

Case Studies

Overriding Confidentiality

Scenario

Mandy is a 15-year-old girl who has been preoccupied and distracted at school for the past couple of weeks. Mandy tells a teaching assistant (TA) that her father did not come home last night and she is worried that her parents might split up – they have been shouting at each other and her dad has been threatening to leave home for several weeks.

The TA is particularly concerned about Mandy because she is aware that Mandy has a history of self-harming in situations of anxiety or distress. This self-harm has taken the form of cutting herself with sharp knives or glass. The TA suggests to Mandy that she should talk to the school nurse or counsellor, but Mandy does not want to, and is adamant that she does not want her parents or any other school staff to be informed.

The TA does not have any evidence to suggest that Mandy is currently self-harming, but has a 'gut feeling' that she might start doing so in the near future. She wants to prevent escalation of emotional distress and possible return of self-harming behaviour, but Mandy has asked the TA not to tell any other school staff about her situation.

The TA does not feel comfortable with keeping this information to herself and wants to share her concerns with her line manager. She has looked at the information sharing guidance and is not sure whether she has enough grounds to share her concerns with any other staff and wonders if she is just worrying unnecessarily.

Action to be taken

The TA is right to be concerned about Mandy and should talk to her line manager or child protection officer about this. Even though Mandy has spoken to the TA in confidence, the TA is permitted to breach or override this confidence by talking to someone else if she has evidence, or has reasonable cause, to believe that Mandy is, or is at risk of, suffering serious harm or if the disclosure is necessary to prevent Mandy from suffering serious harm.

The teaching assistant and her line manager or child protection officer must document the reasons for overriding Mandy's confidence.

If the line manager or child protection officer feel a further disclosure to someone else is needed to protect Mandy from suffering serious harm, then they must consider providing that information on a need-to-know basis and make sure only the need-to-know facts are given. For example, it may only be necessary for the line manager or child protection officer to ask other teachers to discretely monitor Mandy's behaviour, rather than tell them everything about her parents splitting up and her feelings about this.

Vital interest

Scenario

A head teacher is concerned about one of her pupils, eight year old Tom Jones. Tom's teacher has told the head teacher that he has noticed a significant change in behaviour from Tom, who used to be confident and outgoing but is now withdrawn and often emotionally distressed. This emotional distress ranges from crying in the toilets to fighting with other children in the playground, both of which are out of character.

The school has a police community support officer (PCSO) who maintains regular contact with the village primary school and engages frequently with the head teacher. The head teacher is concerned about Tom's welfare so decides that it is in the vital interests of Tom to tell the PCSO about this. She gives the PCSO Tom's full name, address and date of birth and his mum's full name.

The PCSO makes some enquires in to Tom's family circumstances and returns to the police station to speak with the neighbourhood beat manager (NBM) for the village. They conduct a search on the police computer system using the personal details that the head teacher gave them but can't find any information held about the boy or his mum.

The NBM refers the matter to the youth intervention officer, who knows Tom's mum because she recently helped out at the school Community Engagement Day. At this stage the officer is not aware of any concerns in the family.

Later that same day the youth intervention officer is walking through the village when he sees Tom's mum walking down the High Street. She is with a man who he immediately recognises as William Smith. Mr Smith has a criminal record for Possession of Indecent Photographs of Children.

Further police enquiries reveal that Mr Smith has been seen with Tom's mum (Ms Jones), and has been seen leaving her house on a regular basis. It is believed that they have formed a relationship, but up until now it was not known that Ms. Jones had a child.

Action to be taken

The youth intervention officer returns to the police station and submits this intelligence, creating a record of association and submits a Police Referral (121a) for Tom. This 121a forms the basis of a referral to the Child Abuse Investigation Unit.

The child abuse investigator makes contact with social care staff in Children and Young People's Services and has a strategy discussion by telephone, during which the police information is shared and an agreed course of action is determined.

A letter is sent to William Smith requesting a meeting with him and Ms Jones later that week in order for the police and social care staff to assess the risk that he poses to Tom.

Mr Smith has ample time to disclose his previous conviction to Ms Jones ahead of this meeting, if he has not done so already.

In the interim the police make contact with the Probation Service to get William Smith's Pre-Sentence Reports so that they can establish what work is being done with him on his offender programme.

