

PART 2

GUIDANCE ON INFORMATION SHARING

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INFORMATION SHARING

Summary

1. The County Council has produced detailed and established guidance on information sharing. It can be found on the County Councils Intranet (County Council employees only).
2. Other organisations working with, or whose work brings them into contact with children, young people and families, also produce their own information sharing guidance and protocols. Each individual should be familiar with their own agency's guidance.
3. As part of the 'Every Child Matters' publications, HM Government has produced three publications of non-statutory guidance with regard to information sharing, **on which the following guidance is based.** These are:
 - Information sharing: Practitioners Guide (2006) DfES
 - Information sharing: Further Guidance on Legal Issues (2006) DfES
 - Information sharing: Case examples (2006) DfES

These publications can be downloaded from:

www.everychildmatters.gov.uk/informationsharing

or search

www.teachernet.gov.uk/

using ref 0338-2006BKT-EN

4. **NB: Sharing information is vital for early intervention to ensure that children and young people with additional needs get the services they require. It is also essential to protect children and young people from suffering harm from abuse and neglect and to prevent them from offending.**

<p>A recurring factor in serious case reviews has been a failure in sharing information effectively.</p>

Six Key Points on Information Sharing

5. Explain to children, young people and families at the outset, openly and honestly, what and how information will, or could be shared and why, and seek their agreement. The exception to this is where to do so

would put that child, young person or others at increased risk of significant harm or an adult at risk of serious harm, or if it would undermine the prevention, detection or prosecution of a serious crime.

6. Always consider the safety and welfare of a child or young person when making decisions on whether to share information about them. Where there is concern that the child may be suffering or is at risk of suffering significant harm, the child's safety and welfare must be the overriding consideration.
7. Respect the wishes of children, young people or families who do not consent to share confidential information. You may still share information, if in your judgement on the facts of the case, there is sufficient need to override that lack of consent.
8. Seek advice where you are in doubt, especially where your doubt relates to a concern about possible significant harm to a child or serious harm to others.
9. Ensure that the information you share is accurate and up-to-date, necessary for the purpose for which you are sharing it, shared only with those people who need to see it, and share securely.
10. Always record the reasons for your decision – whether it is to share information or not.

Legislative Framework

11. This complex area of operational practice is governed by:
12. **The Common Law Duty of Confidence** whereby it is reasonably expected that personal information shared with another remains confidential. Personal information about children and families that is held by professional agencies should not be disclosed without the consent of the subject.
13. It is however not absolute, whereby information can justifiably be disclosed in the public interest to prevent harm to others.

Human Rights Act 1998

14. This legislation, in recognising an individual's right to have private and family life respected, also recognises that exceptions may apply where disclosure of information without a consent is justified:
 - to safeguard a child.
 - to protect health or morals.
 - to protect rights or freedoms of others.
 - to prevent disorder or crime.

15. though in all cases disclosure has to be proportionate to the need to protect.

Data Protection Act 1998

16. This specifically regulates the handling of personal data held about an individual on computer or a manual filing system. It requires information to be

- Obtained and processed fairly and lawfully.
- Processed for limited purposes.
- Accurate and relevant.
- Held for no longer than necessary.
- Kept securely and only disclosed if specific conditions are met.

17. Legitimate reasons for sharing personal information would include circumstances in which the individual to whom it relates giving consent. It extends however where it is necessary to protect the vital interests of the data subject, or in exercising a statutory function in the public interest or it is demonstrably necessary in the legitimate interests pursued by the person sharing the information.

This condition applies to most situations where a practitioner shares information to safeguard a child's welfare.

18. If information shared is 'sensitive personal data' e.g. racial or ethnic origins, political opinions, religious beliefs, trade union membership, physical or mental health condition, sexual life or criminal offences, one of the following additional conditions of Schedule 3 must be met.

- The subject has explicitly consented.
- It is necessary to protect her/his vital interests or those of another person where the subject's consent cannot be given or is unreasonably withheld or cannot reasonably be expected to be obtained.
- It is necessary to establish, exercise or defend legal rights.
- It is necessary for the exercise of any statutory function and
- It is in the substantial public interest and necessary to prevent or detect an unlawful act and obtaining express consent would prejudice those purposes.

19. Defence of a child's 'legal rights' under the Human Rights Act 1998 or exercise of a statutory function in connection with a S17 assessment or a S47 enquiry may offer justification for information sharing.

20. A mechanism for operating a framework to underpin appropriate information-sharing in health care and social care authorities is located within the **Caldicott Standards**. Each health service and local

authority have their own Caldicott Guardian who can be contacted for advice.

21. **Children Act 2004.** Section 10 makes it clear that effective information-sharing lies at the heart of the duty to cooperate in improving the well-being of children. Sec 11 makes a number of specific arrangements by named agencies which is subsumed into these procedures.

Confidentiality

22. In deciding whether there is a need to share information, there is a need to consider legal obligations including:

23. whether the information is confidential and

24. if it is confidential, whether there is a public interest to justify sharing.

25. Confidential information is:

- Information of some sensitivity which is;
- not already lawfully in the public domain or readily available from another public source.
- Information that has been shared in a relationship where the person giving the information understood it would not be shared with others.

26. Confidence is breached when the sharing of confidential information is not authorised by the person who provided it or to whom it relates. (These can authorise the sharing of information and this should be the first option where appropriate).

27. Sharing confidential information is justified without consent when it can be justified in the public interest, which must be judged by the practitioner on the facts of each case.

28. The key test is that of proportionality, ie whether the proposed sharing is a proportionate response to the need to protect the public interest in question.

29. Circumstances in which sharing confidential information without consent will **normally** be justified in the public interest are:

- **when there is evidence** that the child is suffering or is at risk of suffering significant harm or
- **where there is reasonable cause to believe** that a child may be suffering or at risk of suffering significant harm or

- **to prevent significant harm** arising to children and young people or **serious harm** to adults, including the prevention, detection and prosecution of serious crime.

30. Consent should not be sought where to do so would:

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

31. In the context of SSCB guidance, serious crime means any crime which causes or is likely to cause significant harm to a child or young person or serious harm to an adult.

32. The approach to confidential information should be the same whether any proposed disclosure is internally within one organisation or between agencies.

Eight Key Questions when making Judgements

33. Is there a legitimate purpose for you or your agency to share the information?

34. Does the information enable a person to be identified?

35. Is the information confidential?

36. If the information is confidential, do you have consent to share?

37. Is there a statutory duty or court order to share the information?

38. 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 information?

39. If the decision is to share, are you sharing information in the right way?

40. Have you properly recorded your decision?

Additional Points About Consent

41. Consent must be informed.

42. Consent can be 'explicit' or 'implicit'. Obtaining explicit consent (orally or in writing) is good practice. Written consent is preferable.

43. The approach to securing consent should be transparent and respect the individual.
44. Consider whose consent is needed. A duty of confidence is owed to a person who has provided the information on the understanding it be kept confidential and in the case of medical or other records, the person to whom the information relates.
45. A young person aged 16 or 17, or a child under 16 who has the capacity to understand and make their own decisions, may give (or refuse) consent to sharing information.
46. Children aged under 16 may also have sufficient understanding to make decisions regarding consent. This will require assessment, including reference to Gillick competency.
47. In most cases where a child cannot or is not judged competent to consent, a person with parental responsibility should be asked to consent on their behalf.
48. The consent of one person with parental responsibility is sufficient. If the parents are separated, the consent of the resident parent would usually be sought.

