

Information Sharing Protocol

Practitioners' Guide

Foreword

We need to make sure that we keep children and young people in Devon safe. This means making sure they get the support they need when they need it; we all share this responsibility.

Sometimes this will mean sharing information between agencies and practitioners. So it is vital that we all clearly understand when information can be shared, when it would be inappropriate to share and how we share information properly.

The Data Protection Act is not a barrier to sharing information, but it does require personal information to be shared appropriately.

I hope this guide will be a useful tool - helping us all to do a better job of serving Devon's children and young people, and promoting their wellbeing.

Anne Whiteley

Executive Director of Children and Young People's Services
Devon County Council

Purpose

This guide is for use by anyone working with children, young people and families. This includes staff working in health, education, the youth advisory service, early years and child care, social care, youth offending and the police. This guide supports the Devon Children's Trust Information Sharing Protocol which is the overarching protocol for sharing information about children and young people in Devon.

All disclosures and requests for children's information must be done in accordance with the Protocol and this Practitioners' Guide. All decisions made and services provided must have regard for the children and young people's ethnicity, culture, religion, gender and any disability. In future, any local agreements made for sharing children and young people's information should be developed within the framework established by the Protocol, and be consistent with its principles.

Find more information on sharing children and young people's information at www.devonchildrenstrust.org.uk/iwt

The **Every Child Matters** agenda recommends better information sharing at an earlier stage between agencies.

The aim of this guidance is to improve practice by giving you clear guidance on when and how you can share information legally and professionally.

The term practitioner used in this guidance is the title given to anyone and everyone working with children and young people.

This document provides:

- key principles for you to consider when sharing information about children and young people
- practical guidance on information sharing
- information to help you in the decision making process
- a framework for integrated practice to meet the challenges outlined in the Devon Children and Young People's Plan
- guidance for implementing the information sharing aspects of integrated working.

Sharing information is vital for early intervention, and ensures that children and young people with additional needs get the services they need.

It is also essential to protect children and young people from suffering harm from abuse or neglect, and to prevent them from offending.

Every Child Matters created five key outcomes for children and young people.

1. Stay fit and healthy in mind and body.
2. Stay safe from harm and be protected from abuse and neglect.
3. Enjoy learning, aim for excellence and achieve to the best of their ability.
4. Be valued as members of the community who contribute positively.
5. Find a good job and provide for themselves.

In this broader context it is important that you understand when, why and how to share information so that you can do it confidently and appropriately as part of your day-to-day practice.

This document seeks to give you clear practical guidance when deciding whether or not to share information about children.

Key principles

- 1. Be open and honest** at the outset and explain to children, young people and families how their personal information will be used and who it may be shared with.
- 2. Seek agreement from children, young people and their families** to use or share their information, unless doing so would put that child, young person or others at increased risk of significant harm or an adult at risk of serious harm, or if it would prejudice the prevention or detection of a serious crime or the prosecution of an offender.
- 3. Consider the safety and welfare of a child or young person** when making decisions about whether to share information about them. Where there is concern that the child may be suffering, or is at risk of suffering, significant harm the child's safety and welfare must be the overriding consideration.
- 4.** Where possible, **respect the wishes of children, young people and families** who do not consent to share confidential information. However, you may still share information if, in your judgement on the facts of the case, there is sufficient need to override that lack of consent.
- 5.** If you're in any doubt about sharing personal information **get advice from an appropriate person.**
- 6. Make sure the information you share is accurate and up to date,** necessary for the purpose you are sharing it for, shared only with the people who need to see it and shared securely.
- 7.** You must always **record the reasons for your decision** – whether it is to share personal information or not.

1. Why information sharing is important

Sharing information is essential to enable early intervention to help children, young people and families who need additional services. This will help achieve positive outcomes and will reduce inequalities between disadvantaged children and others.

“No inquiry into a child’s death or serious injury has ever questioned why information was shared. It has always been the opposite”.

Georgina Nunny,
Solicitor, Lewisham in Making it Happen

Information sharing is also vital for safeguarding and promoting the welfare of children and young people. Key factors in serious case reviews have been:

- failure to record information
- failure to share information
- failure to understand the significance of the information shared
- failure to take appropriate action in relation to known or suspected cases of abuse or neglect.

We know that the importance of information sharing is recognised and that there is much good practice, but many people feel that in some situations they are constrained from sharing information by their uncertainty about when they can do so lawfully. This guide aims to make that clear.

2. Confidentiality

All practitioners (temporary and permanent) working with children and young people are bound by a legal duty to protect confidential information that they may come into contact with during the course of their work.

What does confidential mean?

A duty of confidence arises when one person discloses information to another, such as a patient to a clinician, in circumstances where it is reasonable to expect that the information will be held in confidence.

The duty of confidentiality comes out of the common law duty of confidentiality, professional obligations and staff employment contracts (including those for contractors). This legal duty is not embodied in an Act of Parliament but has been built up from case law where practice has been established by individual judgements.

Sharing confidential information

Confidence is only breached when the sharing of confidential information is not authorised by the person who provided it or by the person it is about. 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.

While in some circumstances it could be assumed that a service user may understand that their information needs to be shared between agencies - such as between health and social care, this may not necessarily be the case. Every effort must be made to ensure that they have a good understanding about how their information will be used and who it may be shared with.

It is your responsibility to ensure that you have explained to a service user how information will be shared in various situations and that they consent to that sharing - unless you have an overriding legal power to share without consent.

The duty of confidentiality can extend to information relating to deceased people and that duty must be upheld. However, access to certain health records can be given to some eligible people under the *Access to Health Records Act 1990*.

Use of interpreters and confidentiality

Where an interpreter is needed, you should discuss the necessity of confidentiality with the interpreter in advance, and then discuss with the service user through the interpreter at the beginning of any meeting.

It is recommended that a regulated interpreter is used to ensure confidentiality is maintained.

Sharing confidential information without consent

If you do not have consent from a living individual to share their confidential information because, for example you can't locate them or if they have refused to give consent, there are occasions when you can still disclose this information lawfully, for example if the disclosure is necessary and can be justified to be in the public interest.

In these cases the question of whether there is a public interest in disclosing the information must be judged by you on the facts of each case.

Overriding a refusal of consent to share confidential information should not be taken lightly. Any decision to override a refusal must be clearly documented stating the reasons why. If you have serious concern about a child or young person you should not necessarily regard a refusal of consent as a barrier stopping you from sharing confidential information.

3. Public interest

The term 'public interest' cannot easily be defined but, in essence, it is something which is in the interests of the community as a whole, a group within a community or even an individual. It should be remembered that public interest is not the same as 'interesting to the public'.

