

Cumbria Local Safeguarding Children Board



Information Sharing Protocol

Version 1.4 (June 2015)

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Next review due – January 2017

Introduction

Information sharing is key to the Government's goal of improving outcomes for all children. It is essential to enable early intervention and preventative work for safeguarding children and for wider public protection. Staff who have contact with children must understand what to do and the most effective ways of sharing information. This is particularly relevant if a child and/or family require a service or if staff believes a child is in need, including children at risk of suffering harm. Legal advice should be obtained where staff after reading these procedures remain unsure about sharing information.

Good Practice Note:

- Whilst it is good practice to share with families your intention to make a referral to Cumbria Safeguarding Hub about their child's welfare, it is not a prerequisite.
- In some circumstances you should not inform the family about the referral. For example where evidence of abuse is likely to be removed or where a child will be placed at increased risk when parents have this knowledge.
- Cumbria Safeguarding Hub will accept a referral about a child regardless of whether consent has been given if the child is considered to be at risk.
- Cumbria Safeguarding Hub will firstly assess the child to see if the child is in need (Section 17, Children Act 2004) of a service and or is in need of protection (Section 47, Children Act 2004).
- Information must be collected from agencies who know the child for these decisions to be made and consent is not required for this activity. These are statutory requirements under the Children Act and thus covered by the Data Protection Act 1998, Schedules 2 and 3.
- Consent is needed for a service to be offered. So where a child is clearly a "child in need" of a service then the first action for the Hub must be to obtain consent, unless of course it has been obtained earlier in the process.
- When a child is assessed as in need of protection then consent to share information between agencies remains desirable but is not essential. The safety of the child is paramount.

Principles for Action

Information sharing is vital to safeguarding and promoting the welfare of children and young people. A key factor in many serious case reviews has been a failure to record information, to share it, to understand its significance and then take appropriate action.

Government Guidance, Every Child Matters, "Information Sharing: Guidance for practitioners and managers", (2008) highlights:

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.

Sharing Information: Questions for staff to ask?

Is there a clear and legitimate purpose for sharing information?

Under Section 11 of the Children Act 2004 key people and bodies have the duty to make arrangements which ensure their functions are discharged with regard to the need to safeguard and promote the welfare of children. This extends to the member agencies of the LSCB and the services they commission. Information sharing is fundamental for complying with this statutory regulation.

Information sharing for statutory and non-statutory services must comply with laws relating to confidentiality, data protection and human rights.

Consent is not required from the subject of the information when an agency is required by law to share information or when a court makes an order for certain information or case files to be made available to the court. Such situations do not arise often but when they do practitioners must share information. A court order may be challenged by your organisation but all other situations must be complied with by practitioners.

Does the information enable a living person to be identified?

Information which has been made anonymous can be shared. However, information which identifies an individual, or could identify a person living when considered with other information is personal information and is subject to data protection.

There are issues of confidentiality in relation to deceased individual's records: for more information see Information Commissioners website (<http://ico.org.uk/>).

Is the information confidential?

Not all information is confidential. Confidential information is data of some sensitivity which is not already lawfully in the public domain or readily available from another public source and has been shared in a relationship where the person giving the information understood that it would not be shared with others.

Information which is not confidential may generally be shared where necessary for the legitimate purposes of statutory and preventative work.

Confidence is only breached where the sharing of confidential information is not authorised by the person who provided it or 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 explicit consent to the sharing.

Information can be lawfully shared, even if this has not been authorised, if this can be justified in the public's interest. For example, to protect a child or someone else from harm or to promote the welfare of a child to prevent crime and disorder.

Who do you owe confidentiality to?

The duty of confidentiality is owed to the individual to whom the information relates and to the person who has provided the information on the understanding it is to be kept confidential.

Do you have consent to share?

As a matter of good practice practitioners should inform children, young people and families about their service's policy on how information will be shared and seek their consent. If there is significant change in the way the information is to be used, or a change in the relationship between the agency and the individual, consent should be sought again. It must be remembered that individuals have a right to withdraw or limit consent at any time.

Informed consent means that the person giving consent needs to understand why information would be shared, who will see their information, what it will be used for and the implications of sharing that information. Cumbria LSCB seeks to promote a climate of openness and honesty with children and families where, in the main, informed consent is obtained at the start of intervention in children's lives and gained again where circumstances alter, for example where an agency wishes to make a referral of a child with additional needs or a child in need to another agency.

