

# Information Sharing: Guidance for practitioners and managers

"I left my parents' house when I was about sixteen with my ex-partner and started living on the streets for six months. We went to lots of agencies like job centres and the council but because they weren't talking to each other, they kept passing us on. It was hard for them to help us. We lived in a derelict building and one day it caught fire and the police rescued us. Then they put us in touch with Youth Reach and everyone started to talk to each other. Connexions helped us find work. We were housed and helped with budgeting and paying rent – stuff like that. They helped us find education too.

Now I work for Youth Reach myself. From the perspective of being a worker, as well as someone on the receiving end of the service, I'd say information sharing is vital."

**Source: CWDC Share! Emerging practice in integrated working**

This *Information Sharing: Guidance for practitioners and managers* presents content that is common to everyone and some that is relevant when working with a specific population group, for example, children and/or young people. Where the content is relevant only to a specific group, this will be explained in the text and highlighted in colour-coded boxes as shown below:

**Children and/or young people**

**Adults**

Alongside this document, we have published:

- *Information Sharing: Pocket guide* containing a summary of the key decision making considerations from this document;
- *Information Sharing: Case examples* which illustrate best practice in information sharing situations;
- *Information Sharing: Training materials* available for local agency and multi-agency training, and for use by training providers; and
- *Information Sharing: Further guidance on legal issues* which is a summary of the laws affecting information sharing.

All documents are available at  
**[www.everychildmatters.gov.uk/informationsharing](http://www.everychildmatters.gov.uk/informationsharing)**

This guidance supersedes the HM Government information sharing guidance published in April 2006.

## What is this guidance for?

The aim of this guidance, and associated materials, is to support good practice in information sharing by offering clarity on when and how information can be shared legally and professionally, in order to achieve improved outcomes. This guidance will be especially useful to support early intervention and preventative work where decisions about information sharing may be less clear than in safeguarding or child protection situations.

## Who is this guidance for?

This guidance is for practitioners who have to make decisions about sharing personal information on a case-by-case basis, whether they are:

- working in the public, private or voluntary sectors;
- providing services to children, young people, adults and/or families; and
- working as an employee, a contractor or a volunteer.

This includes front-line staff working in health, education, schools, social care, youth work, early years, family support, offending and criminal justice, police, advisory and support services, and culture and leisure.

This guidance is also for managers and advisors who support these practitioners in their decision making and for others with responsibility for information governance.

## What this guidance does not cover

As this guidance focuses on supporting front-line practitioners who have to make case-by-case decisions about sharing personal information, it does not provide any detailed guidance for staff in agencies or government departments whose information sharing practice is governed by statute and specific policies or agreements.

This guidance does not deal in detail with arrangements for bulk or pre-agreed sharing of personal information between IT systems or organisations other than to explain their role in effective information governance. For information on this subject, readers are referred to references included at the end of Annex A.

# Endorsements



Barnardo's Reg. Charity Nos. 216250 & SC037605





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# 1. Introduction

- 1.1 Information sharing is key to the Government's goal of delivering better, more efficient public services that are coordinated around the needs of the individual. It is essential to enable early intervention and preventative work, for safeguarding and promoting welfare and for wider public protection. Information sharing is a vital element in improving outcomes for all.
- 1.2 The Government understands that it is most important that people remain confident that their personal information is kept safe and secure<sup>1</sup> and that practitioners maintain the privacy of the individual, whilst sharing information to deliver better services. It is therefore important that practitioners can share information appropriately as part of their day-to-day practice and do so confidently.
- 1.3 Practitioners recognise the importance of information sharing and there is already much good practice. However, in some situations they feel constrained from sharing information by uncertainty about when they can do so lawfully, especially in early intervention and preventative work where information sharing decisions may be less clear than in safeguarding or child protection situations. For those who have to make decisions about information sharing on a case-by-case basis, this document seeks to give clear practical guidance, drawing on experience and consultation from across a spectrum of adult and children's services.



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1 *Data Sharing Review Report* (Thomas and Walport 2008).

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- 1.4 To feel confident about making information sharing decisions, it is important that you:
- understand and apply good practice in sharing information at an early stage as part of preventative or early intervention work;
  - understand what information is and is not confidential, and the need in some circumstances to make a judgement about whether confidential information can be shared, in the public interest, without consent;
  - understand what to do when you have reasonable cause to believe that a child may be suffering, or may be at risk of suffering, significant harm, and are clear of the circumstances when information can be shared where you judge that a child is at risk of significant harm;
  - understand what to do when you have reasonable cause to believe that an adult may be suffering, or may be at risk of suffering, serious harm<sup>2</sup> and are clear of the circumstances when information can be shared where you judge that an adult is at risk of serious harm; and
  - are supported by your employer in working through these issues.
- 1.5 This document sets out:
- why information sharing is important (Section 1);
  - seven golden rules for information sharing (Section 2);
  - further information to inform decision making (Section 3);
  - how organisations can support practitioners (Section 4).

### Why information sharing is important

#### Sharing information as part of early intervention and preventative services

- 1.6 There is an increasing emphasis on integrated working across services with the aim of delivering more effective intervention at an earlier stage. Early intervention aims to prevent problems escalating and increase the chances of achieving positive outcomes. In some areas there is increased use of multi-agency services, for example:
- in Children's Centres to support children's health and development;
  - through Youth Inclusion and Support Panels (YISPs) to help young people move away from involvement in crime and disorder; and
  - through use of the Single Assessment Process (SAP) in adult services and the Common Assessment Framework (CAF) in children's services, both intended to promote a more coordinated and person-centred approach to the provision of care.
- 1.7 Whether integrated working is through specific multi-agency structures or existing services, success for those at risk of poor outcomes depends upon effective partnership working and appropriate information sharing between services.

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<sup>2</sup> See Glossary for definitions.

### Sharing information between adult and children's services

1.8 Staff in adults' services are aware that problems faced by clients who have parenting responsibilities are often likely to affect children and other family members. However this information is not always shared and opportunities to put preventative support in place for the children and family are missed. Where an adult receiving services is a parent or carer, sharing information where appropriate with colleagues in children's services could ensure that any additional support required for their children can be provided early.

### Sharing information to support transitions

1.9 There are many transition points in the life of an individual. Transitions include a child moving from nursery into primary school; from primary to secondary school; and moving into adulthood. Significant transitions can also occur when an individual leaves long-term care, hospitalisation or prison. In all of these cases, information sharing is important to ensure that the person gets the support that they require, through and after the transition.

### Sharing information where there are concerns about significant harm to a child or young person

1.10 It is critical that where you have reasonable cause to believe that a child or young person **may be suffering or may be at risk of suffering significant harm**, you should always consider referring your concerns to children's social care or the police, in line with your Local Safeguarding Children Board (LSCB) procedures.

1.11 In some situations there may be a concern that a child or young person may be suffering, or at risk of suffering significant harm, or of causing significant harm to another child or serious harm to an adult. However, you may be unsure whether what has given rise to your concern constitutes 'a reasonable cause to believe'. In these situations, the concern must not be ignored. You should always talk to someone to help you decide what to do – a lead person on safeguarding, a Caldicott guardian, your manager, an experienced and trusted colleague or another practitioner who knows the person. You should protect the identity of the child or young person wherever possible until you have established a reasonable cause for your belief.