There may be circumstances when you want to share personal information with other agencies when you don't have consent to do so from the person whose information you want to share.

You are permitted to make a disclosure without a person's consent if you strongly believe that the disclosure is in the best interests of society. For example, if the disclosure would assist in preventing crime and disorder, apprehending or prosecuting offenders, or protecting the health and safety of employees and members of the public, or for national defence.

There are also public interests, which in some circumstances may weigh against sharing - such as the public interest in maintaining public confidence in the confidentiality of certain services, perhaps in a situation involving a doctor and their patient.

Whenever you wish to share information in the 'public interest' you must weigh up the public interest in **disclosing** the information against the public interest in **withholding** the information.

4. Vital interests

'Vital interests' is a term which has been used for many years but not many practitioners really understand what it means.

The Information Commissioner's Office has defined vital interests as:

'Matters of life or death or for the prevention of serious harm to the individual.'

There may be occasions when you want to share information about someone to protect their vital interests when you may not have their permission to do so. This may be because:

- you are unable to find them
- they are under the influence of drugs or alcohol
- they have refused to provide consent
- they are unconscious
- they are incapacitated by medication or lack of medication
- they are not physically or mentally capable of giving consent.

If the disclosure you want to make will, in your opinion, protect a child, young person or adult's vital interests then you can lawfully disclose their information to another person or agency.

However, you must ensure that the information provided is adequate for the purpose of the disclosure, relevant to the disclosure and not excessive for that purpose.

There are circumstances when you **must** share limited information for the protection of a person's vital interests:

Vital interests

- Where there is **reasonable cause to believe** that a child, young person or adult may be suffering, or is at risk of suffering, serious harm.
- When there is **evidence** that the child, young person or adult is suffering or is at risk of suffering serious harm.
- To **prevent serious harm or death** of a child, young person or adult.

5. Concerns about significant harm

It is critical that all practitioners working with children and young people are in no doubt that where they have reasonable cause to suspect that a child or young person may be suffering, or may be at risk of suffering, significant harm they must always consider referring their concerns.

While, in general you should seek to discuss any concerns with the family and where possible seek their agreement to making referrals to social care services, this should only be done where discussion and agreement-seeking will not place a child at increased risk of significant harm or lead to interference with any potential investigation. The child's interests must be the overriding consideration in making any such decisions.

Significant harm to children and young people can arise from a number of circumstances – it is not restricted to cases of deliberate abuse or gross neglect. For example, a baby who is failing to thrive for no known reason could be suffering significant harm but equally could have an undiagnosed medical condition.

If the parents refuse consent to further medical investigation or an assessment, then you may still be justified in sharing information for the purposes of helping ensure that the causes of the failure to thrive are correctly identified.

Similarly, serious harm to adults is not restricted to cases of extreme physical violence. For example, the cumulative effect of repeated abuse or threatening behaviour may well constitute a risk of serious harm.

Again, it may be justified to share information without consent to identify children and young people for whom preventative interventions in relation to such behaviour are appropriate.

6. Disclosing third party information

The Data Protection Act defines the term 'third party' as someone **other** than the:

- **data subject** - the person the information is about
- **data controller (DC)** - the organisation which holds and uses the data
- **data processor** - the company processing the data for the DC.

A third party can include a parent, sibling, other family member, friend, neighbour, class mate or informant -such as a person who has contacted your organisation with concerns about a child or their family.

A third party is **not** an employee or agent of the data controller or data processor who is acting in their professional capacity.

Considering whether or not to disclose third party information can be difficult, especially when there is third party information held about lots of people.

Whenever you are asked to provide third party data you should:

- decide whether it is appropriate to get consent from the third party
- if appropriate, ask the third party if they consent to the disclosure of their information
- if consent is withheld, decide whether it is **reasonable** in the circumstances to disclose their information without consent.

When deciding **what is reasonable** you should consider:

- any duty of confidentiality owed to the third party
- any steps taken by your organisation with a view to seeking consent
- whether the third party is capable of giving consent
- any express refusal of consent.

Disclosure of practitioner's comments to data subjects

If a practitioner writes a report about a person they have been involved with for their care, treatment or education, or in any other professional capacity, they are **not** classed as a third party. Therefore you do not need to ask for their **permission** to disclose any reports that they have made to the data subject.

However, you must always **consult** with anyone who has written something significant about an individual **before** you disclose any information they have written or provided. This is in case they have any serious concerns about the effect the disclosure may have on the data subject or someone else.

Consultation is **obligatory** if the information is about someone's physical or mental health or condition. In such cases you must contact the health professional responsible for the clinical care of the data subject.

Access to such information can be withheld if the disclosure would be likely to cause serious harm to the physical or mental health or condition of the data subject. Only a health professional can make this prognosis.

You must also consult with the team or person in your organisation responsible for handling requests for personal data. This is usually a data protection officer, information compliance officer or information governance officer.

Disclosing information about family members and informants to data subjects

Siblings, parents, other family members and informants, such as people who have contacted your organisation with concerns about the child or their family, are third parties. You must be careful about revealing their information to data subjects.

You must apply these two rules.

- Ask the third party if they consent to the disclosure of their information, or
- Decide whether it is reasonable in the circumstances to disclose their information without their consent.

You must be especially careful not to reveal the identity of any informant. The information that they provide will usually be given on the assumption or on the condition that it will remain confidential.

Disclosure of an informant's identity could put that person in danger, resulting in verbal abuse or an assault from other family members who might not agree with their concerns.

Disclosing third party information to organisations

When you hold information about a child or young person, you will often hold information about their family as well. This can create difficulties when you want to share information about the child with other organisations to safeguard their welfare, but are not sure whether you can share information about their parents, siblings and other family members too.

You can disclose information about third parties providing that you have a legitimate and lawful purpose. However, any disclosures you make **must** be adequate for the purpose of the disclosure, relevant to the disclosure and not excessive for the purpose of the disclosure.

7. Disclosure of anonymous (de-personalised) information

The *Devon Children's Trust Information Sharing Protocol* and this guide are primarily concerned with sharing personal data. Practitioners must not share personal data when anonymous or de-personalised data would do.

Anonymous information (information which can in no way identify a person) is **not** subject to the Data Protection Act. Consent from service users is not needed because they cannot be identified from the data.

Disclosure of anonymous information may not be subject to the Data Protection Act but your organisation may have policies and procedures in place for sharing that kind of information. If in doubt, check with your line manager.

8. Unlawful obtaining or disclosure of personal information

All practitioners need to be aware that any personal information they come into contact with must only be used for the purpose of their job.