Outcome

At the meeting the social worker will ask Mr Smith to tell Ms Jones about his convictions. If he refuses the social worker will tell Ms Jones herself, without his consent.

Children and Young People's Services will complete a Core Assessment for Tom and if the risk is acceptable and managed, the case can be closed. If on the other hand, Ms Jones is not prepared to co-operate it is likely that an initial Child Protection Conference will be convened.

Proportionality - sharing information with others

Scenario

A family moved to a small rural village, they were not registered with a General Practitioner (GP) and were unknown to the Health Visiting Team. The eldest child of the family attended the local village school and the youngest child was at the local playgroup. The playgroup had concerns about the youngest child because they felt he was withdrawn, had poor speech and was a little unclean. The playgroup contacted the health visitor (HV) linked to the local GP practice and she tracked down the family's medical notes. The health visitor then arranges a 'removal in' home visit with the mother.

During the home visit, the mother shares information with the HV about domestic violence with her estranged husband. The mother tells the HV about a recent incident where her husband had lost his temper and threatened suicide with a knife and threatened to take the lives of the children. The mother describes how she ran from the room and locked herself and the children in the bedroom before calling the police. The mother tells the HV that they have moved to get away from her estranged husband, but fear that he knows where they live and have reason to believe he could turn up at any time. The mother and HV establish a good relationship and agree that the HV can talk to the playgroup leader and the school nurse at the school attended by the older child about the **general issues**. The HV makes a note in the records that the mother has agreed that she can share the information.

When the HV receives the police report about the suicide incident, it has been graded as significant. There is also further information in the report regarding the day after the suicide threat. On that day, the father had taken the youngest child out for the day but had told no one where they were going. There was a panic about whether the father had abducted the child; again the police were involved.

Action taken

The HV does a risk assessment of the situation and decides to share all the information she has with the playgroup leader, the school and social care services.

Outcome

The mother rings the HV to ask what she has said to the playgroup, she says that she is now being treated differently in the village and by the playgroup staff. The mother wants to know exactly what the HV told the playgroup – whether she told them everything or just an outline of the general issues, as they had agreed. The HV tells the mother that she disclosed all the information she had, including the threatened suicide, because she felt that the children were at risk of suffering serious harm from their father. She explains that she came to her decision because of the possibility of the husband turning up at any time and the contents of the police report.

The HV says she felt that the information she disclosed was a **proportionate** response to the need to protect the vital interests of the two children and in deciding this she weighed up the consequences of not disclosing the information against the consequences of disclosing it.

The mother accepts this, but is not happy that all of the staff in the playgroup know everything about the situation, especially as they all live in the same village as her.

Lesson to learn

The playgroup leader should have thought more carefully about disclosing everything to his staff. He should have thought about the sensitivity of the situation and the fact that the mother and children live in the same small village. A more appropriate, and perhaps a more proportionate disclosure, could have been only to tell his staff to keep a more watchful eye on the youngest child when she is in the playgroup and to report any unknown people talking to her. He could also have explained that only the mother would collect the child from the playgroup.

Concerns about significant harm

Scenario

The police are called by a neighbour who is concerned that there is a fight going on next door; she can hear a woman screaming and the children crying. Police officers visit and find the woman with some minor facial injuries, but she is not very willing to talk to them. She says her partner was drunk and has now left the house. She does not expect him to return and she doesn't want any fuss because it will make things worse if he does come back.

Officers ask for permission to look at and speak to the children. They appear to be well-fed and clean but one of them has significant bruising on his arms and legs.

Officers have concerns about the children's welfare and suspect that they may be at risk of suffering significant harm, although at this stage it is not clear to what extent.

Action to be taken

The police officers should tell the mother that they want to contact Children and Young People's Services social care staff and possibly other agencies, because of their concerns about the children and ask for her permission to share this information with those agencies. This will satisfy the 'fair' and 'lawful' principle of the Data Protection Act. If the mother does not consent to the information sharing, the police officers must consider the children's welfare and decide whether the mother's refusal of consent should be overridden.

Likely outcome

If a referral is made to Children and Young People's Services an assessment and possible Section 47 Enquiry (*Children's Act 1989*) would be held. A Section 47 Enquiry is held when a local authority is informed that a child who lives, or is found, in their area is the subject of an emergency protection order or is in police protection or there is reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm.