1.12 Significant harm to children and young people can arise from a number of circumstances – it is not restricted to cases of deliberate abuse or gross neglect. For example a baby who is severely failing to thrive for no known reason could be suffering significant harm but equally could have an undiagnosed medical condition. If the parents refuse consent for further medical investigation or an assessment, then you may still be justified in sharing information. In this case, the information sharing would be to help ensure that the causes of the failure to thrive are correctly identified.

### Sharing information where there are concerns about serious harm to an adult

1.13 You may be sharing information about an adult as part of your aim to deliver more effective intervention at an earlier stage to prevent problems escalating and to increase the chances of achieving positive outcomes. However there may also be situations where you may want to share information because you are concerned about serious harm to an adult.

1.14 If you believe the adult you are dealing with is vulnerable<sup>3</sup> or unable to make informed decisions then you will need to take this into consideration when making your decision. Where harm, or risk of harm, to a vulnerable adult is suspected appropriate action should be taken in accordance with your local codes of practice. You should contact the appropriate person, for example, a safeguarding officer or vulnerable adults worker.

### Sharing information where there are concerns about significant harm or serious harm to third parties

1.15 Where you have concerns that the actions of some may place children at risk of significant harm or adults at risk of serious harm, it may be possible to justify sharing information with or without consent for the purposes of identifying people for whom preventative interventions are appropriate. As set out in paragraph 1.12, significant harm to children and serious harm to adults is not restricted to cases of extreme physical violence. For example, the cumulative effect of repeated abuse or threatening behaviour may well constitute a risk of serious harm to an adult. The theft of a car for joyriding or driving with poor eyesight may well constitute a risk of harm to others in the community as well as those in the car.

### Sharing information where you have a statutory duty or a court order

1.16 Where you have a statutory duty or court order to share information you must do so unless, in the case of a court order, your organisation is prepared to challenge it. For more details see section 3.7.

### Sharing information in an emergency situation (terrorist-related action, natural disaster and other incidents)

1.17 The nature of emergency situations will vary but information sharing is always a vital part of providing services to the people affected by them. Whilst the principles and legislative basis underpinning the sharing of information are broadly the same in an emergency situation, it is more likely than not that it will be in the interests of the individuals for personal data to be shared.

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<sup>3</sup> See Glossary for definitions.

1.18 Timeliness is a key consideration in emergency situations. It may not be appropriate to seek consent for information sharing if delays could incur as a result. You should always consider how much information needs to be shared to achieve the objective and the most appropriate way in which to do so given the urgency of the situation. Security of information sharing must still be considered but should be proportionate to the sensitivity of the information and the circumstances.

## Links to other policy and guidance

1.19 Improving information sharing practice is a cornerstone of the Government's strategy to improve outcomes for all people. This is exemplified in recent policy and guidance including the HM Government *Information Sharing Vision Statement* (2006), the *Children's Plan* (2007) and the Think Family reports (2006, 2008). See Annex A for links to these and other materials.

1.20 This guidance complements and supports policies to improve information sharing across all services. For children's services these include:

- the statutory guidance on section 10 of the Children Act 2004 for agencies covered by the duty to co-operate to improve well-being of children;
- the statutory guidance on section 11 of the Children Act 2004 on the duty to safeguard and promote the welfare of children;
- the statutory guidance *Working Together to Safeguard Children* (HMG, 2006), which sets out how organisations and individuals should work together to safeguard and promote the welfare of children;
- *What to do if you are worried a child is being abused* (HMG, 2006);
- the Education and Inspections Act 2006, which sets out the duty to promote the well-being of pupils to governing bodies of maintained schools;
- the Child Health Promotion Programme (DH, 2008); and
- Local Safeguarding Children Board (LSCB) policies, procedures, protocols and guidance.

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### 1.21 For other services these policies include:

- section 82 of the NHS Act 2006, which places a duty to co-operate upon NHS bodies and local authorities 'to secure and advance the health and well-being of people of England and Wales';
- the Crime and Disorder Act 1998 that sets out the power of any organisation to share information with relevant authorities for the purposes of preventing crime and disorder;
- the statutory guidance to support the Multi-Agency Public Protection Arrangements (MAPPA, 2007), covering arrangements for managing sexual and violent offenders;
- Multi-Agency Risk Assessment Conferences (MARAC) – meetings held between a range of statutory and voluntary agencies, such as the police, probation, social services, housing, health and counselling services, to identify and intervene in cases of high-risk victims of domestic violence and their children;
- the Mental Capacity Act 2005 and the associated Code of Practice (2007); and
- the *No secrets* guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse (DH, 2000).



## 2. Seven golden rules for information sharing

- 1. Remember that 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.
- 2. Be open and honest** with the person (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** if you are in any doubt, without disclosing the identity of the person where possible.
- 4. Share with 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, that lack of consent can be overridden in the public interest. You will need to base your judgement on the facts of the case.
- 5. 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.
- 6. Necessary, proportionate, relevant, 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 people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.
- 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.

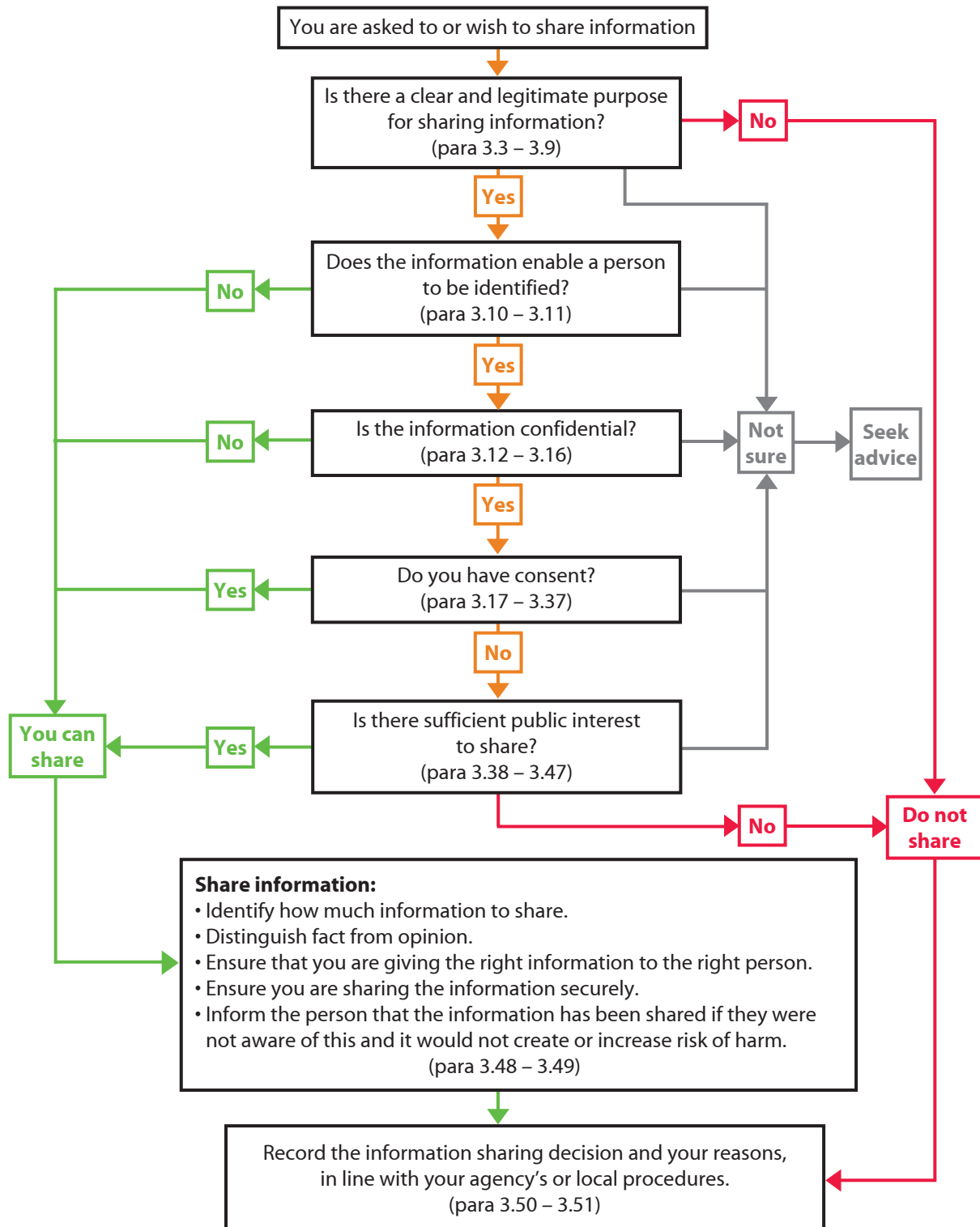
## 3. Further information to inform decision making