A criminal offence will be committed if a person knowingly or recklessly, without the permission of the data controller, usually their employer:

- **obtains or discloses personal information**, or
- **obtains the disclosure from another person.**

The offence will not be committed where the person can show that the obtaining or procuring:

- was necessary for the purpose of preventing or detecting crime
- was required or authorised by any enactment, by any rule of law or by the order of a court
- was carried out in the reasonable belief that they had the right in law to obtain or disclose the information or procure the information from another person
- was carried out in the reasonable belief that they would have had the consent of the data controller, if the data controller had known about the obtaining, disclosing or procuring
- in the particular circumstances was justified as being in the public interest.

A person will also be guilty of an offence if they knowingly or recklessly **sell** or **offer to sell personal information** without the data controller's consent.

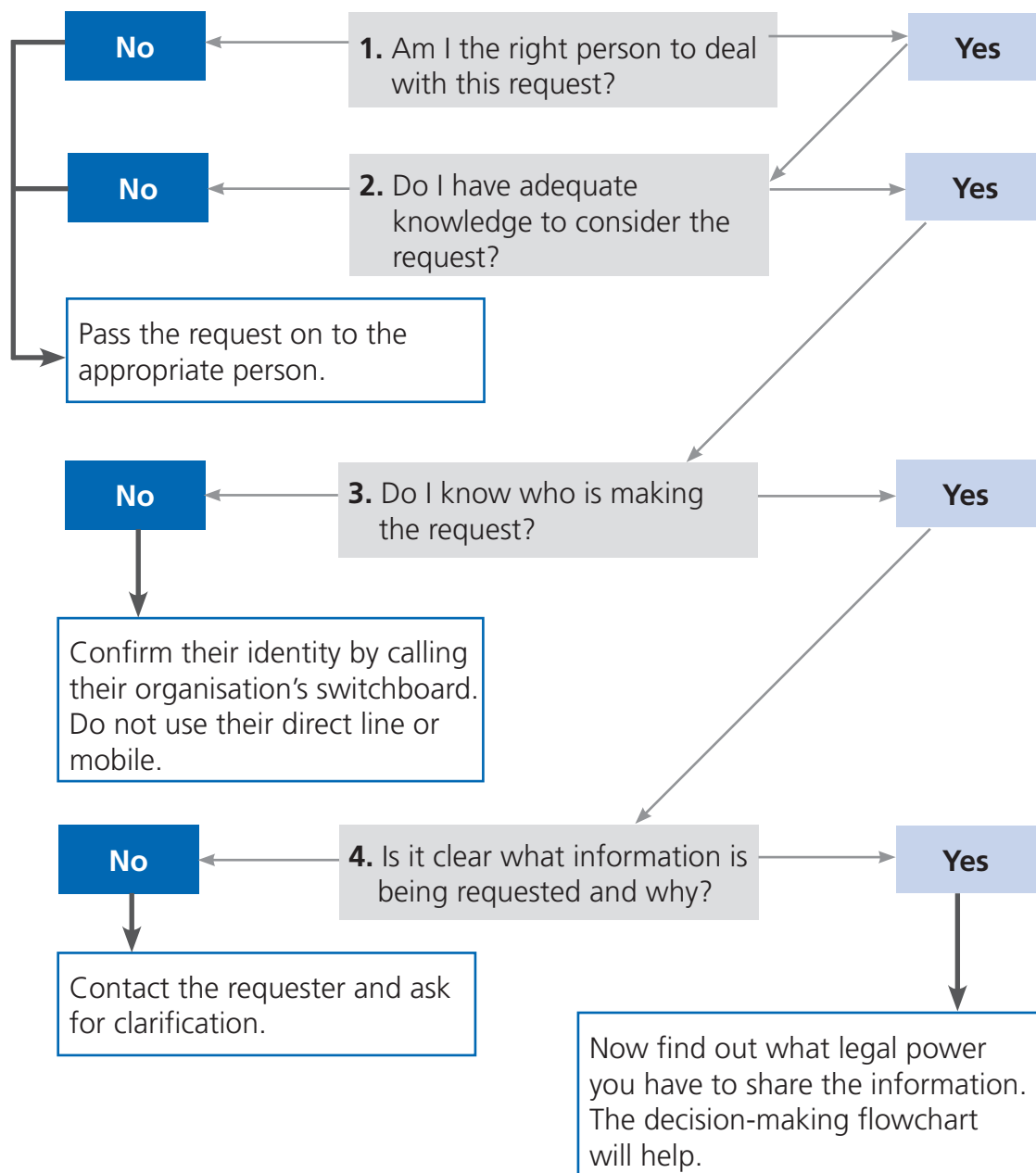
Full details of this offence can be found in Section 55 of the *Data Protection Act 1998*.

Decision-making flowchart

This section will help you in your decision making process when considering whether or not to share personal information. There is a flow chart on page 35 which will also help you in this process.

1. Dealing with a request for information

When you are approached by another organisation in writing or by telephone you must follow the steps in this chart before releasing any information to them.



When you can answer yes to question 4 you need to go on to the next stage in the process and consider the legality of any disclosure.

2. Legitimate and lawful purpose

If you work for a public authority, for example in education, social care, health or youth justice, or if you work in the voluntary sector and are contracted by a public authority to provide services on their behalf, the sharing of information must be within the functions or powers of that agency. It is likely that this will be the case if you are sharing information as a normal part of the job you do for that agency.

Whether you work for a public authority or in a voluntary organisation, any sharing of information must comply with the law relating to confidentiality, data protection and human rights.

Establishing a legitimate purpose for sharing information is an important part of meeting those requirements.

Legitimate and lawful purpose

To establish whether you have a legitimate and lawful purpose for sharing personal information, ask yourself these questions.

- Do I have consent?
- Do I have a contractual duty to share information?
- Is the sharing necessary to comply with a legal obligation?
- Is the sharing in the vital interests of a child, young person or adult - is the sharing necessary for matters of life and death, or for the prevention of serious harm to an individual?
- Is sharing in the public interest (this includes the interest of an individual) or necessary for my organisation or the other organisation to undertake its official duties?
- Do I or the person or agency I want to share the information with have a legitimate purpose for sharing the information and, in my view, the sharing would not cause unwarranted prejudice to the rights and freedoms of the individual?

3. Statutory duty and court orders (disclosures required by law)

In some situations the law requires you to share information.

Some Acts of Parliament impose a statutory duty to share information. If you fail to share information in these cases you would be in breach of statute.

For example, if a person has a specific disease a NHS practitioner may be required under the *Public Health (Infectious Diseases) Regulations 1988* to notify the Health Protection Agency.

