

# OXFORDSHIRE SAFEGUARDING CHILDREN BOARD

## INFORMATION SHARING PROTOCOL

### Introduction

This Protocol forms the basis for the lawful exchange of information between all organisations working with children and young people in Oxfordshire. These organisations are referred to in this Protocol as Statutory Agencies (see **Section 3**). All other organisations, including voluntary organisations, who sign up to this Protocol shall be regarded as Statutory Agencies for the purposes of this document.

This Protocol covers:

- The principles and processing of data exchange
- The protection of data
- Confidentiality
- Access/limits on access to personal data
- Management of adherence to good practice in data exchange
- Indemnity
- Guidance on legal framework for sharing information

1.1. Sharing information is vital for early intervention to ensure that children and young people with additional needs get the services they require. It is essential to protect children and young people from suffering harm from abuse or neglect and to prevent them from offending. This Protocol is based on the DFES Information Sharing Guidance issued as part of Every Child Matters, which can be found at [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk).....

1.2. The sharing of information amongst professionals working with children and their families is essential. In many cases it is only when information from a range of sources is put together that a child can be seen to be vulnerable, in need or at risk of harm. Appropriate sharing with other practitioners and agencies is essential if children and families who may be in need of support and services are to be identified at an early stage before problems become serious. Sharing can also enable information from different cases to be put together and assist the process of assessing levels of concern and any potential risks.

**1.3. In many instances a failure to pass on information, that might have prevented a child suffering harm, would be far more serious and dangerous than an incident of unjustified disclosure.**

- 1.4. Where there are concerns that a child may be being abused, there is no legal or ethical restriction on sharing information between child protection agencies. In most child protection investigations it would be highly unusual to request consent during the initial phase of an investigation because of the high risk of compromising the investigation. This is particularly the case when Police officers and social workers are conducting a joint investigation. Information should always be exchanged when such disclosure is necessary for the purposes of child protection.
- 1.5. There is nothing to prevent disclosure of confidential information. Sharing information between agencies is lawful if:
  - 1.5.1. Consent is given; or
  - 1.5.2. The public interest in safeguarding the child's welfare overrides the need to keep the information confidential; or
  - 1.5.3. Disclosure is required under a statutory obligation e.g. the local authority duty to investigate all cases where there is reasonable cause to suspect a child is suffering or is likely to suffer Significant Harm (Section 47, Children Act 1989).
  - 1.5.4. The law relating to information sharing is set out at Annex A.

## **2. Duty to Co-Operate**

- 2.1. There is an obligation on any LEA, PCT, National Health Service and any Local Housing Authority to co-operate and assist the Local Authority in fulfilment of its statutory obligations (Section 27 Children Act 1989).
- 2.2. There is no difference between sharing confidential information within your organisation (e.g. within a school or within the Children, Young People & Families Directorate) than between different statutory agencies (e.g. from a teacher to a social worker). There is therefore no bar to sharing information provided agencies follow this Protocol.

## **3. Management of the Protocol**

- 3.1. This Protocol covers the exchange of information/welfare issues between all agencies that belong to Oxfordshire Safeguarding Children Board; these Authorities are:
  - 3.1.1. Oxfordshire County Council
    - 3.1.1.1. Children, Young People & Families Directorate
    - 3.1.1.2. Oxfordshire Youth Offending Service
    - 3.1.1.3. Resources Directorate
  - 3.1.2. Thames Valley Police

- 3.1.3. Thames Valley Probation Service
- 3.1.4. Thames Valley Strategic Health Authority
- 3.1.5. Oxfordshire PCT
- 3.1.6. Oxford Radcliffe NHS Trusts
- 3.1.7. Oxfordshire Mental Health Care Trust
- 3.1.8. Oxfordshire Learning Disability Trust
- 3.1.9. Oxfordshire Ambulance Trust
- 3.1.10. Nuffield Orthopaedic Centre
- 3.1.11. Connexions
- 3.1.12. Children and Family Court Advisory and Support Service (CAFCASS)
- 3.1.13. Huntercomb Young Offenders Institution
- 3.1.14. Oxford City Council
- 3.1.15. West Oxfordshire District Council
- 3.1.16. Vale of White Horse District Council
- 3.1.17. South Oxfordshire District Council
- 3.1.18. Cherwell District Council