- 3.1 If you are asked, or wish, to share information, you must use your professional judgement to decide whether to share or not and what information it is appropriate to share, unless there is a statutory duty or a court order to share.
- 3.2 To inform your decision making this section sets out further information in the form of seven key questions about information sharing:
1. Is there a clear and legitimate purpose for you or your agency to share the information?
  2. Does the information enable a living person to be identified?
  3. Is the information confidential?
  4. If the information is confidential, do you have consent to share?
  5. If consent is refused, or there are good reasons not to seek consent to share confidential information, is there a sufficient public interest to share the information?
  6. If the decision is to share, are you sharing information appropriately and securely?
  7. Have you properly recorded your information sharing decision?

These questions are illustrated in the flowchart on the facing page. Further information on each of the questions can be found in the remainder of this section.



## Flowchart of key questions for information sharing



If there are concerns that a child may be at risk of significant harm or an adult may be at risk of serious harm, then follow the relevant procedures without delay.  
Seek advice if you are not sure what to do at any stage and ensure that the outcome of the discussion is recorded.

## Question 1: Is there a clear and legitimate purpose for sharing information?

- 3.3 If you are asked, or wish, to share information about a person you need to have a good reason or a clear and legitimate purpose to do so. This will be relevant to whether the sharing is lawful in a number of ways.
- 3.4 If you work for a statutory service, for example, education, social care, health or justice, the sharing of information must be within the functions or powers of that statutory body. It is likely that this will be the case if you are sharing the information as a normal part of the job you do for that agency. This will also be the case if you work in the private or voluntary sector and are contracted by one of the statutory agencies to provide services on their behalf.
- 3.5 Whether you work for a statutory or non-statutory service, any sharing of information must comply with the law relating to confidentiality, data protection and human rights. Establishing a legitimate purpose for sharing information is an important part of meeting those requirements. There is more information about the legal framework for sharing information in the document *Information Sharing: Further guidance on legal issues*.
- 3.6 Individual agencies may have developed specific guidelines and processes for sharing information. You will need to be guided by your agency's policies and procedures and – where applicable – by your professional code.

### **Sharing information where you have a statutory duty or a court order**

- 3.7 In some situations you are required by law to share information, for example, in the NHS where a person has a specific disease about which environmental health services must be notified. There will also be times when a court will make an order for certain information or case files to be brought before the court.
- 3.8 These situations are relatively unusual and where they apply you should know or be told about them. In such situations, you must share the information, even if it is confidential and consent has not been given, unless in the case of a court order, your organisation is prepared to challenge it and is likely to seek legal advice.
- 3.9 Consent from the individual is not required in these situations and should not be sought because of the potential consequences of refusal. Wherever possible, subject to considerations set out in paragraph 3.11, you should inform the individual concerned that you are sharing the information, why you are doing so, and with whom.

## Question 2: Does the information enable a living person to be identified?

3.10 In most cases the information covered by this guidance will be about an identifiable living individual. It may also identify others, such as a child, partner, parent or carer. If the information is anonymised, it can be shared. However, if the information is about an identifiable individual or could enable a living person to be identified when considered with other information, it is personal information and is subject to data protection and other laws. The remainder of this section provides further information to inform your decision about sharing personal information.



3.11 Wherever possible, you should be open about what personal information you might need to share and why. In some situations, it may not be appropriate to inform a person that information is being shared or seek consent to this sharing, for example, if it is likely to hamper the prevention or investigation of a serious crime<sup>4</sup> or put a child at risk of significant harm or an adult at risk of serious harm.

## Question 3: Is the information confidential?

3.12 Confidential information is:

- personal information of a private or sensitive<sup>5</sup> nature; and
- information that is not already lawfully in the public domain or readily available from another public source; and
- information that has been shared in circumstances where the person giving the information could reasonably expect that it would not be shared with others.

**This is a complex area and you should seek advice if you are unsure.**

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<sup>4</sup> For the purposes of this guidance, serious crime means any crime which causes or is likely to cause significant harm to a child or serious harm to an adult.

<sup>5</sup> As defined in the Data Protection Act – see Glossary for definition.

There are different types of circumstances that are relevant to confidentiality. One is where a formal confidential relationship exists, as between a doctor and patient, or between a social worker, counsellor or lawyer and their client. Here it is generally accepted that information is provided in confidence. In these circumstances all information provided by the individual needs to be treated as confidential. This is regardless of whether or not the information is directly relevant to the medical, social care or personal matter that is the main reason for the relationship.

Another circumstance is, for example, in an informal conversation, where a pupil may tell a teacher a whole range of information but only asks the teacher to treat some specific information confidentially. In this circumstance, only the information specific to the pupil's request would be considered to be confidential.

There are also circumstances where information not generally regarded as confidential (such as name and address) may be provided in the expectation of confidentiality and therefore should be considered to be confidential information.