In these situations you are obligated to share the information, even if it is confidential and consent has not been obtained, unless any other legislation or court ruling provides authority not to do so.

In other cases a court order may require you to share or disclose information. It is important that you follow the correct procedure when shown a court order as different rules apply depending on the circumstances of the case.

Criminal court orders

Where, in a criminal case, a court orders the disclosure of confidential information about someone who is not the alleged perpetrator - a 'third party' (for example, a victim or a witness) - the court has a duty to consult with that person and give them the opportunity to express their views to the court. As the confidential information belongs to the third party and not the organisation, you do not have a right to disclose it unless you are satisfied that the court has fulfilled its duty to consult. If you get a court order relating to information about a third party in a criminal case, you should speak to your line manager or legal department before disclosing any confidential information.

Civil court orders

The civil courts often issue orders to disclose confidential information in connection with proceedings against organisations, or in legal action between two or more third parties (for example, a clinical negligence case against a hospital trust or contact proceedings between two parents).

- Where a court order for the disclosure of information relates to proceedings against your organisation, you must not disclose the information but pass the order immediately to your legal (or equivalent) department.
- Where the court order relates to legal action between two or more third parties you should inform your line manager and discuss what to do as appropriate. The following is a list of practical steps that organisations should take when ordered by the court to disclose confidential information about a third party:
- Inform the person to which the confidential information relates, as they may be able to make representations to the court.
- State in writing to the court that you have a duty of confidentiality, and the reasons why you have that duty before disclosing. Remember that the court has powers to keep certain evidence private in appropriate circumstances.
- Make sure that you have an original or sealed copy of the order for disclosure and that you read the wording carefully in order to establish your requirement to disclose.
- If you are still required to disclose, disclose only what is necessary and relevant.

In all cases whether under a statutory duty or in accordance with a court order, you must keep your disclosure of information to the minimum necessary and only disclose what is relevant.

Remember that confidential material that does not relate to the court case does not need to be disclosed. Where documents contain information to be disclosed and irrelevant confidential material, the irrelevant confidential information should be removed or blacked out.

Practitioners should follow their own organisations policies and procedures in these circumstances.

4. Requests from solicitors

Solicitors will often request information about their clients. Requests from solicitors are usually classed as Subject Access Requests under the *Data Protection Act 1998*. Solicitors are entitled to this information if they can show they have the consent of their client and, where appropriate, pay the required fee. If you get a request from a firm of solicitors you should forward this to the appropriate person in your organisation. This is usually a data protection officer, information compliance officer or information governance officer.

Sometimes the request is for information that will be used in issuing legal proceedings against your organisation. In such cases contact your legal department or, if this is not possible, contact someone senior to you or the department which deals with complaints for advice.

5. Sharing confidential information

There are different types of confidential relationships - for example, where a formal confidential relationship exists between a doctor and their patient or a social worker and their client.

Sometimes people may not specifically ask you to keep information confidential when they discuss their own problems or pass on information about others, but may assume that the information will be treated as confidential.

If you are not sure if the individual wants the information to remain confidential you should ask them. You should also find out whether there are any limits around the confidentiality and ask under what circumstances they are happy for the information to be shared with others.

Public bodies that hold information of a private or sensitive nature about individuals for the purpose of carrying out their functions, for example social care services, may also owe a duty of confidentiality. This is because people have provided information on the understanding that it will be used for those purposes. In some cases the public body may have a statutory obligation to maintain confidentiality, for example in relation to the case files of Children in Care.

6. Consent

Consent issues can be complex and lack of clarity about them can sometimes lead practitioners to the incorrect assumption that no information can be shared.

What constitutes consent?

Consent must be 'fully informed'. This means that the person giving consent must understand why their information may be shared, who will see their information and any implications that may result from sharing their information.

Consent can be **explicit** or **implicit**. Obtaining explicit consent is good practice and it can be expressed either orally or in writing, although **written consent is preferable because it reduces the scope for later disputes.**

If you do not have an appropriate form for requesting consent for sharing information, you may find the template consent form helpful.

Implicit consent can also be valid in many circumstances. Consent can legitimately be implied if the context is such that information sharing is essential to the activity, especially if that has been explained at the outset. For example, where a GP refers a patient to a hospital specialist and the patient agrees to the referral. In this situation the GP can assume the patient has given implied consent to share information with the hospital specialist.

The approach to securing consent should be transparent and respect the individual. Consent must be freely given and must not be obtained through coercion or inferred from a lack of response to a request for consent.

If there is a significant change in the use of the information, then consent should be sought again for that new use. Individuals have the right to withdraw or refuse consent at any time.

Whose consent should be sought?

- Where a child is **under 12 years old**, consent should be sought from the parent.
- Where a child is **over 12 but under 16 years old** you need to assess whether the child is competent to consent for themselves. If they are assessed as being competent you should seek consent directly from them.
- **Young people over 16** are usually considered to be competent for the purposes of giving consent, therefore you should seek consent from them.

For consent to be valid, the person (child or parent) giving consent must be:

- capable of taking that particular decision - 'competent'
- acting voluntarily - not under pressure or duress from anyone
- provided with enough information to be able to make the decision - 'informed'.

Young people aged 16 or 17 are presumed to be competent to give consent and so are entitled to the same duty of confidentiality as adults.

However, even if a young person is over 16 there may be issues, as with adults, which affect their capacity to consent, for example they may be unconscious or unable to make a decision because of the effects of medication.

It is good practice to encourage competent children to involve their families in decision-making. Where a competent child does ask you to keep their confidence, you must do so and **appropriately record this request**, unless you can justify disclosure on the grounds that you have reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm. You should however **seek to persuade them to involve their family**, unless you believe that it is not in their best interests to do so.

Obtaining consent from children under 16

Children under the age of 16 can give consent if they have sufficient maturity and judgement to enable them to fully understand what is proposed.

Gillick competence

The term **Gillick Competence** arises from the case in which Mrs Gillick sought an injunction to prevent her local health authority prescribing contraception to any of her daughters without her knowledge or consent until they were 16 years old.

The House of Lords ruled that a child under the age of 16 could give valid consent without the knowledge of their parents provided the child had sufficient understanding of the nature, implications and possible consequences of what they are consenting to.

The court held that it is a question of fact whether a child under 16 has sufficient understanding of what is involved to be competent to consent and where a child has sufficient understanding, they are entitled to make an informed decision of their own choice.

This choice applies to information sharing and confidentiality as well as to medical treatment. If a child under 16 has been appropriately informed of the implications and has sufficient understanding to consent to the use of their information for specific purposes, the child's consent must be respected and a duty of confidentiality will be owed to the child.

