

# **Information sharing protocols in Safeguarding Adults activities**

## **General principles**

Professionals can only work together to safeguard vulnerable adults from abuse if they are able to share relevant information.

Information should only be disclosed on a “need to know” basis when it is in the best interests of the vulnerable person or other vulnerable adults who may be at risk of being abused. Article 8 of the European Convention on Human Rights gives everyone the right to respect for private family life, home and correspondence. Authorities can only interfere with this if they are working within the law, are pursuing a legitimate aim (including protecting the health and rights of others) and the action taken is no more than is needed to achieve the legitimate aim of protection.

If the alleged abuse constitutes a crime then the police should be consulted before any information is shared so that evidence is protected and the risk to the vulnerable person minimised.

## **Consent**

Wherever possible informed consent to share information should be obtained from the vulnerable person

However there may be situations where

- consent is withheld or
- the person is unable to give informed consent

Information may still be shared between professionals if consent is withheld

if the team manager responsible for coordinating believes that there is a high risk of serious harm to the vulnerable person or that consent was withheld under duress or that other vulnerable adults or children are at risk. Absolute assurances of confidentiality cannot be given, especially where other vulnerable people may be at risk. If consent is withheld and the risk of harm is assessed as low at that time the team manager should consider what can be offered to the vulnerable person to enable them to get help in the future.

If the person is unable to give informed consent and information needs to be shared in order to prevent or protect them from abuse then the principle of “need to know” must be observed.

## **Sharing**

Information belongs to the adult to which it refers. Wherever possible the vulnerable person should be told what information is being shared, with whom and why. The person may refuse to allow information to be shared with certain others, eg relatives. This should be respected. It may be necessary to offer the vulnerable person counselling and support to enable them to tell their relatives.

An adult can request to see information held upon them under the Data Protection Act. They may be provided with information regarding themselves only – all other information will be removed.

The strategy discussion should be the forum in which to consider if, how and when relatives, service providers and other interested parties should be informed of the allegations or decisions taken on how to investigate them.

Confidentiality within meetings can be promoted by use of the proforma attendance sheet for a strategy meeting which confirms the confidential status of information discussed and contains a statement which commits attendees to the protocols on information sharing.

Should service users or their relatives/advocates/friends be attending a meeting third party information cannot be discussed in their presence and they will have to withdraw for that part of the meeting.

## **Recording**

Any decision about for sharing information needs to be recorded, making the rationale for sharing or not sharing clear.

Good information sharing is based on good information keeping. Compliance with the Data Protection Act 1998 means that records must be:

- Accurate
- Relevant
- Kept up to date
- Kept no longer than necessary for their purpose, all records relating to allegations of abuse are kept for 6 years after the date of the last entry.

Minutes of meetings need to be checked by the chair of the meeting before distribution to ensure that they meet the criteria above.

Records received by email should be transferred to a secure system.

In Adult Care PARIS should be used as the preferred recording system for all safeguarding adults activity. Should you have any cause to believe that records are not secure get advice from your service manager as soon as possible.

## **Frequently asked questions:**

## Q1 What are the legal restrictions?

In all cases the main restrictions on disclosure of information are

- 1 the common law duty of confidence
- 2 Human Rights Act 1998
- 3 Data Protection Act 1998

## Q2 What is the common law duty of confidence?

The circumstances in which a common law duty of confidence arises have been built up in case law over time. The duty arises where a person shares information with another in circumstances where it is reasonable to expect that the information will be kept confidential, for example where there is a special relationship between the parties such as patient/doctor, service user/social worker.

The duty is not absolute. Disclosure can be justified if

- The information is not confidential in nature
- The person to whom the duty is owed has expressly or implicitly authorised the disclosure ( **CONSENTED** ) , where they are assessed as having the capacity to do so in the circumstance
- There is an overriding public interest in disclosure
- Disclosure is required by a court order or other legal obligation

The information relates to

- serious crime
- danger to a person
- danger to other people
- danger to the community
- serious threat to others including staff

- serious infringement of the law
- risk to health of the person

### **Q 3 What is meant by consent?**

Consent must be “informed” – the person giving consent needs to understand why information needs to be shared. Who will see their information, the purpose to which it will be put and the implications of sharing that information. An assessment of a vulnerable adults capacity to understand why information needs to be shared may say that they do not have the “capacity” to understand or make decisions about information sharing. They cannot therefore give “informed” consent.