- 3.13 Sometimes people may not specifically ask you to keep information confidential when they discuss their own issues or pass on information about others, but may assume that personal information will be treated as confidential. In these situations you should check with the individual whether the information is or is not confidential, the limits around confidentiality and under what circumstances information may or may not be shared with others.
- 3.14 Confidence is only breached where the sharing of confidential information is not authorised by the person who provided it or, if about another person, by the person to whom it relates. If the information was provided on the understanding that it would be shared with a limited range of people or for limited purposes, then sharing in accordance with that understanding will not be a breach of confidence. Similarly, there will not be a breach of confidence where there is consent to the sharing.
- 3.15 Information about an individual or family is confidential to the agency as a whole, and not to individual practitioners. However individual practitioners do have a responsibility to maintain the confidentiality of the information. They should only share confidential information with other practitioners in the same agency or team for genuine purposes, for example, to seek advice on a particular case or ensure cover for work while on leave. This should be explained clearly to the individual or family at the start of the involvement.
- 3.16 Public bodies that hold information of a private or sensitive nature about individuals for the purposes of carrying out their functions (for example children's social care, young people's health services or adult mental health services) may also owe a duty of confidentiality, as people have provided information on the understanding that it will be used for those purposes. In some cases the agency may have a statutory obligation to maintain confidentiality, for example, in relation to the case files of looked after children.

## Question 4: Do you have consent to share?

- 3.17 Consent issues can be complex and a lack of clarity about them can sometimes lead practitioners to assume incorrectly that no information can be shared. This section gives further information to help you understand and address the issues. It covers:
- what constitutes consent;
  - whose consent should be sought; and
  - when consent should not be sought.

### What constitutes consent

- 3.18 Consent must be 'informed'. This means that the person giving consent needs to understand why information needs to be shared, what will be shared, who will see their information, the purpose to which it will be put and the implications of sharing that information.
- 3.19 Consent can be 'explicit' or 'implicit'. Obtaining explicit consent for information sharing is best practice and ideally should be obtained at the start of the involvement, when working with the individual or family to agree what support is required. It can be expressed either verbally or in writing, although written consent is preferable since that reduces the scope for subsequent dispute. Implicit consent can also be valid in many circumstances. Consent can legitimately be implied if the context is such that information sharing is intrinsic to the activity or service, and especially if that has been explained or agreed at the outset.

An example of **implicit consent** is where a GP refers a patient to a hospital specialist and the patient agrees to the referral. In this situation the GP can assume the patient has given implicit consent to share information with the hospital specialist. However, explicit consent would be required to share information outside the bounds of the original service or setting, for example, for a different type of referral.

In a multi-agency service, **explicit consent** for information sharing is usually obtained at the start of the involvement and covers all of the agencies within the service. This would provide implicit consent to share information **within** the multi-agency service but there would be a need to seek additional explicit consent for sharing with practitioners or agencies **outside** of the service.

- 3.20 It is best practice to set out clearly your agency's policy on sharing information when the service is first accessed. The approach to securing consent should be transparent and respect the individual. Consent must not be secured through coercion or inferred from a lack of response to a request for consent.

3.21 If there is a significant change in the use to which the information will be put compared to that which had previously been explained, or a change in the relationship between the agency and the individual, consent should be sought again. Individuals have the right to withdraw consent at any time.

### Whose consent should be sought – children and young people

3.22 You may also need to consider whose consent should be sought. Where there is a duty of confidence, it is owed to the person who has provided the information on the understanding it is to be kept confidential. It is also owed to the person to whom the information relates, if different from the information provider.

3.23 A child or young person, who has the capacity to understand and make their own decisions, may give (or refuse) consent to sharing. Children aged 12 or over may generally be expected to have sufficient understanding. Younger children may also have sufficient understanding. As explained in paragraph 3.30, this is presumed in law for young people aged 16 and older. When assessing a child's understanding you should explain the issues to the child in a way that is suitable for their age, language and likely understanding. Where applicable, you should use their preferred mode of communication.

3.24 The following criteria should be considered in assessing whether a particular child or young person on a particular occasion has sufficient understanding to consent, or to refuse consent, to sharing of information about them:

*Can the child or young person understand the question being asked of them?*

*Do they have a reasonable understanding of:*

- what information might be shared;
- the main reason or reasons for sharing the information; and
- the implications of sharing that information, and of not sharing it?

*Can they:*

- appreciate and consider the alternative courses of action open to them;
- weigh up one aspect of the situation against another;
- express a clear personal view on the matter, as distinct from repeating what someone else thinks they should do; and
- be reasonably consistent in their view on the matter, or are they constantly changing their mind?

3.25 Considerations about whether a child has sufficient understanding are often referred to as Fraser guidelines, although these were formulated with reference to contraception and contain specific considerations not included above. For more details see the Glossary.

3.26 In most cases, where a child cannot consent or where you have judged that they are not competent to consent, a person with parental responsibility should be asked to consent on behalf of the child. If a child or young person is judged not to have the capacity to make decisions, their views should still be sought as far as possible.

3.27 Where parental consent is required, the consent of one such person is sufficient. In situations where family members are in conflict you will need to consider carefully whose consent should be sought. If the parents are separated, the consent would usually be sought from the parent with whom the child resides. If a care order is in force, the local authority will share parental responsibility with parent(s) and practitioners should liaise with them about questions of consent.

3.28 If you judge a child or young person to be competent to give consent, then their consent or refusal to consent is the one to consider, even if a parent or carer disagrees. Where parental consent is not required, you should encourage the young person to discuss the issue with their parents. However, you should not withhold the service on the condition that they do so.

3.29 These issues can raise difficult dilemmas. Wherever appropriate you should try to work with all involved to reach an agreement or understanding of the information to be shared. You must always act in accordance with your professional code of practice where there is one and consider the safety and well-being of the child, even where that means overriding refusal to consent. You should seek advice from your manager or nominated advisor if you are unsure.



### Whose consent should be sought – adults

- 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 of confidential information, unless there is evidence to the contrary.
- 3.31 The *Mental Capacity Act 2005 Code of Practice* defines the term 'a person who lacks capacity' as a person who lacks capacity to make a particular decision or take a particular action for themselves, at the time the decision or action needs to be taken.
- 3.32 A person who is suffering from a mental disorder or impairment does not necessarily lack the capacity to give or withhold their consent for information sharing. Equally, a person who would otherwise be competent may be temporarily incapable of giving valid consent due to factors such as extreme fatigue, drunkenness, shock, fear, severe pain or sedation. The fact that an individual has made a decision that appears to others to be irrational or unjustified should not be taken on its own as conclusive evidence that the individual lacks the mental capacity to make that decision. If, however, the decision is clearly contrary to previously expressed wishes, or is based on a misperception of reality, this may be indicative of a lack of capacity and further investigation will be required.
- 3.33 All decisions taken on behalf of a person who lacks capacity must be taken in their best interests. A judgement about best interests is not an attempt to determine what the person would have wanted. It is as objective a test as possible of what would be in the person's actual best interests, taking into account all relevant factors. Factors to be addressed include:
- the person's own wishes (where these can be ascertained); and
  - the views of those close to the person, especially close relatives, partners, carers, welfare attorneys, court-appointed deputies or guardians.
- 3.34 The *Mental Capacity Act 2005 Code of Practice* provides information on points to consider when assessing a person's capacity to make a specific decision and should be referred to for more detailed guidance (for location see Annex A). These are essentially the same as the criteria set out at paragraph 3.24.
- 3.35 If you consider that an adult may not have the capacity to give 'informed consent' for information sharing, you must follow the Code of Practice. If you judge that an individual does not have the capacity to make decisions, their views should still be sought as far as possible.