What is competence?

Gillick competence relates to the competence of a person under the age of 16. Competence is the general term applying to all individuals.

The British Medical Association definition is: 'Competence is understood in terms of the individual's ability to understand the choices and their consequences, including the nature, purpose and possible risks...Clearly, the more serious the nature and scope of the choice being made, a correspondingly better grasp of the implications is required.'

When making a decision about competence, the mental health of the young person should be taken into account, as well as any possible drug or alcohol misuse, as this could have a bearing on their ability to see the consequences and understand the implications of their choices.

However, it is unlikely that a decision about sufficient understanding will arise from an initial or casual encounter; it will normally be made during the course of a substantial one-to-one professional relationship with a young person.

You should still always encourage the child to inform their parents.

This guidance does not override any legal duty relevant to your own agency for involving parents and carers in matters relating to children and young people.

7. Ensuring sufficient understanding

When seeking consent from a child or person with parental responsibility you must make sure that they have sufficient understanding. To do this you should give them:

- honest, clear, objective information about their choices – this information may be multi-layered, allowing them to seek as much detail as they need
- an opportunity to talk to, and ask questions of, someone they can trust
- reasonable time and privacy to reach decisions
- explanations of any forms they may need to sign or processes they need to understand
- a choice as to whether to be contacted in the future about further uses, and how such contact should be made.

The information provided must cover:

- a basic explanation of what information is recorded and why, and what further uses may be made of it
- a description of the benefits that may result from the proposed use or disclosure of the information
- how the information and its future uses will be protected, including how long the information is likely to be kept and under what circumstances it will be destroyed
- any outcomes, implications or risks if consent is withheld - this must be honest, clear, and objective, it must not be, or appear to be, coercive in any way
- an explanation that consent can be withdrawn at any time.

The information provided must allow for disabilities, illiteracy, diverse cultural conditions and language differences.

Unless you can justify disclosure on the grounds that you have reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm, you must respect any request from a competent under 16 year old to keep their information confidential.

If you assess that a child is not competent to consent you should seek consent from a person with parental responsibility, if such a person is available.

8. Parental responsibility

If a child is not competent to give consent for themselves, you must seek consent from a person with parental responsibility. This will often be, but is not always, the child's parent.

Where parental consent is needed, the consent of one person is enough unless an Act of Parliament requires the consent of all people with parental responsibility. In situations where family members are in conflict you will need to carefully consider whose consent should be sought. If the parents are separated, the consent of the resident parent will usually suffice but they should be encouraged to inform and consult the non-resident parent. You should make sure you document any reasons for not informing other people with parental responsibility.

Who has parental responsibility?

- A mother always has parental responsibility.
- The father of the child if married to the mother at the time of, or after, the child's birth.
- An unmarried father can get parental responsibility by:
 - being registered as the child's father if the registration took place after 1 December 2003
 - written agreement with the child's mother, *The Children Act* specifies the procedure for this agreement
 - an order of the Court
 - appointment as a guardian, by the Court or by the mother or other guardian.
- The child's legally appointed guardian - appointed either by a court or by a person with parental responsibility in the event of their death.
- A person in whose favour a court has made a residence order for the child.
- A local authority designated in a care order for the child - but not where the child is being looked after under section 20 of *The Children Act 1989*, also known as being accommodated or in voluntary care.

- A local authority or other authorised person who holds an emergency protection order for the child.

Where parental consent is needed, the consent of one person is enough. If you judge a child or young person to be competent to give consent, then their consent or refusal to consent is the one to consider, even if a parent or carer disagrees.

These issues can raise difficult dilemmas. You must always act in accordance with your professional code of practice and in the best interests of the child, even when that means overriding a refusal of consent.

9. What if you don't have consent or consent is refused?

Getting the views of children, young people and parents is important and is good practice. However, even if consent is refused, that does not automatically stop you from sharing information about a child you have concern for.

If you are in any doubt about whether you can share information without consent, look at the Guidance on Sharing Information section.

10 When should you not seek consent?

There will be cases when sharing limited information without consent is justified to enable you to reach an informed decision about whether further information should be shared or action should be taken.

There are also circumstances when consent must **not** be sought.

Do not seek consent if the disclosure would:

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

This is not an exhaustive list.

In deciding whether to disclose information without consent, you should seek advice from your line manager or a nominated individual whose role is to support you in these circumstances.

If you are working in the NHS or a public authority the information governance officer, data protection officer, Caldicott Guardian or safeguarding welfare team may be helpful. You can also get advice from professional bodies like the General Medical Council or the Nursing and Midwifery Council.

If the concern is about possible abuse or neglect, all organisations working with children and young people will have a person or team responsible for child protection. In this case you should always consult with the appropriate child protection lead in your organisation.

11 Sharing information properly

- only share information which is necessary
- only share information with the person or people who need to know
- check that the information is accurate and up to date
- make sure you share information in a secure way
- establish whether the recipient intends to pass it on to other people and make sure they understand the limits of any consent which has been given
- inform the person the information is about and, if different, any other person who provided the information of the sharing, if it is safe to do so.

12. Recording your decision

You must record your decision and the reasons for it whether or not you decide to disclose information. If the decision is to disclose, you should record what information was disclosed, to whom and why.

A disclosure record template is available in this guidance if you do not already have a disclosure recording system in place.

Disclosure records should be kept on the service user's file.

13. Requesting information in writing or over the phone

When you request personal information from another organisation you must make sure that you provide enough information for the disclosing organisation to:

- identify you as someone authorised to request the information
- satisfy themselves that you or your organisation are legally entitled to receive the information.

14. Taking pictures and video recording service users

If you need to take a picture of someone or record an interview, you must remember that if the individual is identifiable in any way, that image is classed as personal data so you must always ask for their permission (or a person with parental responsibility if they are not considered competent) to do this.

You must never photograph or record someone without their knowledge, unless the police have approved it.

Law relating to information sharing

There is no single source of law that governs or enables information to be shared between different organisations or services.

The existence of a legitimate or lawful purpose is governed by a vast body of legislation that provides public bodies with their powers and purpose to provide certain statutory services. These powers and purposes form the functions of statutory services and public bodies cannot do anything that is outside the powers granted to them by law.

If you work for a public body (for example, education, health, social care or justice), for the information sharing to be lawful, you will need to make sure that the purpose of the information sharing is related to a statutory function of your service, or the service you are sharing with.

This will normally be the case if sharing the information is to enable you to do your day-to-day job, or it is part of the service you are contracted to provide on behalf of a statutory service.