Consent can be implicit or explicit. Obtaining explicit consent is good practice, this can be given orally or in writing. Written, or signed consent, is most valid

### **Q4 What is best practice in obtaining consent?**

The process should be respectful and transparent. Be very clear why you wish to share information and who you will share it with. Talk through the implications of this for the vulnerable person, what effect would sharing the information, or not sharing the information, have.

Enable the vulnerable person to identify any particular issues they do not wish to share or agencies they do not wish to share with.

If circumstances change and an agency not identified to the vulnerable person needs to know information then renewed consent should be sought.

### **Q5 When should I not try to obtain consent to share information?**

Do not try to obtain consent when doing so would:

place the vulnerable person at increased risk of significant/serious harm

place a third party at risk of harm

prejudice the prevention or detection of a serious crime

### **Q6 Will I breach the Human Rights Act if I share information?**

Article 8 of the European Convention on Human Rights recognises the right to respect for private and family life. However this is not an absolute right.

Disclosing confidential information which may disrupt a

Person's private and family life can be justified by article 8(2) if it is necessary to prevent crime or protect the health and welfare of a vulnerable adult.

### **Q7 Will I breach the Data Protection Act if I share information?**

The Data Protection Act requires compliance with data protection principles when considering sharing information. However these do not present an obstacle to sharing information if

- you have particular concerns about the welfare of a vulnerable adult
- you share information with ACC or another professional **and**
- the disclosure is justified under the common law duty of confidence ( see above)

### **Q8 What is the difference between sensitive and non sensitive information and how I might share this?**

The Data Protection Act 1998 defines "sensitive personal information" as information about a person's

- physical or mental health or condition
- racial or ethnic origins
- political opinions
- trade union membership
- religious beliefs
- sexual life
- criminal offences.

All other information is defined as non sensitive.

If you have consent all information can be shared. However if you do not there are different rules for sharing sensitive and non sensitive information:

When can I share personal information that is **not sensitive** without the consent of the person it is about? **One** of the following conditions must be met

- the person to whom the data relates consents
- disclosure is necessary to comply with a legal obligation
- disclosure is necessary to protect the person's 'vital interests' (this generally applies to life and death situations and serious and immediate concerns for someone's safety).
- it is necessary in order to perform a statutory function given to your organisation under an act of parliament.
- it is necessary to perform a public function undertaken in the public interest.
- it is necessary to prevent or help detect a crime.
- it is necessary for the legitimate interests of the person sharing the information, unless to do so would conflict with the rights, freedoms, and legitimate interests of the person the information is about.

If the information you need to share is **sensitive**, you need to be sure that **one of the conditions above must be met and also one** of the following apply:

- the data subject has explicitly consented to disclosure
- it is necessary to establish, exercise or defend legal rights. This includes rights under the Human Rights Act 1998.
- it is necessary to protect someone's vital interests and the person to whom the information relates cannot consent (e.g. because of a lack of capacity to make a decision), is unreasonably withholding consent, or consent cannot reasonably be expected to be obtained. 'Vital interests' generally applies to life and death situations and serious and immediate concerns for someone's safety.
- it is necessary to perform a statutory function given to your organisation under an act of parliament.
- it is in the substantial public interest (this would include, for instance, allegations about a care home where other residents may be at risk of harm) and necessary to prevent or detect an unlawful act and obtaining consent would prejudice those purposes.

Sharing information that is sensitive or not sensitive can this usually be easily justified if it is for the purposes of protecting a vulnerable adult from significant or serious harm.

### **Q9 What is meant by significant harm? What is meant by serious harm?**

The Law Commission (1995) defines significant harm as harm to a vulnerable persons' emotional or physical well being or to the development of a vulnerable adult who is cognitively impaired.

Serious harm to a vulnerable adult may involve extreme physical violence or refer to the cumulative effect of repeated abuse or threatening behaviour. This would refer to serious harm to a persons mental or physical well being.

### **Q10 Do I have to tell the vulnerable person that I have shared information about them without their consent?**

It is best practice to do so – research has shown that even when this is difficult it does increase trust and openness in relationships and enables the vulnerable person to have a sense of control over what is happening.

However you may not do so if this would

place the vulnerable person at increased risk of significant/serious harm

place a third party at risk of harm

prejudice the prevention or detection of a serious crime

### **Q11 What is best practice in sharing information?**

Only share on a need to know basis. Only share enough information to achieve the necessary outcome. This is known as the principle of **PROPORTIONALITY**. 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 protect the health and well being of a vulnerable adult.