### When consent should not be sought

- 3.36 There will be some circumstances where you should not seek consent from the individual or their family, or inform them that the information will be shared. For example, if doing so would:
- place a person (the individual, family member, yourself or a third party) at increased risk of significant harm if a child, or serious harm if an adult; or
  - prejudice the prevention, detection or prosecution of a serious crime; or
  - lead to an unjustified delay in making enquiries about allegations of significant harm to a child, or serious harm to an adult.
- 3.37 You should not seek consent when you are required by law to share information through a statutory duty or court order. In these situations, subject to considerations set out in paragraph 3.11, you should inform the individual concerned that you are sharing the information, why you are doing so, and with whom.

### Question 5: Is there sufficient public interest to share the information?

- 3.38 Even where you do not have consent to share confidential information, you may lawfully share it if this can be justified in the public interest. Seeking consent should be the first option. However, where consent cannot be obtained or is refused, or where seeking it is inappropriate or unsafe as explained at 3.36, the question of whether there is a sufficient public interest must be judged by the practitioner on the facts of each case. **Therefore, where you have a concern about a person, you should not regard refusal of consent as necessarily precluding the sharing of confidential information.**
- 3.39 A public interest can arise in a wide range of circumstances, for example, to protect children from significant harm, protect adults from serious harm, promote the welfare of children or prevent crime and disorder. There are also public interests, which in some circumstances may weigh against sharing, including the public interest in maintaining public confidence in the confidentiality of certain services.
- 3.40 The key factors in deciding whether or not to share confidential information are necessity and proportionality, i.e. whether the proposed sharing is likely to make an effective contribution to preventing the risk and whether the public interest in sharing information overrides the interest in maintaining confidentiality. 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. The nature of the information to be shared is a factor in this decision making, particularly if it is sensitive information<sup>6</sup> where the implications of sharing may be especially significant for the individual or for their relationship with the practitioner and the service. For more on the legal background see *Information Sharing: Further guidance on legal issues*.

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<sup>6</sup> As defined in the Data Protection Act. See Glossary for definition.

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3.41 It is not possible to give guidance to cover every circumstance in which 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.

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.

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. You should seek advice if you are unsure.



3.44 If you are unsure whether the public interest justifies disclosing confidential information without consent, you should be able to seek advice from your manager or a nominated individual in your organisation or local area whose role is to support you in these circumstances. Where possible you should not disclose the identity of the person concerned. Other sources of advice include the Information Commissioner's Office (ICO) and your Local Safeguarding Adults Board or Local Safeguarding Children Board. If you are working in the NHS or a local authority, the Caldicott Guardian may be helpful. Advice can also be sought from representative bodies, for example, the British Medical Association or the Royal College of Nursing.

3.45 All organisations working with children will have a nominated person who undertakes a lead role for safeguarding children. If the concern is about possible abuse or neglect of a child or young person, you should discuss your concerns with your manager or the nominated person within your organisation or area. If you still have concerns, you should refer your concerns to children's social care and/or the police in line with your Local Safeguarding Children Board procedures.

3.46 You should discuss any concerns with the family and, where possible, seek their agreement to making referrals to children's social care **only where such discussion and agreement-seeking will not place a child at increased risk of significant harm, or any other individual at increased risk of serious harm, or lead to interference with any potential investigation.** The child's safety and well-being must be the overriding consideration in making any such decisions.

3.47 If you decide to share confidential information without consent, you should explain to the person that you intend to share the information and why, unless it is inappropriate or unsafe to do so (as explained in paragraph 3.36).

## Question 6: Are you sharing information appropriately and securely?

3.48 If you decide to share information, you should share it in a proper and timely way, act in accordance with the principles of the Data Protection Act 1998, and follow your organisation's policy and procedures. In relation to sharing information at the front-line, you will need to ensure that you:

- share only the information necessary for the purpose for which it is being shared;
- understand the limits of any consent given, especially if the information has been provided by a third party;
- distinguish clearly between fact and opinion;
- share the information only with the person or people who need to know;
- check that the information is accurate and up-to-date;

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- share it in a secure way, for example, confirm the identity of the person you are talking to; ensure that a conversation or phone call cannot be overheard; use secure email; ensure that the intended person will be on hand to receive a fax;
- establish with the recipient whether they intend to pass it on to other people, and ensure they understand the limits of any consent that has been given; and
- inform the person to whom the information relates and, if different, any other person who provided the information, if you have not done so already and it is safe to do so.

3.49 In deciding what information to share, you also need to consider the safety of other parties, such as yourself, other practitioners and members of the public. If the information you want to share allows another party to be identified, for example, from details in the information itself or as the only possible source of the information, you need to consider if sharing the information would be reasonable in all circumstances. Could your purpose be met by only sharing information that would not put that person's safety at risk?

### Question 7: Have you properly recorded your information sharing decision?

3.50 You should record your decision and the reasons for it, whether or not you decide to share information. If the decision is to share, you should record what information was shared and with whom.

3.51 You should work within your agency's arrangements for recording information and within any local information sharing procedures in place. These arrangements and procedures must be in accordance with the Data Protection Act 1998 – the key provisions of which are summarised in *Information Sharing: Further guidance on legal issues*.



# 4. How organisations can support practitioners

4.1 This section describes the important organisational and cultural aspects that are required to ensure that good practice in information sharing is promoted and supported.

## Organisational support

- 4.2 Practitioners need to understand their organisation's position and commitment to information sharing. They need to have confidence in the continued support of their organisation where they have used their professional judgement and shared information professionally.
- 4.3 To give practitioners confidence to apply the guidance in practice, it is important that their employers aim to establish:
- a culture that supports information sharing between and within organisations including proactive mechanisms for identifying and resolving potential issues and opportunities for reflective practice;
  - a systematic approach within their agency to explain to service users when the service is first accessed, how and why information may be shared, and the standards that will be adopted, which will help to build the confidence of all involved;
  - clear systems, standards and procedures for ensuring the security of information and for sharing information. These may derive from the organisation's information sharing governance (as set out in paragraph 4.7), any local procedures in place, or from their professional code of conduct;
  - infrastructure and systems to support secure information sharing, for example, access to secure email or online information systems;
  - effective supervision and support in developing practitioners' and managers' professional judgement in making these decisions. For example, access to training where practitioners can discuss issues which concern them and explore case examples with other practitioners; and specific training and support for managers and advisors who provide support to practitioners in making information sharing decisions;
  - mechanisms for monitoring and auditing information sharing practice; and
  - a designated source of impartial advice and support on information sharing issues, and for resolution of any conflicts about information sharing.

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4.4 Attention should be paid to providing this support to practitioners in smaller organisations, especially in the voluntary and independent sectors. In particular, there is a need to provide an impartial source of advice to these practitioners and to resolve any disputes between organisations in relation to information sharing.

4.5 For children's services, the statutory guidance on section 10 of the Children Act 2004 clearly lays out the organisational duties regarding information sharing.