Whose consent should be sought?

A child, who is able to understand and make their own decisions, is able to give or refuse consent to share information. Every case should be assessed to gauge a child's understanding of consent explaining the information to the child in a way which is suitable for the child's age and likely understanding and through using their preferred method of communication.

Seeking consent can at times pose difficult dilemmas. The principle should always be one of openness with both parents and children. Practitioners, wherever possible should seek to gain the consent of parents and children. Under the Mental Capacity Act 2005, adults (but also young people over the age of 16) are presumed to have capacity to give or withhold their consent to sharing of confidential information, unless there is evidence to the contrary.

Capacity to give consent is a "functional test" and is not dependant on age. Generally children aged over 12 may be expected to have sufficient understanding. However, younger children may also have enough understanding while some older children will not. When assessing children for "sufficient understanding" practitioners should consider whether the child has a reasonable understanding of what information might be shared, the main reason(s) for sharing it and the implications of sharing or not sharing the information. Practitioners should address whether a child can:

- "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, are they constantly changing their mind?” Information Sharing: Guidance for Practitioners and Managers, (2008)

Where a child cannot consent one person with parental responsibility should be asked to consent on behalf of the child. In these circumstances it remains important that practitioners seek the child's views as far as possible. When seeking parental consent, practitioners should ensure proper consideration is given to whose consent to seek. For example where parents are separated consent should be sought from the parent with whom the child resides.

Where a child is able to give informed consent the practitioner must consider their consent or refusal even where a parent disagrees. In such circumstances the practitioner must encourage the child to discuss the issue with their parents and agree how this will be managed. Practitioners must not withhold any service on the condition that parents are informed.

Specific guidance from Association of Directors of Children’s Services is available regarding undertaking Age Assessments of unaccompanied children seeking asylum:

http://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf

When consent should not be sought

Wherever possible practitioners should seek consent to share information at their first contact whenever they are concerned about a child with additional needs, a child in need or a child in need of protection. There may however be some circumstances where they should not seek consent initially but even so should obtain consent when it is appropriate to do so. 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” Information Sharing: Guidance for Practitioners and Managers, (2008)

Can I share information when I cannot obtain consent or consent is refused?

Where information is confidential and consent is refused, that should be respected unless in the practitioner's professional judgment on the facts of the case, there is justification for sharing information.

Where consent cannot be obtained to share information or consent is refused or where seeking it may undermine the prevention, detection, or prosecution of a crime the practitioner must judge from the facts whether there is enough public interest. A concern in relation to protecting a child from significant harm, promoting the welfare

of children, protecting adults from serious harm or preventing crime and disorder are all well within public interest.

Sharing confidential information without consent will normally be justified in the public interest:

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

Practitioners must decide whether sharing information is a necessary and proportionate response to the need to protect the child in question. The decision making process must weigh up what might happen if the information is shared against what might happen if it is not shared. It is important to note that a lack of information sharing is a consistent theme within Serious Case Reviews.

No professional should assume that someone else will pass on information which they think may be critical to keeping a child safe

If a professional has concerns about a child's welfare and believes they are suffering or likely to suffer harm, then they should share the information with Cumbria Safeguarding Hub.

What information may be shared?

It is necessary to show proportionality when information is shared i.e. that a fair balance has been struck between the individual rights of the person and the relevant justification.

Confidentiality of the information exchanged

Unless s/he is already known, a telephone call received from professional seeking information must be verified before information is divulged, by calling her/his agency back via the switchboard number.

Transmission of personal and sensitive information by fax should only happen when absolutely necessary. The number/address to which it is being sent should be checked very carefully (preferably by a colleague) and reassurance provided and recorded about the security of its handling by the other agency staff.

When sending a fax, a cover sheet should be used which contains a confidentiality statement, e.g. 'This fax is confidential and is intended only for the person to whom it is addressed'.

When sending out e-mails, faxes, or correspondence containing confidential information practitioners should follow their agency policies and procedures.

Sharing information appropriately and securely

When a practitioner has made the decision to share information s/he must

- ensure information shared is 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 fact from 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 the information in a secure way;
- establish whether the recipient intends to pass it on to other people, and ensure the recipient understands the limits of any consent that has been given;
- ensure that the person to which the information relates (or the person who provided the information) is informed that you are sharing information where it is safe to do so

Disclosure of Information about an Offender/Suspected Offender

This applies to Cumbria Safeguarding Hub when disclosure to third parties of an offender/suspected offender's previous history is being considered.