3.2. It is the responsibility of all signatories to this Protocol to:

- 3.2.1. Ensure that data exchanges are justified by and in accordance with:
  - 3.2.1.1. The principles of data protection as enshrined in the Data Protection Act 1998
  - 3.2.1.2. The justification for the disclosure of confidential information with regard to the rights of a data subject under common law.
  - 3.2.1.3. The Human Rights Act 1998 and the circumstances in which disclosure is necessary.
  - 3.2.1.4. The statutory responsibilities conferred on the statutory agencies by the Children Act 1989 and the requirements relating to associated guidance.

- 3.2.2 Ensure that information provided under the terms of this Protocol is not disclosed to any third party without clear reason and justification.

#### **4. Data Exchange**

##### 4.1. General Principles

- 4.1.1. All data exchanged between statutory agencies under this Protocol must be:

- 4.1.1.1. Relevant to all necessary actions undertaken to protect children, and
- 4.1.1.2. Sufficiently detailed for the specified purpose
- 4.1.1.3. In circumstances justifying the need to share information.

- 4.1.2. The data subject's right to access his/her personal data is not affected by this Protocol. An application by the data subject should be made to the agency that is in possession of the data. In accordance with the Data Protection Act 1998 all forms and information exchanged under this Protocol will be considered to be third party information if such an application is made i.e. if holding information received from another agency, then that agency's consent should normally be sought.

#### **5. Information Exchange: Personal Data**

- 5.1. Personal information relating to a victim, informant or witness should wherever possible be disclosed with the consent of the data subject unless such disclosure would place the child at risk or prejudice or undermine a Child Protection Investigation or would cause unacceptable delay.

- 5.2. When considering whether the principles of confidentiality are overridden, the following should be considered:

- 5.2.1. It may be inappropriate or impossible to obtain the consent of an alleged perpetrator, if consent is likely to be withheld. The Data Protection Act allows disclosure of information for the prevention/detection of crime, or the apprehension/prosecution of offenders. Assessment must be made on a case-by-case basis.

- 5.2.2. With regard to third parties, their consent to disclosure should be obtained if possible and reasonable in all the circumstances.

- 5.2.3. It is in the public interest to maintain a high standard of confidentiality so that people will have the confidence to come forward with their complaints or information.

- 5.2.4. Implied consent may often be present when there is a reasonable expectation on the person providing the information that all necessary and appropriate action would be taken.

- 5.3. Children are entitled to the same duty of confidentiality as adults provided that they have the ability to understand the choices and consequences. If, however, it is

considered that a child is under the undue influence of another person (e.g. in perhaps a case of alleged sexual abuse), confidentiality to the child may need to be overridden in order to safeguard the child.

- 5.4. There are specific ethical difficulties in balancing the interests or confidentiality of the children and parents or carers' right to know the issues of concern. A balance needs to be struck between competing obligations and specialist advice in those circumstances should always be sought.
- 5.5. If the disclosure of personal information is necessary or expedient, the power to disclose must be present either:
  - 5.5.1. in the public interest to prevent harm to others
  - 5.5.2. under the statutory obligations to investigate the risk to children set out in the Children Act 1989.
  - 5.5.3. in the interests of the data subject e.g. in relation to his/her health
  - 5.5.4. if appropriate, with the consent of the data subject
- 5.6. Where personal data is required for child protection purposes even when consent has not been sought or given, the rules applicable to confidentiality still apply. Assessments should be made on a case-by case basis whether:
  - 5.6.1. The disclosure is necessary to support child protection action
  - 5.6.2. The public interest is of sufficient weight to override the presumption of confidentiality
  - 5.6.3. The information is being processed fairly.
- 5.7. Guidelines for the disclosure of personal data (Data Protection Act 1998):
  - 5.7.1. Personal information must be destroyed when it is no longer required for the purpose for which it was provided.
  - 5.7.2. All statutory agencies should retain information relating to child protection as long as it is necessary for not only the protection of the child but possibly other children and a specified retention period should take into account the importance of retaining this information for future investigations (NOTE: Care Proceedings and Adoption papers are retained for a period of 75 years).
  - 5.7.3. Both/all parties should note disclosures of personal data
  - 5.7.4. Any disclosure of personal data must have regard to the law
  - 5.7.5. The grounds for disclosure should be recorded.
  - 5.7.6. The signatories to the Protocol will nominate authorised named Data Protection/Liaison Officers to fulfil the responsibilities set out below. A register of such officers will be updated and maintained by the chair of OSCB.