Local authorities and senior managers in partner organisations should ensure that information sharing is properly addressed in their own organisations and that all:

- change strategies and service delivery plans incorporate effective and clearly understood mechanisms for sharing information across service and professional boundaries;
- relevant managers and practitioners receive adequate training on information sharing;
- managers, practitioners and other staff understand the legal basis on which information can be shared;
- information sharing becomes an integral part of the way in which practitioners fulfil their duties; and
- strategic managers are familiar with the guidance that their managers in children's services should follow.

4.6 Whilst these types of statutory duties are not always so clearly specified for other services, they are generally good practice and could be of benefit to all.



### Information sharing governance frameworks

- 4.7 It is good practice to establish an information sharing governance framework so that all staff are clear about the organisation's position on information sharing. An information sharing governance framework must always recognise the importance of professional judgement in information sharing at the front-line and should focus on how to improve practice in information sharing within and between agencies. These should be communicated to the front-line so that practitioners have confidence in their organisation's commitment and support for professional information sharing.
- 4.8 An information governance framework would be expected to include:
- An **Information Sharing Code of Practice**, which outlines the principles and standards of expected conduct and practice of the organisation and the staff within the organisation. The Code of Practice establishes the organisation's intentions and commitment to information sharing and promotes good practice when sharing personal information.
  - **Information Sharing Procedures**, which describe the chronological steps and considerations required after a decision to share information has been made, for example, the steps to be taken to ensure that information is shared securely. Information sharing procedures set out, in detail, good practice in sharing information.
  - **Privacy, confidentiality, consent (service users)**. The organisation should have in place a range of processes and documentation for service users, such as 'Privacy/Confidentiality Statement', 'Fair Processing Notice', 'Consent', and 'Subject Access'. Relevant staff within the organisation must understand these processes and be able to access documentation when required.
  - **Information Sharing Protocols (ISP)**. Where the organisation is involved in pre-specified, regular or bulk sharing of personal information with other organisations then the framework would also be expected to include one or more Information Sharing Protocols. An ISP is a signed agreement between two or more organisations or bodies, in relation to specified information sharing activity and/or arrangements for the routine of bulk sharing of personal information. An ISP relates to a specific information sharing activity and explains the terms under which both (or all) organisations have agreed to share information and the practical steps that need to be taken to ensure compliance with those terms.

### Applicability of Information Sharing Protocols (ISP)

- 4.9 There has been some uncertainty about the applicability of Information Sharing Protocols (ISP) to information sharing practices at the front-line. This section aims to provide clarity on this issue.

- 4.10 An ISP is sometimes taken to mean a document that sets out principles and general procedures for sharing information. However there are also definitions and templates for ISPs that include, for example, detailed specification of what data fields will be shared, and what the storage and archive principles are. The latter type of ISP is designed to support bulk or regular sharing of information between IT systems or organisations.
- 4.11 Although neither type of ISP is required for information sharing at the front-line, the first is good practice and is covered in the definitions of codes of practice and procedures above; the second is unsuitable for front-line practices. It is misunderstandings around what is involved in an ISP and a potential reliance on ISPs over professional judgement that this guidance seeks to address.
- 4.12 Where practitioners have to make decisions about sharing information on a case-by-case basis that are not clearly covered by statute, the decision to share or not share information must always be based on professional judgement. It should be taken in accordance with legal, ethical and professional obligations, supported by this HM Government information sharing guidance and informed by training and experience.
- 4.13 **Information Sharing Protocols are not required before front-line practitioners can share information about a person.** By itself, the lack of an Information Sharing Protocol must never be a reason for not sharing information that could help a practitioner deliver services to a person.

This approach is supported by the Information Commissioner's Office:

*"All organisations can accomplish information sharing lawfully by adhering to governing legislation and the principles of the Data Protection Act whether an Information Sharing Protocol is in place or not.*

*An Information Sharing Protocol is a useful tool in some circumstances. It is not a legal requirement.*

*There are two distinct types of information sharing. Organisations may share large amounts of data with one or more partner organisations on a regular basis, or practitioners may share information with each other on an ad hoc basis as individual situations require.*

*An Information Sharing Protocol is a useful tool with which to manage large scale, regular information sharing. It creates a routine for what will be shared, when and with whom and provides a framework in which this regular sharing can take place with little or no intervention by practitioners.*

*It is not a useful tool for managing the ad hoc information sharing which all practitioners find necessary. Most importantly it is not intended to be a substitute for the professional judgement which an experienced practitioner will use in those cases and should not be used to replace that judgement."*

**Information Commissioner's Office**

# Annex A: Key sources of further guidance

## General information sharing guidance

*Information Sharing: Guidance for practitioners and managers* (HMG, 2008) and case examples, training materials and further information about powers/legislation. Available at [www.ecm.gov.uk/informationsharing](http://www.ecm.gov.uk/informationsharing)

ICO guidance for organisations on Data Protection Act and other legislation including good practice notes, codes of practice and technical guidance notes Available at [www.ico.gov.uk/Home/for\\_organisations/data\\_protection\\_guide.aspx](http://www.ico.gov.uk/Home/for_organisations/data_protection_guide.aspx)

*HM Government Information sharing vision statement* (HMG, 2006) Available at [www.justice.gov.uk/publications/informationsharingvision.htm](http://www.justice.gov.uk/publications/informationsharingvision.htm)

*NHS Information Governance* (DH, 2007) Available at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_079616](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_079616)

*Confidentiality: NHS Code of Practice* (DH, 2003) Available at [www.dh.gov.uk/assetRoot/04/06/92/54/04069254.pdf](http://www.dh.gov.uk/assetRoot/04/06/92/54/04069254.pdf)

*Confidentiality: protecting and providing information* (GMC, 2004) Available at [www.gmc-uk.org/guidance/current/library/confidentiality.asp](http://www.gmc-uk.org/guidance/current/library/confidentiality.asp)

*Confidentiality and Disclosure of Health Information Toolkit* (BMA, 2008) Available at [www.bma.org.uk/ap.nsf/Content/ConfToolKit08](http://www.bma.org.uk/ap.nsf/Content/ConfToolKit08)

*The NMC Code of Professional Conduct: Standards for Conduct, Performance and Ethics* (NMC, 2004). Available at [www.nmc-uk.org](http://www.nmc-uk.org)

*Data Protection Act 1998 – Guidance for Social Services* [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_4010391](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_4010391)

*Mental Capacity Act: 2005 Code of Practice* (DCA, 2007) Available at [www.justice.gov.uk/guidance/mca-code-of-practice.htm](http://www.justice.gov.uk/guidance/mca-code-of-practice.htm)

*MAPPA (Multi Agency Public Protection Arrangements) guidance* (2007) Available at [www.probation.homeoffice.gov.uk/output/page30.asp](http://www.probation.homeoffice.gov.uk/output/page30.asp)

*MARAC (Multi-Agency Risk Assessment Conference) toolkits* Available at [www.caada.org.uk/index.html](http://www.caada.org.uk/index.html)

### Guidance for children's services

*Working Together to Safeguard Children and What to do if you are worried a child is being abused* (HMG, 2006)

Available at [www.ecm.gov.uk/safeguarding](http://www.ecm.gov.uk/safeguarding)

*Guidance on the Children Act 2004* (HMG, 2004)

Available at [www.ecm.gov.uk/strategy/guidance](http://www.ecm.gov.uk/strategy/guidance)