If you are sharing fact and opinion make it clear which is which.

Ensure that you give the information to the right person and that they understand the confidential nature of the information and what to do with it.

Do record who you have given the information to.

If you are sending the information in writing mark “private and confidential- for addressee only” and send by recorded delivery. Ask the recipient to acknowledge receipt via phone/email/writing.

If you are asked for information over the phone always check the persons name, job title, department and organisation. Clarify why they want the information. Phone the main switchboard if you need to check they do work for the organisation they claim to.

Never discuss or share information in a public place.

**Q12 What is the difference between sharing information with someone in my own agency and sharing with someone in another organisation?**

The principles of good practice are the same. However there is often an assumption of implied consent to sharing information within the same organisation. The vulnerable adults understanding of what is shared within an organisation needs to be discussed, not only at the beginning of a contact with them but from time to time in the time they are known to an agency.

**Q13 What if sharing information puts a staff member or third party at risk?**

The necessity of sharing the information should be carefully thought about and discussed within a strategy meeting or discussion. If the information must be shared the third party must be made aware of this and a risk assessment undertaken and risk management plan put in place immediately.

## **Legislation and Guidance on Sharing Information:**

**No Secrets** DH 2000 (National Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults.

**The Bichard Enquiry (2004/5)** comments on the need for key agencies to share information in the interest of protecting vulnerable people.

**The Caldicott Report** (Caldicott Committee Report on the Review of Patient-identifiable Information) is clear that confidential information may need to be disclosed in the best interests of the person, and discusses in what circumstances this may be appropriate, and what safeguards need to be observed.

**The Data Protection Act 1998** is an important piece of legislation in the context of confidential information. It gives individuals the right of access to information held about them. It protects against the unnecessary sharing of identifiable information. It does not decree that we cannot share information to provide an effective service, and to protect a person from abuse. It gives guidance on developing information-sharing protocols

**The Freedom of Information Act 2000** provides a general right of access to information held by public authorities or by those providing services for public authorities. It extended the rights given in the Data Protection Act for individuals to access information about themselves, to allow access to all the types of information we hold, whether personal or non-personal, paper or electronic unless it is exempt.

**The Human Rights Act 1998 and the European Convention of Human Rights**

Article 8 protects an individual's right to respect for his (sic) private and family life, his home and his correspondence. However Article 8 also says that the right to a private life can be legitimately interfered with when it is in accordance with the law and is necessary for the prevention of crime and disorder, public safety, protection of health or morals or the protection of rights and freedoms of others.

**Public Interest Disclosure Act 1998** – came into force on 2<sup>nd</sup> July 1999 and encourages people to report concerns about malpractice in the workplace. It provides some protection for people at work who raise genuine concerns about issues such as criminal activities, negligence, breach of contract, miscarriage of justice, danger to health and safety or the environment. Reporting abuse of a vulnerable adult to an employer or other responsible person will be a protected disclosure within the meaning of the Act.

### **National Health Service Act 1977**

Section 2 provides for sharing information with other NHS professionals and practitioners from other agencies carrying out health service functions that would otherwise be carried out by the NHS

### **Health Act 1999**

Section 27 states that NHS bodies and local authorities shall co-operate with one another (this allows for practitioners to share information) in order to secure the health and welfare of people.

**The Safeguarding Vulnerable groups act (2008) amended by the Protection of Freedoms Act 2012**, imposes a legal duty upon any person who is a provider of activities classed as “restricted activity” to a vulnerable person to refer a worker to the independent safeguarding authority in

circumstances where the worker has been dismissed ( or would have been dismissed had he/she not retired or resigned) suspended or transferred to a non care position on the grounds of gross misconduct ( whether or not in the course of employment) which harmed or placed at risk of harm a vulnerable adult.

The duty also arises where information comes to light later e.g. after a worker has resigned, retired or transferred to a non care position and the provider would have dismissed the worker or considered dismissing the worker on such grounds.

Other parties, i.e police and local authorities, also have a duty to refer.

### **Criminal Justice Act 2003**

- Section 325 of the Act details the arrangements for assessing risks posed by different offenders. In Bristol this function is performed under the MAPPA process. Co operation, including the exchange of information, is expected from all statutory authorities and registered “social landlords” who provide or manage residential accommodation.

### **Care Quality Commission – Safeguarding Protocol 2013**

- Details information sharing agreements between CQC and local authorities