The general presumption is that information should not normally be disclosed, except if one of the following applies:

- Consent has been obtained from the offender/suspected offender/alleged offender;
- There is a statutory requirement or other duty;
- There is a duty to the public.

Generally the risk assessment for disclosure of information on convicted abusers will be led by the Police and Probation Service. However Children's Services Social Care may also need to consider the risk of those alleged abusers who:

- Have been charged with an offence and the outcome of the case is pending;
- Were not prosecuted because the required standard of proof did not allow for a criminal case to be pursued;
- Were not prosecuted but the case was 'left on file';
- Were acquitted;
- Where there may be potential consequences in the context of law and order.

The absence of a conviction for child abuse in a criminal court does not prevent a Local Authority from informing parents or carers of the potential risk posed by someone who is honestly believed, on reasonable grounds, to have abused other children.

There is however an expectation that full consideration will be given to factors which will indicate whether there is a pressing need to share the information (often referred to as the 'pressing needs test').

Pressing Needs Test re Offender/Suspected Offender

Considerations to be made in deciding whether there is a pressing need to share information about an offender/suspected offender include:

- Disclosure should only be made if there is a pressing need;
- Disclosure should be the exception rather than the rule;
- Each case must be considered on its own merits – a blanket approach is not permissible;
- Disclosure can have grave consequences so there must be real and cogent evidence of a pressing need for disclosure;
- The balance between the public interest in the need to protect children and the right of an individual to a private life;
- The person's previous history and current risk assessment if available;
- The level and quality of likely access to children;
- The degree of risk posed by the person if disclosure is not made;
- Any other factor in the individual case that is thought to be relevant.

Where possible, these matters should be considered on a multi-agency basis. Legal advice should be sought where doubt exists as to the lawfulness of disclosure. In view of the possibility of legal challenge by an offender, potential/suspected offender or future victim, all agencies must, in addition to seeking any legal advice required, maintain a written audit trail of events, actions, discussions, decisions and the reasons for them.

Information Sharing Glossary

Term	Definition
Anonymised information	Information from which a person cannot be identified, either from that information alone or from that information combined with other information already held by the recipient.
Confidential information	Information 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.
Consent	Agreement freely given to an action based on knowledge and understanding of what is involved and its likely consequences. All consent must be informed. The person to whom the information relates should understand why particular information needs to be shared, who will use it and how, and what might happen as a result of sharing or not sharing the information.
Explicit consent	Consent given orally or in writing.
Lead information officer	A senior manager in each agency, responsible for decisions relating to information sharing within the agency, who can determine controversial issues.
Personal data	Information about any identified or identifiable living individual and includes their name, address and telephone number as well as any reports or records.
Proportionality	The key factor in deciding whether or not to share confidential information without consent is proportionality: i.e. is the information professionals wish to, or are asked to share, a balanced response to the need to safeguard a child or another person, or to prevent or detect a serious crime.
Public interest	The interests of the community as a whole, or a group within the community or individuals.
Public interest test	The process a professional should use to decide whether to share confidential information without consent. It requires consideration of the competing public interests e.g. the public interest in protecting children, 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.
Secondary disclosure	Disclosure by the person to whom data has been disclosed to another agency or person e.g. if a GP provides data to a school and the school passes it to LA Children's Services Social Care.

Supporting legislation/ Guidance

Data Protection Act 1998 [Data Protection Act 1998](#)

Children's Act 2004 (sections 11,17 & 47) [Children Act 2004](#)

Working Together 2015 <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

Mental Capacity Act 2005 [Mental Capacity Act 2005](#)

Children and Families Act 2014 [Children and Families Act 2014](#)

[Information sharing: advice for practitioners providing safeguarding services](#) (March 2015)

Information Commissioner [Data Protection and Freedom of Information advice - ICO](#)
[NSPCC Information Sharing and Confidentiality for Practitioners – Things to know and issues to consider](#)

The ADCS Asylum Task Forces has worked with the Home Office to provide a set of jointly agreed 'good practice documents'.

<http://adcs.org.uk/safeguarding/article/age-assessment-information-sharing-for-unaccompanied-asylum-seeking-childre>