The legislation set out here details a number of provisions that may require or enable information to be shared to deliver statutory functions. For example, section 17 of the *Children Act 1989* requires local authorities to promote the welfare of children in need. This function will require services to share information about the identity of children in need and details of how they are being managed for the local authority to promote welfare through, for example, assessment of needs.

You should be clear on what powers you are relying on to justify the purpose of the information sharing. Once you have established that you have a lawful purpose, you will then need to follow the rest of the information sharing decision-making process.

Children's Act 1989

Section 17 - general duty of local authorities to safeguard and promote the welfare of children within their area who are in need, and so far as is consistent with that duty, to promote the upbringing of such children by their families.

Section 47 - where 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, there is a duty to investigate.

Children's Act 2004

Section 10 - promote co-operation to improve wellbeing.

Section 11 - arrangements to safeguard and promote welfare.

Children (Leaving Care) Act 2000

Section 24C(1) - where it appears to a local authority that a person with whom they are under a duty to keep in touch under section 23B, 23C or 24; or whom they have been advising and befriending under section 24A; or to whom they have been giving assistance under section 24B, proposes to live, or is living, in the area of another local authority, they must inform that other authority.

Section 24C(2) - where a child who is accommodated by a voluntary organisation or in a private children's home, by any Health Authority, Special Health Authority, Primary Care Trust or local education authority or in any care home or independent hospital or any accommodation provided by a National Health Service trust, ceases to be so accommodated, after reaching the age of sixteen, the organisation, authority or (as the case may be) person carrying on the home shall inform the local authority within whose area the child proposes to live.

Crime and Disorder Act 1998

Section 17 - duty of each authority to exercise its functions with due regard to the likely effect of the exercise of those functions, and the need to do all that it reasonably can, to prevent crime and disorder in its area.

Section 115 - any person who apart from this section would not have power to disclose information to a relevant authority or to a person acting on behalf of such an authority, shall have power to do so in any case where the disclosure is necessary or expedient for the purposes of this Act.

Criminal Justice and Courts Services Act 2000

Section 67 - the authority for each area must establish arrangements for the purpose of assessing and managing the risks posed in that area by relevant sexual or violent offenders and other persons who have committed offences who are considered by the authority to be persons who may cause serious harm to the public.

Section 68 - interpretation of who is a relevant sexual or violent offender.

Data Protection Act (DPA) 1998

Section 29(3) - where disclosure is required for the prevention or detection of crime or the apprehension or prosecution of offenders.

Section 34 - where a data controller is obliged by or under any enactment to make personal data available to the public.

Section 35(1) - where the disclosure is required by or under enactment, by any rule of law or by the order of a Court.

Section 35(2) - where the disclosure is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings) or for the purpose of obtaining legal advice or establishing, exercising or defending legal rights.

Education Act 1996

Section 322 - where it appears to a local education authority that any health authority or local authority could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of the authority, specifying the action in question.

Education Act 2002

Section 175 - A local education authority shall make arrangements for ensuring that the functions conferred on them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children.

Health and Social Care Act 2001

Section 60 - gives the Secretary of State for Health powers to authorise use of identifiable information for essential medical purposes without the consent of patients.

Learning and Skills Act 2000

Section 114 - the Secretary of State may provide or secure the provision of services which he thinks will encourage, enable or assist the effective participation by young persons in education or training. In securing the provision of those services the Secretary of State may make arrangements with local authorities and other persons for the provision of services.

Section 120 – for the purpose of the provision of services in pursuance of section 114, any of the persons or bodies mentioned may supply information about a young person (a person who has attained the age of 13 but not the age of 20) to the Secretary of State or to any other person or body involved in the provision of those services.

Those persons and bodies are a local authority, a Health Authority, the Learning and Skills Council for England, a chief officer of Police, a probation committee, a youth offending team and a Primary Care Trust.

Local Government Act 2000

Section 2 – councils have the power to do anything which is considered likely to achieve any one or more of their objectives.

- To promote or improve the economic wellbeing of their area.
- To promote or improve the social wellbeing of their area.
- To promote or improve the environmental wellbeing of their area.

Management of Police information (MOPI)

Code of Practice on the Management of Police Information.

This code was developed under section 39 and 39a of the Police Act 1996 and enacted in November 2005. The code sets out principles governing the management of police information, including procedures governing authorised sharing of information obtained and recorded for policing purposes within the police service, and with other agencies. A full Manual of Guidance on the Management of Police Information supporting the requirements of the code was published in March 2006.

Policing purposes are defined in the code as:

- protecting life and property
 - preserving order
 - preventing the commission of offences
 - bringing offenders to justice
 - any duty or responsibility of the Police arising from common or statute law.
- The code allows the police to disclose police information to the other people or bodies where this is reasonable and lawful to do for the policing purposes as set out in Sub paragraph 2. Any sharing of information must comply with the ACPO Guidance on the Management of Police Information 2006 and any protocol, local or national, which may be agreed with the people or bodies needing to receive the information.
 - Additionally the code of practice sets out obligations on the people or bodies receiving police information which equate to the requirements set out in sections 7, 12, 16, 17, 18, 19 and 20 of this Protocol.

National Health Service Act 1977

Section 22 – in exercising their respective functions health and local authorities shall co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.

Data Protection Act 1998 **Human Rights Act 1998** **Common Law of Confidence**

The signatories shall each take into account and comply with all legal requirements.

In the case of personal data held under a duty of confidence, a disclosure may be made in respect of that personal data, if the public interest demands it or there is another overriding statutory justification which permits the disclosure. For the purposes of public interest, the signatories understand the public interest criteria to include, but not limited to:

- the protection of children from harm as a result of abuse or neglect
- the prevention or detection of crime
- the apprehension of offenders
- order of court, or for taxation or public health issues.

The signatories agree to consider the following points when deciding if the public interest criteria should override any duty of confidentiality:

- is the intended disclosure proportionate to the intended aim?
- how vulnerable are those at risk?
- is there another equally effective means of achieving the same aim?
- is the disclosure necessary to prevent or detect crime and uphold the rights and freedoms of the public?
- is the disclosure necessary to protect other vulnerable people?

The signatories acknowledge that the duty of confidentiality can extend to information relating to deceased individuals and that duty must be upheld. The Access to Health Records Act 1990 gives some eligible people

the right to access Health Records of deceased individuals.

The signatories recognise that Article 8 of the Human Rights Act 1998 states that everyone has the right to respect for his or her private and family life, home and his or her correspondence. There shall be no interference by a public authority with this right except as in accordance with the law and is necessary in a democratic society in the interests of:

- national security
- public safety
- economic wellbeing of the country
- the prevention of crime and disorder
- the protection of health and morals, or
- the protection of the rights or freedoms of others

and shall apply the same when considering and making disclosures.