Another outcome involving the other agencies may be that a practitioner does some work with the mother and helps the family embark on a change process, accessing other support services in the community.

It is now acknowledged that even if children do not suffer physical abuse as a result of getting caught up in domestic violence, but just hear or witness it, they are still likely to be harmed by it.

If information is not shared and appropriate action taken to safeguard and support these children they are likely to suffer emotional and, possibly significant, physical harm.

Legitimate and lawful purpose

Scenario

A year head has been contacted by the Youth Offending Service which is asking for information about a pupil.

The information relates to the pupil's attendance, academic ability, details of any disciplinary action taken by the school and any other issues causing concern.

The year head is told that the information is needed for a Pre-Sentence Report that the Youth Offending Service is preparing on the pupil for the local Youth Court.

Action to be taken

The information that has been requested can be given without the consent of the pupil or the pupil's parents.

There is a legitimate and lawful purpose for the school to share the information because the information is required for a court report. There may not necessarily be any requirement or legal power for the Youth Offending Service to inform the school of the outcome at court.

Outcome

The information will be included in the Pre-Sentence Report and will form a crucial part of the Youth Offending Service worker's assessment of the pupil and inform the sentencing recommendation.

The information will also inform the planning of work to be done by the Youth Offending Service with regard to any issues raised by the year head.

Gillick competence - underage sex

Scenario

Natasha attends the local Genito-Urinary Clinic with her friend Trina because she has symptoms of a sexually transmitted infection (STI). She doesn't want to go to her family general practitioner (GP). Natasha says that she is 14 years old but the health worker (HW) thinks that she looks younger. Natasha tells the HW she has been having a sexual relationship with her boyfriend for about three months but refuses to give any information about him. She says she is very happy with the relationship and does not feel coerced into doing anything against her will. She has not told her boyfriend that she has come to the clinic because she wants to find out if there is a problem first and she doesn't want her parents to know.

The worker is unable to persuade Natasha to involve her parents and following the criteria, and a guideline outlined by Lord Fraser in 1985, decides on balance that Natasha is capable of giving consent to treatment. The tests show Natasha has an STI, the HW encourages her to tell her boyfriend because he will need treatment too which Natasha agrees to do. The HW also offers advice about sexual health and contraception.

Some months later Natasha returns to the clinic with further symptoms, the health worker notices that her physical appearance has deteriorated; she appears to have lost weight and she has some faded bruises around the left side of her face. On examination Natasha is found to be pregnant as well as having a different STI than before. Natasha still refuses to have her parents involved and says she wants a termination of her pregnancy. The health worker comments on her bruises and Natasha becomes agitated saying that she wants to leave the clinic and will come back later for treatment.

The health worker persuades her to stay and learns that Natasha is upset because she has discovered that her boyfriend has other girlfriends, he has been seen in his car with girls from his workplace, and has tried to persuade her to have group sex with his friends. When asked about the bruises, Natasha says she walked in to a door and bruised her face. The health worker concludes that Natasha's boyfriend is probably a lot older than her, if he is working and driving, and is possibly also trying to coerce her in to sexual activity that she is unhappy about and may have been violent towards her.

The health worker arranges to see Natasha for a further appointment in a few days time to try and persuade her to involve her parents or another trusted adult in the situation. The health worker also wants to discuss the situation with the child protection nurse and check with other agencies as she suspects Natasha may have given her false information about her age and address.

Action to be taken

When Natasha returns to the clinic and cannot be persuaded to involve her parents or another adult, the health worker and the child protection nurse have to make a judgment about reporting their concerns to Children and Young People's Services social care staff and the police. They must weigh up Natasha's right to privacy against the degree of current or likely harm, what any information shared is intended to achieve and what the potential benefits are to Natasha's welfare.

The health worker and child protection nurse decide that they must make a referral to social care staff and the police as they are concerned that Natasha is at risk of significant harm. They are also concerned that her boyfriend may be violent and could be committing an offence in having a sexual relationship with a young person.

In this case, the practitioners involved would need to take account of **considerations listed in chapter 5 of Working Together to Safeguard Children** in the section 'allegations of harm arising from underage sexual activity' when assessing the extent to which Natasha, or other children who may be being abused by her boyfriend, may be suffering, or at risk of suffering, significant harm.



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