

# A Guide for Professionals on the Sharing of Information

**NOTE**

This practical guide is not intended to replace any information sharing protocols which have been agreed between agencies

## **Information sharing – “consent and the public interest test”**

The importance of effective, relevant and proportionate information sharing to safeguard both adults and children is recognised by both the Safeguarding Children and Adult’s Boards in County Durham.

Both Serious case reviews and Domestic Homicide reviews frequently comment on either the absence of, or ineffective, information sharing which impacts on the effective risk assessment of a child or an adult’s safety. Professionals can lack confidence about when they should share information and whether they need consent to do so.

The Data Protection Act is not a barrier to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately.

The Children Acts of 1989 and 2004 together with Government guidance, Public Inquiry report findings and UK and European case law recognise that protecting people is inter-disciplinary and requires cooperative partnership and multi-agency collaboration, which includes the exchange of information, which should be multi-agency.

This sharing of information can involve the relevant sharing of matters recorded on IT systems, the sharing of reports as well as discussions between professionals. Collectively, this helps professionals to make recommendations and appropriate decisions.

Below are extracts taken from Caldicott principles, current Government guidance, the Durham Working Together protocol and the Durham LSCB 8 Golden rules which you may find helpful in considering your justification for the sharing of information. The complete documents can be sourced easily through google searches or the Local Safeguarding Children Board website.

### **The position in respect of Caldicott**

Dame Fiona Caldicott first investigated issues surrounding confidentiality and the use of patient data in the NHS in 1996-97. This saw the introduction of the “Caldicott principles” and the appointment of Caldicott guardians to take responsibility for the security of confidential information.

Dame Fiona has been asked by the Government to review this as the Government is keen to ensure that there is effective information sharing

across services. A review panel was established for this purpose. This review has coincided with the publication of a report in April 2013 “*Information to share or not to share: the information governance review*” which has been accepted at Government level.

This lengthy report addresses several aspects of information sharing, not just about safeguarding adults or children. However the report does recognise the practical issues faced by professionals, evidenced by the following extracts:

Chapter 3 Direct care of individuals

*When it comes to sharing information, a culture of anxiety permeates the health and social care sector. Managers who are fearful that their organisation may be fined for breaching data protection laws are inclined to set unduly restrictive rules for information governance. Front line professionals who are fearful of breaking these rules do not cooperate with each other as much as they would like by sharing in the interests of patients and service users. There is also a lack of trust between the NHS and local authorities and between public and private providers due to perceived and actual differences in information governance practice. **This state of affairs is profoundly unsatisfactory and needs to change.***

*3.6 Sharing personal information effectively is a key requirement of good information governance and cultural change in the health and social care system is key to achieving this. Many projects, pilots and demonstrators have highlighted how sharing information securely can work for the benefit of patients and service users.*

*The review panel found a strong consensus of support among professionals and the public that the safe and appropriate sharing in the interests of the individual’s direct care should be the rule not the exception.*

*This has coincided with a new Caldicott principle:*

***That the duty to share personal confidential data can be as important as the duty to respect service user confidentiality.***

***Health and social care professionals should have the confidence to share information in the best interests of their patients within the framework set out by these principles. They should be supported by the policies of their employers, regulators and professional bodies.***

*3.9 A culture change is needed to encourage sharing of relevant personal confidential data among the registered and regulated health and social care professionals who have a legitimate relationship with the patient or service user.*

### Next steps

The Law Commission has announced that it is about to review the law on data sharing between bodies, a report will be published in May 2014. In the interim this most recent review by Dame Caldicott is a valuable contribution to help organisations, and professionals navigate around these often complex issues.

As part of the Health and Social Care Act 2012, there will also be a review of the 2008 Department of Health Code of practice around confidentiality.

### **HM Government Information Sharing: Guidance for practitioners and managers (2009)**

This guidance is still current and applies to both adults and children. The guidance addresses the issue of sharing information without consent when a person's safety is at risk, as well as sharing information for the purposes of the prevention and detection of a crime.