The signatories will comply with all relevant guidance issued by the Home Office and other government departments pursuant to, or in respect of, the Acts or laws referred to in this Protocol. In the event of any conflict between such guidance and the relevant Act(s) or laws, then the Act(s) or laws will prevail.

This list of Acts and sections is not exhaustive. It is intended to be a point of reference, signatories should read the relevant sections within the Acts themselves if wishing to rely on them, when requesting or disclosing personal information.

Disclosure checklists

This section gives you a flowchart and a selection of checklists that can be used when making disclosures. You may find it useful to print these off and keep them to hand.

Flowchart

Sharing information

Checklist 1

Requesting information

Checklist 2

Obtaining consent

For working outside the CAF process

Checklist 3

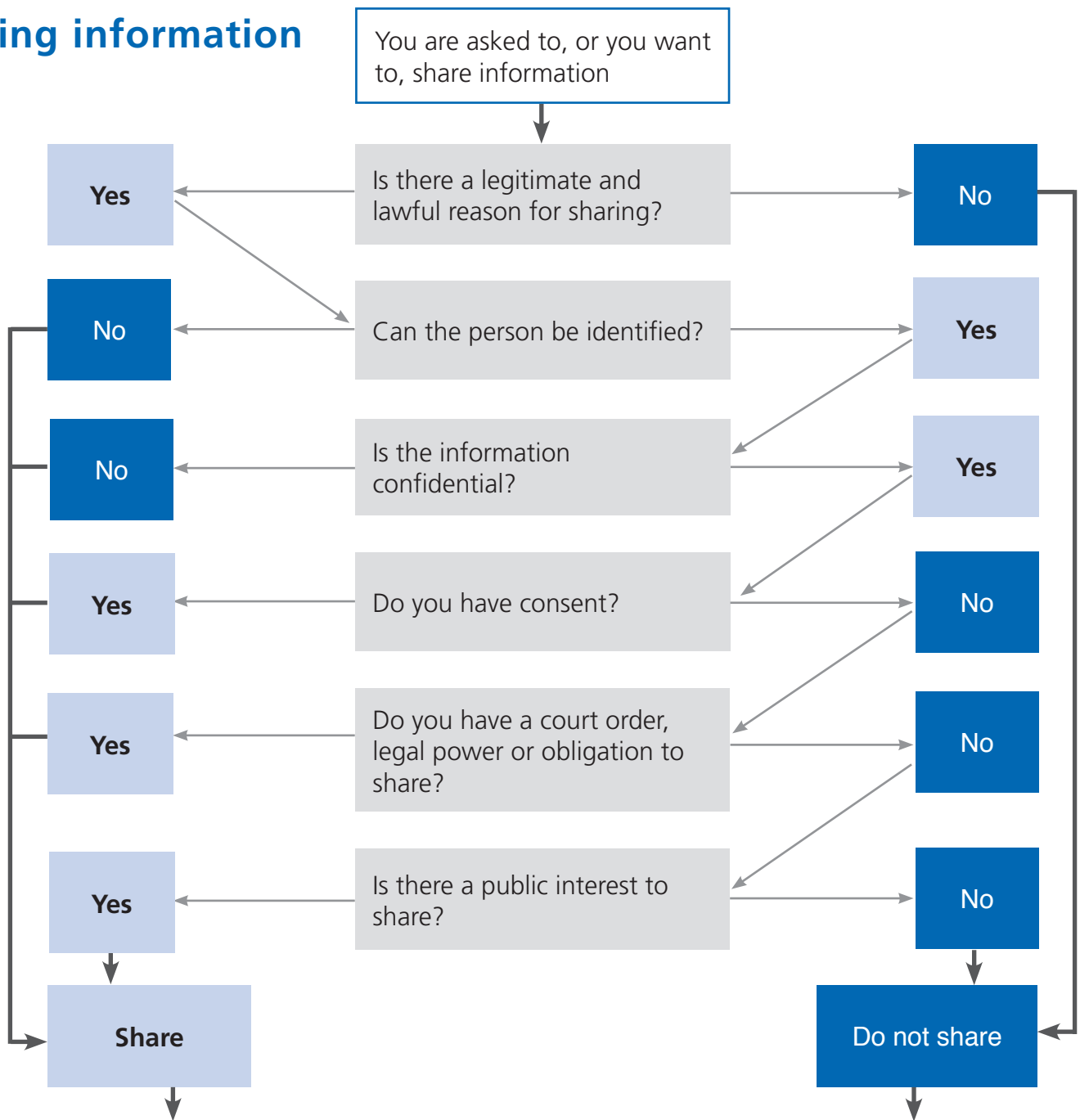
Sufficient understanding

Checklist 4

Sharing information securely

This should be read alongside your own organisation's policies

Sharing information



- Identify how much information to share
- Distinguish fact from opinion
- Give the information to the right person
- Tell the person the information is about of any sharing if it is safe to do so.
- Record your reasons for sharing the information

Record your reasons for not sharing the information.

Seek advice from your manager, supervisor, child protection advisor or Caldicott Guardian if you are not sure what to do at any stage and make sure that the outcome of the discussion is recorded.

Checklist 1

Requesting information

- State your name, job title, department and organisation's name.
- Provide the service user's name, date of birth and address.
- Make it clear what information you are requesting disclosure of.
- Make sure that any information you ask for is adequate for your purpose, relevant and not excessive for that purpose.
- Confirm the legislation or the reason for the request, for example:
 - the information is necessary to prevent or detect crime
 - the information is necessary to apprehend or prosecute an offender
 - the information is required as part of a child protection enquiry
 - the information is necessary to protect the vital interests (matters relating to life and death or prevention of serious harm) of the individual.
- State if you have obtained consent from the individual for the release of their information to you **and** enclose a copy of the written consent.

Checklist 2

Obtaining consent

- Identify who you are and where you work (unless this is obvious).
- Explain to the individual, using language appropriate to them, what you are requesting their consent for.
- Explain what information you would like to share, who you want to share it with and why.
- Explain to the individual what will happen to their information if they give consent and what could happen if they don't or if they want to restrict consent in any way.
- Inform the individual that they may withdraw consent at any time.
- Record whether consent has been given and the date.

Important - you must make sure that the person you are obtaining consent from is fully informed of what they are consenting to and the consequences of any disclosure or non-disclosure. You should always record whether an individual has consented to a disclosure.

Checklist 3

Sufficient understanding

Does the child understand the question they are being asked?