## **6. Data Protection/Liaison Officers**

6.1. In order to ensure that personal information is exchanged in the most efficient, effective and safe manner, statutory agencies will designate Data Protection Officers/Data Liaison Officers. In selecting/appointing such officers, statutory agencies must identify the minimum number of officers needed in order to retain operational effectiveness, dependent on the size and structure of the organisation.

6.2. These Officers should have responsibility for:

6.2.1. Data protection (subject access)

6.2.2. Data quality

6.2.3. Confidentiality

6.2.4. Security of holding and the safe transmission of data

6.2.5. Compliance

6.2.6. Audit and monitoring

6.2.7. Complaints procedure (unless separate procedure applies)

6.3. Where there is doubt as regards whether there is justification for disclosure of personal information, the Data Protection/Liaison Officer of the relevant agency should be consulted. In cases of doubt, legal advice should be obtained.

6.4. With regard to complaints, any investigation will examine the process that led to the provision of data and will be handled by the Data Protection/Liaison Officer (unless a separate procedure applies). Ideally, this Officer will be the first point of contact for any complaints. This arrangement does not remove the right for complaints to be made directly to the Information Commissioner (formally the Data Protection Registrar).

## **7. Security**

7.1. The level of access to personal data is the responsibility of the Data Protection/Liaison Officer who is responsible for the security measures outlined above and the maintenance and security of passwords. An effective security policy must be in place in each statutory agency in accordance with the stipulations of the Data Protection Act 1998. An indicative minimum standard for data security is set out below but agencies may have more stringent requirements which must be adhered to by their staff:

7.1.1. Data disclosed as hard copy:

7.1.1.1. Data must be stored in a locked filing cabinet

7.1.2. Data disclosed and held on a networked computer:

7.1.2.1. Databases/files are password protected

7.1.2.2. If a database is shared, only hard/paper copies of relevant files may be printed.

7.1.2.3. Database files are not left open on a computer when the machine is unattended.

7.1.2.4. Backup disks of data are stored in a secure environment (locked filing cabinet/safe)

7.1.3. Data disclosed and stored on a 'stand-alone' computer (not networked):

7.1.3.1. Databases/files are password protected

7.1.3.2. If a database is shared, only hard/paper copies of relevant files may be printed

7.1.3.3. Database files are not left open on a computer when the machine is unattended

7.1.3.4. Backup disks of data are stored in a secure environment (locked filing cabinet/safe)

7.1.3.5. Except in the case of a 'lap-top' computer the hard disk is physically secured to the desk

7.1.3.6. If the data is held on a 'lap-top' computer the equipment is stored in a secure environment when not being used (locked cabinet/safe)

## **8. Confidentiality**

8.1. When considering disclosure, a balance must be made between the following public expectations:

8.1.1. That personal information known to public bodies is properly protected

8.1.2. That relevant information is shared between relevant authorities.

8.2. Underpinning this balance of disclosure are the following stipulations to ensure confidentiality is respected:

8.2.1. Information shared will only be used for the purpose for which it was requested, unless the consent of the supplier of the information (the Data Holding Agency) is required for a further specific use. The data must be securely stored (Paragraph 7.1) and destroyed when no longer required

8.2.2. Any request for information disclosure by a third party must be referred to the Data Holding Agency

8.2.3. All partners/agencies wishing to be part of this information sharing will be required to sign up to the Protocol. These agencies that have signed up remain bound by the Protocol for all information they held at the date of ceasing to be parties in the process.