## **Remember if the service user consents to share then the information should be shared.**

The following extracts should assist in decision making:

**Paragraph 3.30** *It is good practice to seek consent of an adult where possible. All people aged 16 and over are presumed in law to have the capacity to give or withhold their consent to sharing confidential information unless there is evidence to the contrary.*

**Paragraph 3.41** *It is not possible to give guidance to cover every circumstance in which the sharing of confidential information without consent will be justified.*

*You must make a judgement on the facts of the individual case. Where there is a clear risk of significant harm to a child or serious harm to an adult, the public interest test will almost certainly be satisfied (except as described in 3.43). There will be other cases where you will be justified in sharing limited confidential information in order to make decisions on sharing further information or taking action – the information shared should be necessary for the purpose and be proportionate.*

**Paragraph 3.42** *There are some circumstances in which sharing confidential information without consent will normally be justified in the public interest.*

These are:

- *when there is evidence or reasonable cause to believe that a child is suffering, or is at risk of suffering, significant harm; or*
- *when there is evidence or reasonable cause to believe that an adult is suffering, or is at risk of suffering, serious harm; or*
- *to prevent significant harm to a child or serious harm to an adult, including through the prevention, detection and prosecution of serious crime.*

**Paragraph 3.43** *An exception to this would be where an adult with capacity to make decisions (see paragraph 3.30) puts themselves at risk but presents no risk of significant harm to children or serious harm to other adults. In this case it may not be justifiable to share information without consent.*

**Extract from the County Durham protocol for Working Together in the delivery of services to adults and children (2010) agreed by all agencies and services in Durham**

*"All organisations and practitioners have a duty of care to service users to share information with others both within and outwith their organisation when to do so would promote the welfare of either the service user and any other individual, be it an adult or child*

***Service User Confidentiality***

*In applying these procedures to their day-to-day work, practitioners and their managers whilst being rightly mindful of the need to retain appropriate standards of confidentiality must always take into account that the need to protect the safety and welfare of others (including those employed by their own and other agencies) is **always** paramount over any perceived right of confidentiality of the service user.*

***Failure to disclose information to other agencies that would serve to protect any other person is not justifiable under any circumstances and liable to result in disciplinary measures***

**The LSCB Eight golden rules**

***"Share with consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. You should go ahead and share information without consent if, in your judgement, that lack of consent can be overridden in the public interest, or where a child is at risk of significant harm. You will need to base your judgement on the facts of the case.***

**Note**

This golden rule is also recognised in the HM Government guidance above and is also relevant for issues concerning adults.

## **The practical implications for professionals**

In child and adult safeguarding it is essential that all agencies “tasked” with statutory safeguarding responsibilities are able to assess **the family and social circumstances**. Safeguarding involves:

- Assessing family and environmental factors such as family history and functioning (including life style).
- The family’s peer groups, friendships and social networks
- Wider family connections and the family’s social integration

**The assessment of harm for children and adults may include an analysis of a single incident or event or a compilation of incidents, both acute and long standing, which interrupt, change or damage a child’s physical and psychological development or pose adult safeguarding concerns.**

Experience has shown that:

- A single agency or service is unlikely to develop or access all the relevant information which helps to assess the risk of harm.
- Risk assessment is a continuous, dynamic process. Risk can change quickly, sometimes daily and because of this different agencies or services will have information which, if shared, may escalate or even reduce risk.
- The public and Government expect agencies and services to share information to protect adults and children and trust professionals to do the right thing. This is a judgement call for the professional, commonly referred to as making a proportionate response.

## **So what should be shared?**

**Remember agencies across County Durham are committed to delivering Early Help in safeguarding. This relies on effective information sharing at an early stage to prevent matters escalating.**

In safeguarding, the ability to share information without consent, or in the public interest, centres on 2 factors:

- Whether there is evidence or reasonable cause to believe that someone is suffering, or is at risk of suffering, significant harm

**And/or**

- To prevent significant harm to someone, including through the prevention, detection and prosecution of serious crime

In any given circumstances, both these factors may be present or only one.

Professionals must recognise that the information sharing factors do not rely on a professional having evidence of significant harm. Having a reasonable cause to believe that information sharing is necessary to prevent someone from suffering significant harm in the future is equally important. This is what we call “*Early help*”

When a child or adult is exposed to physical or sexual abuse, professionals generally recognise this as significant harm and will share this information.

However there are situations, often relating to the parents of the child or connected with the child’s or adult’s home or family circumstances, where professionals **SHOULD** share information. Often this is linked to problems around alcohol and drug use, domestic abuse or parents who may have mental health problems. For children these are often referred to as “the toxic mix” of risk indicators.

The sharing of information is also necessary where parents are failing to address their responsibilities to cloth, feed and nurture a child.

The sharing of information under both circumstances is proportionate and necessary to help professionals understand how this may impact on children and adults and to assist agencies to coordinate the right support, at the right time.

**The sharing of information can be compared to making a jigsaw. You may only have one piece, whilst other agencies may have other pieces. Through information sharing we build the jigsaw, see the picture and then make the right decisions.**