

Information sharing principles

- 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.

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

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.

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.

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*. 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

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.

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.

Consent from the individual is not required in these situations and should not be sought because of the potential consequences of refusal. Wherever possible, 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?

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.

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 crime⁴ or put a child at risk of significant harm or an adult at risk of serious harm.

Question 3: Is the information confidential?

Confidential information is:

- personal information of a private or sensitive⁵ 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.

4 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.

5 As defined in the Data Protection Act

Question 4: Do you have consent to share?

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?

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.

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.

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.

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

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.

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. 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.

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?

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.

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.

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.

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.

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.

When consent should not be sought

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.

You should not seek consent when you are required by law to share information through a statutory duty or court order. In these situations, 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?

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, 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.

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.

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 information⁶ 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*.

⁶ As defined in the Data Protection Act. See Glossary for definition

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. 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.

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.

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.

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.

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.

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

Question 6: Are you sharing information appropriately and securely?

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
- 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.

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?

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.

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*.