## **9. Secondary Use of Data**

9.1.No secondary i.e. no further disclosure is permitted under this Protocol unless in full compliance with an agency's statutory obligations or in accordance with OSCB procedures. Any requests for information by or for external organisations or other third parties should normally be made to the Data Holding Agency.

## **10. Data Quality**

10.1. Information shared between statutory agencies should be either factual or constitute relevant personal data.

10.2. Personal data found to be inaccurate should be notified to the authority owning the data. That authority will be responsible for:

10.2.1. Correcting the information

10.2.2. Notifying all other recipients of this data (who, upon being notified of inaccuracy, are responsible for relevant data in their possession being corrected).

10.3. Data retained by statutory agencies should be regularly monitored, the frequency of such monitoring dependent on the type of data. Any corrections or amendments made to shared information must be made known to the statutory agencies which also retain that particular information within fourteen days.

## **11. Documentation**

11.1. Requests for information to be shared between Relevant Authorities should be made in writing unless the matter is urgent in which case the request or reply should be followed up in writing.

11.2. A written response from a Data Holding Agency should be made within fifteen working days to such a request for information.

11.3. Any subsequent disclosure of information should record:

11.3.1. The source of the data

11.3.2. The Data Holding Agency as originator of the data. This must be specific as the exchange of data may continue for several years, new staff will be involved and the original agreement may get watered down



- 11.3.3. What data was originally requested. In certain circumstances this may differ from what was actually permitted to be disclosed
  - 11.3.4. Grounds/justification for disclosure (including why public interest outweighs the duty of confidentiality)
  - 11.3.5. What data has been disclosed with particular reference to the degree of personal data shared
  - 11.3.6. Who and which organisations have received the data
  - 11.3.7. What time-limits apply to the sharing of data
  - 11.3.8. Details of any extensions to these time-limits
  - 11.3.9. Whether (subsequently) there has been any secondary disclosure of the data
  - 11.3.10. Amendments to the quality of the data.
- 11.4. Forms used for the exchange of data must be signed and dated with copies retained by all parties to the disclosure.
- 11.5. Decisions made on the basis of disclosed personal data should be minuted.

## **12. Indemnity**

- 12.1. Each agency (“indemnifying agency”) will indemnify and keep indemnified all other agencies who are part of this Protocol from and against any and all loss, damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the other agencies resulting from any negligent act or omission and/or a breach of this protocol by the indemnifying agency including
- 12.1.1. Any act negligent or default of the indemnifying agencies, employees or agents, or
  - 12.1.2. Breaches resulting in any successful claim by any third party arising out of the wrongful disclosure of any information by the indemnifying agency.

# ANNEX A

## Information Sharing Briefing

### Summary of the Legal Position

#### 1. Introduction

1.1. Sharing information is vital for early intervention to ensure that children and young people with additional needs get the services they require. It is essential to protect children and young people from suffering harm from abuse or neglect and to prevent them from offending. This Protocol is based on the DFES Information Sharing Guidance issued as part of Every Child Matters.

