3 The permission of the subject (child or parent) must ordinarily be sought on those occasions when there is a need to gather further information via checks with other agencies, in order to:
- Check the Child Protection register
 - Progress an assessment of need (s.17 Children Act 1989)
 - Decide whether to re-designate an assessment of need to a child protection (s.47 Children Act 1989) enquiry or
 - Inform a child protection enquiry (s.47 Children Act 1989)
- 4.4 **Such checks may be completed without such permission if:**
- Seeking permission is likely to increase the risk to the children concerned or other individuals e.g. by causing a substantial delay to the s.47 enquiry
 - A request for permission has been refused, the reason for refusal has been considered and sufficient professional concern remains to justify disclosure
 - Seeking permission is likely to impede a criminal investigation

RECORDING OF INFORMATION SOUGHT AND SHARED

- 4.5 The person requesting information from another agency and the person in that agency who provides it must record the event in accordance with her/his own agencies.
- 4.6 The recording must indicate if the consent of the relevant person was sought and obtained, sought and refused or not sought.
- 4.7 If information was provided without consent, the reason/s for so doing must be made clear and the record must also indicate whether the person in question was subsequently informed of the information transfer.

CONFIDENTIALITY OF EXCHANGES OF INFORMATION

- 4.8 Unless s/he is already known, a telephone call received from a professional seeking information must be verified before information is divulged, by calling her/his agency back.
- 4.9 A record of any information relayed by phone or in person must be made.
- 4.10 Transmission of personal and sensitive information by fax should only happen when absolutely necessary. The number / address to which it is being sent should be checked very carefully (preferably by a colleague) and reassurance provided and recorded about the security of its handling by the other agency.
- 4.11 A cover sheet must be used which contains a confidentiality statement - e.g. 'This fax is confidential and is intended only for the person to whom it is addressed'.
- 4.12 When sending out e-mails containing confidential information, a confidentiality warning should be used - e.g. 'This e-mail is confidential and is intended for the person to whom it is addressed'. Good practice suggests that confidential information should only be sent by secure electronic systems and not by internet e-mail.
- 4.13 All agencies must ensure that their record keeping is kept in accordance with statute and guidance (both national and local).

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