*Child Health Promotion Programme* (DH, 2006)

[www.dh.gov.uk/en/Publicationsandstatistics/Publications/DH\\_083645](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/DH_083645)

*0-18 years: guidance for all doctors* (GMC, 2007)

[www.gmc-uk.org/guidance/ethical\\_guidance/children\\_guidance/index.asp](http://www.gmc-uk.org/guidance/ethical_guidance/children_guidance/index.asp)

*When to share information: Best practice guidance for everyone working in the youth justice system* (2008)

[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_084703](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084703)

*Sharing Personal and Sensitive Personal Information on Children and Young People at Risk of Offending: A Practical Guide* (Youth Justice Board, 2005)

[www.yjb.gov.uk/publications](http://www.yjb.gov.uk/publications)

### Guidance for working with vulnerable adults

*No secrets: guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse*

[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4008486](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4008486)

### Links to other information

*Reaching Out: Think Family, analysis and themes from the Families At Risk Review* (Cabinet Office, 2006) and *Think Family: Improving the life changes of families at risk* (Cabinet Office, 2008)

[www.cabinetoffice.gov.uk/social\\_exclusion\\_task\\_force/families\\_at\\_risk.aspx](http://www.cabinetoffice.gov.uk/social_exclusion_task_force/families_at_risk.aspx)

Local Safeguarding Children Boards  
information available at [www.ecm.gov.uk/lscb](http://www.ecm.gov.uk/lscb)

*Every Child Matters* (TSO, 2003)

Available at [www.everychildmatters.gov.uk/aims/background/](http://www.everychildmatters.gov.uk/aims/background/)

Children's Centres – information available at [www.surestart.gov.uk/surestartservices/settings/surestartchildrenscentres/](http://www.surestart.gov.uk/surestartservices/settings/surestartchildrenscentres/)

Youth Inclusion and Support Panels – information available at [www.yjb.gov.uk/en-gb/yjs/Prevention/YISP/](http://www.yjb.gov.uk/en-gb/yjs/Prevention/YISP/)

Single Assessment Process – information available at [www.dh.gov.uk/en/SocialCare/Chargingandassessment/SingleAssessmentProcess](http://www.dh.gov.uk/en/SocialCare/Chargingandassessment/SingleAssessmentProcess)

Common Assessment Framework – information available at [www.ecm.gov.uk/caf](http://www.ecm.gov.uk/caf)

ContactPoint – information available at [www.ecm.gov.uk/ContactPoint](http://www.ecm.gov.uk/ContactPoint)

*CWDC Share!* (2007-08) – available from the Children’s Workforce Development Council at [www.cwdcouncil.org.uk/cwdc-share](http://www.cwdcouncil.org.uk/cwdc-share)

*Our Health, Our Care, Our Say* (DH, 2006)  
Available at [www.dh.gov.uk/en/Healthcare/Ourhealthourcareoursay/index.htm](http://www.dh.gov.uk/en/Healthcare/Ourhealthourcareoursay/index.htm)

### Links to legislation documents

Information on relevant legislation is given in *Information Sharing: Further guidance on legal issues*. Links to legislation referenced in this document are given below.

The Data Protection Act 1998. Information available at [www.ico.gov.uk/what\\_we\\_cover/data\\_protection.aspx](http://www.ico.gov.uk/what_we_cover/data_protection.aspx)

Education and Inspections Act 2005. Information available at [www.dcsf.gov.uk/publications/educationandinspectionsact/](http://www.dcsf.gov.uk/publications/educationandinspectionsact/)

Mental Capacity Act 2005. Information available at [www.justice.gov.uk/guidance/mental-capacity.htm](http://www.justice.gov.uk/guidance/mental-capacity.htm)

National Health Service Act 2006. Information available at [www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/DH\\_064103](http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/DH_064103)

Safeguarding Vulnerable Groups Act 2006. Information available at [www.opsi.gov.uk/ACTS/acts2006/ukpga\\_20060047\\_en\\_1](http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060047_en_1)

### Links to documents related to bulk or pre-agreed information sharing

*Data Protection and Sharing – Guidance for Emergency Planners and Responders* (HMG, 2007). Available at [www.ukresilience.gov.uk/response/recovery\\_guidance/generic\\_issues/data\\_protection.aspx](http://www.ukresilience.gov.uk/response/recovery_guidance/generic_issues/data_protection.aspx)

Data handling procedures across government. Information available at [www.cabinetoffice.gov.uk/csia](http://www.cabinetoffice.gov.uk/csia)

*Data Sharing Review Report* (Richard Thomas and Mark Walport, 2008)  
Available at [www.justice.gov.uk/docs/data-sharing-review.pdf](http://www.justice.gov.uk/docs/data-sharing-review.pdf)

# Annex B: Glossary

For the purpose of this document, the following definitions have been used. Wherever possible, definitions have been taken from legislation or existing guidance and the source referenced.

**Anonymised information** is information from which a person cannot be identified by the recipient.

**Caldicott Guardian (NHS)** is a senior person responsible for protecting the confidentiality of patient and service-user information and enabling appropriate information sharing. The Guardian plays a key role in ensuring that the NHS, Councils with Social Services responsibilities, and partner organisations satisfy the highest practicable standards for handling patient identifiable information. (DH website, April 2008).

**Child** means a person under the age of eighteen (Children Act 1989, section 105).

**Confidential information** is information that is not normally in the public domain or readily available from another source, it should have a degree of sensitivity and value and be subject to a duty of confidence. A duty of confidence arises when one person provides information to another in circumstances where it is reasonable to expect that the information will be held in confidence.

**Consent** is agreement freely given to an action based on knowledge and understanding of what is involved and its likely consequences. See also separate entries for explicit consent, implied consent and informed consent.

**Explicit consent** is consent given orally or in writing detailing exactly what the consent is for and in what circumstances it will apply.

**Failing to thrive** denotes poor weight gain and physical growth failure over an extended period of time in infancy.

**Fraser guidelines.** The term arises from the Victoria Gillick case in the early 1980s. Gillick mounted a legal challenge attempting to set a legal precedent which would have meant that medical practitioners could not give young people under the age of 16 treatment or contraceptive services without parental permission. The challenge was successful in the Court of Appeal but then the House of Lords ruled that young people who are under 16 are competent to give valid consent to a particular intervention if they have sufficient understanding and intelligence to enable them to understand fully what is proposed and are capable of expressing their own wishes. Lord Fraser of Tullybelton gave the leading judgement in the House of Lords, hence the reference to the Fraser guidelines.

The Fraser guidelines stress that:

- the young person must understand the advice being given and must indicate that they cannot be persuaded to involve their parents;
- the young person would be likely to continue to have sexual intercourse with or without advice or treatment;

- the professional must be satisfied that if the young person does not receive contraceptive advice or treatment their physical or mental health, or both, will suffer; and
- the young person's best interests require the professional to give the contraceptive advice or treatment, or both, without parental consent.

**Implicit consent** is where the person has been informed about the information to be shared, the purpose for sharing and that they have the right to object, and their agreement to sharing has been signalled by their behaviour rather than orally or in writing. Implicit consent can also be inferred from earlier explicit consent providing there is no change in the relationship with the organisation and the use of the information.