**1.2. The sharing of information amongst professionals working with children and their families is essential. In many cases it is only when information from a range of sources is put together that a child can be seen to be in need or at risk of harm. In many instances a failure to pass on information that might have prevented a child suffering harm would be far more serious and dangerous than an incident of unjustified disclosure.**

**1.3. Where there are concerns that a child may be being abused there is no legal or ethical restriction on sharing information between child protection agencies. In most child protection investigations it would be highly unusual to request consent during the initial phase of an investigation because of the high risk of compromising the investigation. This is particularly the case when Police and Social & Health Care are conducting a joint investigation.**

**1.4. There is nothing to prevent sharing of information between agencies if:**

**1.4.1. The public interest in safeguarding the child's welfare overrides the need to keep the information confidential;**

**1.4.1.1. Where a child is believed to be at serious risk of harm**

**1.4.1.2. Where there is evidence of serious public harm or risk of harm to others**

**1.4.1.3. Where there is evidence of serious health risk to and individual**

**1.4.2. Disclosure is required under a statutory obligation eg. Local Authority duty to investigate all cases where there is reasonable cause to suspect a child is suffering or is likely to suffer significant harm (Section 47 Children Act 1989).**

## **2. Duty to Co-Operate**

- 2.1. There is an obligation on any LEA, Health Authority, PCT, National Health Service Trust and any Local Housing Authority to co-operate and assist the Local Authority in fulfilment of its statutory obligations (Section 27 Children Act 1989).
- 2.2. There is no difference between sharing confidential information within your organisation (e.g. within a school or within the Children, Young People & Families Directorate) than between different agencies (e.g. from a teacher to a social worker).

### **3. The Children Act 2004**

**3.1. This Act places a duty on each children's services authority to make arrangements to promote co-operation between itself and relevant partner agencies to improve the well-being of children in their area in relation to:**

**3.1.1. Physical and mental health, and emotional well-being;**

**3.1.2. Protection from harm and neglect;**

**3.1.3. Education, training and recreation;**

**3.1.4. Making a positive contribution to society;**

**3.1.5. Social and economic well-being**

**3.2. The relevant partners must co-operate with the Local Authority to make arrangements to improve children's well-being and are formal members of the Oxfordshire Safeguarding Children Board.**

**3.3. The statutory guidance on this Act states that good information sharing is key to successful collaborative working and that arrangements under Section 10 of the Children Act 2004 should ensure that information is shared for strategic planning purposes and to support effective service delivery. It also states that these arrangements should cover issues such as improving the understanding of the legal framework and developing better information sharing practice between and within organisations.**

**3.4. Section 11 of the Act places a duty on key people and bodies to make arrangements to ensure that their functions are discharged with regard to the need to safeguard and promote the welfare of children. The key people and bodies are:**

**3.4.1. Local Authorities (including District Councils)**

**3.4.2. The Police**

**3.4.3. The Probation Service**

**3.4.4. Bodies within the National Health Service**

**3.4.5. Connexions**

**3.4.6. YOTs**

**3.4.7. Governors/Directors of Prisons and Young Offenders Institutes**

**3.4.8. Directors of Secure Training Centres**

**3.4.9. The British Transport Police**

**3.5. In order to safeguard and promote the welfare of children, arrangements should ensure that:**

**3.5.1. All staff in contact with children understand what to do and the most effective ways of sharing information if they believe a child or family may require targeted or specialist services in order to achieve their optimal outcome;**

**3.5.2. All staff in contact with children understand what to do and when to share information if they believe that a child may be in need, including those children suffering or at risk of significant harm.**

**4. Other specific legislation containing express powers or which imply powers to share information**

**4.1. Section 155 and 175 Education Act 2002**

**4.2. Section 13 Education Act 1996**

**4.3. Section 434(4)**

**4.4. Section 117 and 119 Learning and Skills Act 2000**

**4.5. Regulation 6 and 18 Education (SEN) Regulations 2001**

**4.6. Children (Leaving Care) 2000**

**4.7. Protection of Children Act 1999**

**4.8. Section 20 Immigration and Asylum Act 1999**

**4.9. Part 1 Local Government Act 2000**

**4.10. Section 325 Criminal Justice Act 2003**

**4.11. Section 17, 37, 39(5), 115 of the Crime and Disorder Act 1998**

**4.12. Section 2 of the National Health Service Act 1977**

**4.13. Section 27 Health Act 1999**

**4.14. The Adoption and Children Act 2002**

**5. Disclosure of Non Child Protection Information**

**5.1.. Under Section 17 of the Children Act 1989 the local authority has a statutory duty to safeguard and promote the welfare of children within their area who are in need.**