**Informed consent** is where the person giving the consent understands why particular information needs to be shared, what information might be shared, who will use it and how, and what might happen as a result of sharing or not sharing the information.

**Integrated services** are joined up services centred on the needs of service users and are often co-located. This includes consideration of how services are planned, commissioned and delivered. Integrated services move away from the traditional structuring of services around professional disciplines.

**Integrated working** is where services work together effectively to put the person or family at the centre, meet their needs and improve their lives.

**Poor outcomes for children and young people** mean failing to achieve the outcomes that matter most to them, as laid out in Green Paper *Every Child Matters* (TSO, 2003). These outcomes are: being healthy; staying safe; enjoying and achieving; making a positive contribution; and economic well-being.

**Poor outcomes for adults** means failing to achieve social care outcomes as laid out in the White Paper *Our Health, Our Care, Our Say* (DH, 2006). These outcomes are: improved health and emotional well-being; improved quality of life; making a positive contribution; exercise choice and control; freedom from discrimination or harassment; economic well-being; and personal dignity and respect.

**Personal data (or personal information)** means data which relate to a living individual who can be identified:

- (a) from those data; or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (DPA, 1998).

**Practitioner** is the generic term used in this guidance to cover anyone who works with children, young people and/or adults.

**Proportionality** is one of the key factors in deciding whether or not to share confidential information without consent. The principle of proportionality implies that the means should not exceed the ends. In other words, is the information you wish, or have been asked, to share, a balanced response to the need to safeguard a person, or to prevent or detect a serious crime?

**Public bodies** are any public service, for example, a local authority, health services or schools.

**Public interest** is the interests of the community as a whole, or a group within the community or individuals. The “public interest” is an amorphous concept which is typically not defined in legislation. The examples given in the definition of the public interest test below are currently accepted common law categories of the public interest.

**Public interest test** in this context is the process a practitioner uses to decide whether to share confidential information without consent. It requires them to consider the competing public interests – for example, the public interest in protecting individuals, promoting their welfare or preventing crime and disorder, and the public interest in maintaining public confidence in the confidentiality of public services, and to balance the risks of not sharing against the risk of sharing.

**Safeguarding and promoting welfare** is the process of protecting children, young people or vulnerable adults from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care which will enable them to have optimum life chances and enter adulthood successfully.

**Sensitive information** means personal data consisting of information about:

- (a) the racial or ethnic origin of the data subject;
- (b) his political opinions;
- (c) his religious beliefs or other beliefs of a similar nature;
- (d) whether he is a member of a trade union;
- (e) his physical or mental health or condition;
- (f) his sexual life;
- (g) the commission or alleged commission by him of any offence; or
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings. (DPA, 1998).

**Serious crime** for the purposes of this guidance means any crime which causes or is likely to cause significant harm to a child or serious harm to an adult.

**Serious harm** is defined as death or serious injury to a person’s physical or mental health (DH, 2008).

**Significant harm:** The Children Act 1989 states: *“Where the question of whether harm suffered by a child is significant turns on the child’s health and development, his health or development shall be compared with that which could reasonably be expected of a similar child”.*

There are no absolute criteria on which to rely when judging what constitutes significant harm. Consideration of the severity of ill-treatment may include the degree and the extent of physical harm, the duration and frequency of abuse and neglect, the extent of premeditation, and the presence or degree of threat, coercion, sadism and bizarre or unusual elements. Each of these elements has

been associated with more severe effects on the child, and/or relatively greater difficulty in helping the child overcome the adverse impact of the maltreatment.

Sometimes, a single traumatic event may constitute significant harm, for example, a violent assault, suffocation or poisoning. More often, significant harm is a compilation of significant events, both acute and long-standing, which interrupt, change or damage the child's physical and psychological development. Some children live in family and social circumstances where their health and development are neglected. For them, it is the corrosiveness of long-term emotional, physical or sexual abuse that causes impairment to the extent of constituting significant harm. (*Working Together to Safeguard Children*, HMG 2006).

**Vulnerable adult:** The broad definition of a 'vulnerable adult' is a person who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation. (*No secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse*. DH, 2000).

**Well-being:** For children and young people, well-being is the term used in the Children Act 2004 relating to the five *Every Child Matters* outcomes, i.e. being healthy; staying safe; enjoying and achieving; making a positive contribution; and achieving economic well-being.



# Annex C: Endorsing and supportive statements

## Endorsing statements

### Association of Youth Offending Team Managers (AYM)

*“The Association of Youth Offending Team Managers (AYM) represents managers in youth offending teams (YOTs) across England and Wales. Although firmly embedded within local children’s services, YOTs have distinct and separate responsibilities as data controllers. This guidance helps managers to fulfil their responsibilities under data protection legislation, and supports their staff in their work with children and young people in conflict with the law, their parents and carers and the victims of youth crime. Practitioners in YOTs are drawn from health, education, social care, probation, police and other agencies. Clear, consistent guidance for all of our staff, whichever background they come from, is of great value.”*

Mike Thomas, Chair,  
Association of Youth Offending Team Managers

### Barnardo’s

*“Barnardo’s acknowledges the significance of a consistent approach to information sharing practice across the range of social care activities. In particular we are pleased to know that those working with children, young people and families in whatever context can have confidence that information sharing is taking place within a shared and agreed framework, which supports fellow professionals in working together for better outcomes. On this basis we are very happy to endorse the revised guidance and the seven golden rules for information sharing.”*

Chris Hanvey, UK Director of Operations, Barnardo’s

### General Social Care Council (GSCC)

*“The GSCC endorses the Information Sharing: Guidance for practitioners and managers as a useful development. The guide sets clear expectations for information sharing to promote the interests of children, young people and adults and to safeguard their well being. Social workers, their managers and others in social care roles have a significant role in communicating across the full range of professionals and services and this guidance will support their taking informed and confident action in the variety of situations they are faced with. The guidance complements the GSCC codes of practice which emphasise the importance of handling information sensitively and will also help social care workers to be clear with people who use services how information they give us will be shared and promote good practice.”*

Mike Wardle, Chief Executive, General Social Care Council

### National Society for the Prevention of Cruelty to Children (NSPCC)

*“The NSPCC endorses this guidance which sets out practical steps that practitioners can use to decide when it is appropriate to share information with other agencies about a vulnerable child/adult.”*

Wes Cuell, Director of Services for Children and Young People, NSPCC

## Supportive statements and recommendations

### General Medical Council (GMC)

*"I am pleased to confirm that the guidance is consistent with our own published guidance for doctors on confidentiality in relation to both adults and children and young people. We believe it will be of value in providing a common understanding of the responsibilities of everyone who holds and shares personal information."*

Dr John Jenkins,  
Chairman of Standards and Ethics Committee,  
General Medical Council

### Lord Laming

*"Every Children's Trust should assure themselves that partners consistently apply the Information Sharing Guidance published by the Department for Children, Schools and Families and the Department for Communities and Local Government to protect children."*

Recommendation from *'The Protection of Children in England: A Progress Report'*,  
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**Further endorsing and supportive statements are available at  
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