Again, in general the law will not prevent you from sharing information with other practitioners if:

5.1.1. those likely to be affected consent, or

5.1.2. the public interest in safeguarding the child's welfare overrides the need to keep the information confidential; or

5.1.3. disclosure is required under a Court Order or other legal/statutory obligation

5.2.. The Courts have found a duty of confidentiality to exist only when:

5.2.1. A contract provides for information to be kept confidential, or

5.2.2. There is a special relationship between parties, such as patient and Doctor, Solicitor and client, teacher and pupil, or

5.2.3. An agency or a Government Department, such as Inland Revenue, collects and holds personal information for the specific purposes of its functions.

5.3. This duty is not absolute. Disclosure can be justified if:

5.3.1. The information is not confidential in nature, or

5.3.2. The person to whom the duty is owed has expressly or implicitly authorised the disclosure, or

5.3.3. There is an overriding public interest in disclosure (ie. clear justification), or

5.3.4. Disclosure required by a Court Order or other legal/statutory obligation

## **6. Is the Information Confidential?**

6.1.. Some information is clearly confidential and special arrangements need to be made to safeguard from unjustified or accidental disclosure. The confidentiality that attaches to this is not absolute in all circumstances and where there is a clear need to disclose then provided the correct procedure is followed and there is clear justification this can be done. Some information may not be confidential, particularly if it is trivial or readily available from other sources or if the person to whom it relates would not have an interest in keeping it secret. For example, a social worker who was concerned about a child's whereabouts might telephone the school to establish whether the child was in school that day.

## **7. Maintaining Confidentiality**

7.1.. As a general rule you should treat all personal information you acquire or hold in the course of working with children and families as confidential and take particular care that sensitive information is held securely.

## **8. Disclosure by Consent**

8.1.. There will be no breach of confidence if the person to whom a duty of confidence is owed consents to the disclosure. Consent can be express (that is orally or in writing) or can be inferred from the circumstances in which the information was given (implied consent).

## **9. Whose Consent Is Required?**

9.1.. The duty of confidence is owed to the person who has provided information on the understanding it is to be kept confidential and, in the case of medical or other records, the person to whom the information relates.

## **10. Has Consent Been Given?**

10.1. You do not need express consent if you have reasonable grounds to believe that the person to whom the duty is owed understands and accepts that the information will be disclosed. For example, a person who refers an allegation of abuse to a social worker would reasonably expect that information to be shared on a “need to know” basis with those responsible for investigating and following up the allegation. Anyone who receives information, knowing it is confidential, is also subject to the duty of confidence. Whenever you give or receive information in confidence you should ensure that there is a clear understanding as to how it may be used or shared.

10.2. Professionals should avoid giving absolute guarantees as to confidentiality, particularly when dealing with disclosures from children. In such cases it should be made clear from the outset that what is said will be treated in confidence but such information may need to be passed on to other professionals who may need to know.

## **11. Should I Seek Consent?**

11.1. If consent is given then it is absolutely clear to all concerned that there is no problem whatsoever in sharing information. You should not ask for consent in circumstances where you think this will be contrary to the child’s welfare. For example, if the information is needed urgently then the delay in obtaining consent may not be justified. Seeking consent may prejudice a Police investigation or may increase the risk of harm to the child.

## **12. What If Consent Is Refused?**

12.1. Care needs to be taken but refusal does not act as an absolute veto on sharing information. You will need to decide whether the circumstances justify the disclosure, taking into account what has been disclosed, for what purposes and to whom, in addition to the reasons for the refusal itself.

## **13. Disclosure In the Absence of Consent**

13.1. The law recognises that disclosure of confidential information without consent or Court Order may be justified in the public interest to prevent harm to others.

13.2. The key factor in deciding whether or not to breach confidentiality is proportionality: i.e. is the proposed disclosure a proportionate response to the need to protect the welfare of the child. The amount of confidential information disclosed, and the number of people to whom it is disclosed, should be no more than is strictly necessary to meet the public interest in protecting the health and wellbeing of a child. The more sensitive the information, the greater the child centred need must be to justify disclosure and the greater the need to ensure that only those professionals who have to be informed receive the material (“the need to know basis”).

### 13.3. The “Need to Know” Basis

Relevant factors:

13.3.1. What is the purpose of the disclosure?

13.3.2. What is the nature and extent of the information to be disclosed?

13.3.3. To whom is the disclosure to be made (and is the recipient under a duty to treat the material as confidential)?

13.3.4. Is the proposed disclosure a proportionate response to the need to protect the welfare of a child to whom the confidential information relates.

13.4.. It is, therefore, essential that there is a clear record of the reasons and justification for disclosure so as to demonstrate that the decision is reasonable, proportionate and fully justifiable.

## **14. The Duty of Confidentiality to Children and Young People**

14.1. Children are entitled to the same duty of confidentiality as adults provided that they have the ability to understand the choices and consequences. If, however, it is considered that a child is under the undue influence of another person (eg. in perhaps a case of alleged sexual abuse), confidentiality to the child may need to be overridden in order to safeguard the child.

## **15. Human Rights Act 1998**

15.1. All statutory agencies have a pro-active responsibility to ensure that no person should be subjected to inhuman or degrading treatment in accordance with Article 3 of the European Convention on Human Rights.

15.2. In addition, the right to a private and family life described in Article 8 is subject to lawful interference by a public authority only where it is necessary to:



15.2.1. prevent disorder or crime

15.2.2. protection of health or morals

15.2.3. protection of rights and freedom of others

15.3. Clearly, if disclosure falls within these exemptions then it is entirely appropriate, necessary and in accordance with the Human Rights Act 1998. The proportionality test as specified in the common law duty of confidence similarly applies. There remains a degree of justification on disclosure decisions but the Human Rights Act does not prevent sharing of information and indeed in child protection cases requires sharing of information in order to fulfil these statutory responsibilities.

## **16. Data Protection Act 1998**

16.1. The Data Protection Act 1998 regulates the handling of personal data. Essentially this is information kept about an individual on a computer or on a manual filing system. The Act lays down requirements for the processing of this information, which includes obtaining, recording, storing and disclosing it.

16.2. Where there is a legitimate reason for sharing information and one of the following conditions applies then information can be disclosed:

16.2.1. the data subject (the person to whom the data relates) consents; or

16.2.2. the disclosure is necessary for compliance with a legal/statutory obligation;  
or

16.2.3. it is necessary to protect the vital interests of the data subject; or

16.2.4. it is necessary for the exercise of a statutory function or other public function exercised in a public interest (e.g. under the Children Act 1989 for the purposes of a Section 17 assessment or a Section 47 enquiry); and

16.2.5. it is necessary for the purposes of legitimate interests pursued by the person sharing the information, except where it is unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

16.3. As can be seen there is a condition to cover most situations where a practitioner needs to share information to safeguard a child's welfare. In particular, the last condition (legitimate interest) is relevant in all cases and involves a proportionality test similar to that applied to breaches of confidence.

## **17. Sensitive Personal Data**

17.1. There are additional safeguards within the Data Protection Act for sensitive personal data relating to the data subject's racial or ethnic origins, physical or mental health or conditions, sexual life, criminal offences, clinical opinions, religious beliefs, membership of Trade Union.

17.2. . This sensitive personal data can be shared if:

17.2.1. the data subject has explicitly consented to the disclosure;

17.2.2. it is necessary to protect the vital interests of the data subject or another person where the data subject's consent cannot be given or is unreasonably withheld or cannot reasonably be expected to be obtained;

17.2.3. it is necessary to establish, exercise or defend legal rights

17.2.4. it is necessary for the exercise of any statutory functions; **or**

17.2.5. it is the substantial public interest and necessary to prevent or detect an unlawful act and obtaining express consent would prejudice those purposes.

17.3. Where sensitive personal data relates to child protection, the risk of child abuse falls clearly within prevention or detection of an unlawful act.

17.4. The justified and necessary sharing of information between professionals is an essential prerequisite in safeguarding a child's welfare. The Data Protection Act does not prevent sharing of information amongst Social & Health Care and other agencies in connection with a Section 17 assessment or a Section 47 enquiry.

17.5. If in doubt, if you need advice on Data Protection requirements you should contact your Data Controller who will be able to provide you with advice on the Data Protection requirements.

## **18. Other Statutory Provisions**

18.1. Section 115 of the Crime and Disorder Act 1998 enables any person to disclose information to a relevant Authority for any purposes of the Act if they do not otherwise have the power to do so. Relevant authorities include Local Authorities, NHS Bodies and Police Authorities. The purpose of the Act broadly covers the prevention and reduction of crime in the identification or apprehension of offenders.

## **19. Case Law Decisions**

19.1.. There have now been a number of decisions dealing with the criteria by which disclosures may be justified and the factors that need to be considered.

19.2.. Before a decision is made about disclosure, a professional must consider the following factors, "is there a pressing need to disclose?" i.e.

19.2.1. belief in the truth of the allegation

19.2.2. legitimacy of the interests of the person needing this information

19.2.3. degree of risk if disclosure is not made

19.3. In addition, the following factors may also be important:

- 19.3.1. The relevance and importance of the information
- 19.3.2. The urgency of disclosure
- 19.3.3. Whether consent for disclosure has been sought
- 19.3.4. The interests of the child
- 19.3.5. The impact upon the person to whom the information relates

19.4. These factors are particularly relevant when details about the Schedule 1 offence might be disclosed if, in the individual circumstances of such cases, the agency feel there is a clear basis for concern that the child may be at risk, and it is entirely appropriate to inform parents or carers of:

- 19.4.1. The offenders previous convictions;
- 19.4.2. That this gives rise to a legitimate concern and view of the potential for future abuse

(There is well documented research establishing the high rate of reoffending of Schedule 1 offenders. Disclosure may be justified see R v (1) A Police Authority in the Midlands (2) A County Council in the Midlands, ex parte LM 1999)

19.5. It is permissible for findings in care proceedings that a child's father constituted a considerable risk to children to be disclosed to the father's Housing Association landlord where there was "real and cogent evidence of a pressing need" for such disclosure (re C (Sexual Abuse: Disclosure 2002))

19.6. Local Authorities have the power to communicate the conclusions of enquiries made under Section 47 of the Children Act 1989 where on the facts of the case it is reasonably believed it was necessary to do so to protect children from the risk of sexual abuse (R v Hertfordshire County Council, ex parte A 2001)

19.7. Each case should be judged on its own facts and disclosure should only be made where there is a pressing need for that disclosure to be made and if possible with the data subject being provided with an opportunity to respond to the proposed disclosure prior to a final decision being taken. This may not be possible within the reasonable time constraints of the investigation. Disclosure must be judged against Article 8 and proven to be necessary in all the circumstances. The honest judgement of professional police officers went a long way towards establishing reasonableness (R v Chief Constable of North Wales Police ex parte Thorpe 1998).

19.8. In deciding whether or not to release information relating to a charge of indecency where this was subsequently withdrawn, it was essential that a view be taken that the information was relevant and reliable and proper weight was given to the identification of the claimant and the effect of disclosure on a person's employability. The emphasis was on the need for a proper procedure to ensure that all relevant factors were considered and that the person had a right to make representations before disclosure (R v Chief Constable West Midlands Police (Times Law Report 2<sup>nd</sup> Feb 2004).

## **20. Conclusion**

**20.1. There are no legal barriers whatsoever that prevent the appropriate and necessary sharing of information between agencies in fulfilment of their statutory duties to safeguard and promote the welfare of children, provided that proper agreed procedures are followed.**

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