Does the child have a reasonable understanding of:

- what information might be shared?
- the main reasons for sharing the information?
- the implications of sharing the information and of not sharing it?

Can the child or young person:

- appreciate and consider the options that are open to them to agree or disagree to?
- weigh up one side of the decision against the other?
- express their own opinion on the matter and not just repeat what someone else thinks they should do?
- be reasonably consistent in their opinion on the matter and not constantly change their mind?
- fully understand the implications of their decision for themselves and others?

Checklist 4

Sharing information securely

Sharing personal information by fax

Do not fax personal or confidential information unless it is absolutely necessary.

- Mark the cover sheet 'Strictly confidential, intended for the addressee only. In the event of an error please contact the sender immediately'.
- Information should be restricted to the minimum necessary and only items which are essential to the purpose of the disclosure. Information should be anonymous where possible to limit identification of the service user when it is not relevant.
- Telephone the recipient to confirm they are aware a confidential fax is about to be sent, that an identified individual will collect and deliver it and that safe receipt will be confirmed.
- Use pre-installed numbers wherever possible to minimise the risk of misdialling. Double check the fax number before sending.

Sharing personal information verbally

- Take care to make sure that confidentiality is maintained in verbal discussions, especially if you may be overheard by people who do not need to know.
- Make sure you know who you are talking to over the phone and check that the individual is the right person to speak to.
- If you don't recognise the person calling or the telephone number given, ask the caller for their name, job title, department and switchboard number and call them back by asking the switchboard to put you through to them.

Sending personal information by post

- Mark post 'Personal and confidential - to be opened by the addressee only' and clearly state the name and full work address of that person.
- Make sure envelopes and packages are effectively sealed and have the correct postage.
- Inform the designated recipient that the information has been sent and ask them to contact you if the information is not received in the expected timescale.
- Limit the amount of personal information disclosed to those details necessary for the designated recipient to carry out their role.

Sending personal information by email

Do not email confidential information unless it is absolutely necessary and you know that the transmission is secure (encrypted).

- When sending information as an attachment the document should be password protected.

Templates

This section provides you with a series of example templates that may be used when requesting or disclosing information with other organisations in the Children's Trust.

These examples can be used in circumstances where no other documentation exists in your organisation.

Template 1

Disclosure cover sheet

For use when faxing or posting personal data.

Template 2

Confidential disclosure record

Template 3

General consent form

Template 4

Photograph, video or digital recordings consent form

Disclosure cover sheet

Strictly confidential

This information is only for the named person or organisation it is addressed to.

If you have received this information in error please notify us immediately.

Unauthorised disclosure or use of this information may be in breach of legislation or confidentiality.

Sender's name:

Work address:

Telephone number:

Template 2

Confidential disclosure record

Service user's name(s)	Service user's date of birth	Description of data disclosed	Reason for disclosure	Recipient(s) of the data
Disclosing organisation				
Disclosed by				
Authorised by				
Date of disclosure				

A copy of this disclosure record should be kept on the service user's file.

Template 3

General consent form

Consent form: sharing your personal information

Service user's details

Last name:

First name:

Date of birth:

Practitioner responsible for obtaining consent

Name:

Position:

Agency name:

Action by practitioner

I have explained to the service user:

- what personal information we want to share
- why we want to share their information
- who we want to share their information with
- the consequences of sharing the information
- the consequences of not sharing the information
- that their information will be kept secure
- how long their information will be kept for (if known)
- their rights under the **DPA*** to access their personal information
- their right to withdraw or restrict consent
- the complaints procedure.

Tick the boxes when complete.

* Data Protection Act 1998, Section 7.

Please read this form carefully

If you have any concerns discuss them with the practitioner before you sign.

Service user's statement

It has been explained what information the agency would like to share about me, who they want to share the information with and why they want to share it.

I have been made aware of what might happen because of my information being shared and what might happen if I do not allow my information to be shared.

I understand that if I agree to my information being shared I have the right to limit how much is shared or withdraw my agreement at any time.

Declaration

I ***consent/*do not consent** to: (*circle the statement you **agree** with)

sharing my information or my child's information or both on a need to know basis with:

for the purpose(s) of:

Print name: _____

Sign: _____

Date: _____

If the person is unable to sign but has indicated their **consent** by other means, a witness should sign below to confirm consent. Children and young people may also want their parent or person with parental responsibility to sign here.

I confirm that the person named overleaf has indicated their consent for

to share their personal information.

Witness name: _____

Relationship to service user: _____

Sign: _____

Date: _____

A copy of this form must be kept on the service user's file and a copy must be given to the service user.

Template 4

Consent form: photographs, video or digital recordings

Service user's details

Last name:

First name:

Date of birth:

Practitioner responsible for obtaining consent

Name:

Position:

Agency name:

Action by practitioner

I have explained to the service user:

- why we want to photograph or video record them
- what we are going to do with these images
- who we may need to share these images with
- any likely consequences of capturing and sharing their image
- any likely consequences of not capturing and sharing their image
- that their image will be kept securely
- how long their image will be kept for (if known)
- their rights under the **DPA*** to access their personal information
- their right to withdraw or restrict consent
- the complaints procedure.

Tick the boxes when complete.

* Data Protection Act 1998, Section 7.

Please read this form carefully

If you have any concerns discuss them with the practitioner before you sign.

Service user's statement

It has been explained why the agency would like to record my image and who they want to share the recording with.

I have been made aware of what might happen because of the recording being shared and what might happen if I do not agree to that sharing.

I understand that if I agree to my recording being shared I have the right to limit how much is shared or withdraw my agreement at any time.

Declaration

I ***consent/*do not consent** to: (*circle the statement you **agree** with)

recording my image and sharing it with:

for the purpose(s) of:

Print name: _____

Sign: _____ **Date:** _____

If the person is unable to sign but has indicated their **consent** by other means, a witness should sign below to confirm consent. Children and young people may also wish their parent or person with parental responsibility to sign here.

I confirm that the person mentioned overleaf has indicated their consent for

to share their personal information.

Witness name: _____

Relationship to service user: _____

Sign: _____ **Date:** _____

A copy of this form must be kept on the service user's file and a copy must be given to the service user.

Frequently asked questions

Q1. Why do we need to share information?

- To safeguard and promote the welfare of children and young people.
- To develop a holistic view of a child or young person's situation over time.
- To provide effective service delivery.
- To improve the quality of service.
- To safeguard staff.

Q2. Will I be supported by my organisation if I share information?

Yes. The agencies signed up to the **Devon Children's Trust Information Sharing Protocol** are committed to supporting staff when they share information in good faith and in accordance with this guidance, to promote a child's wellbeing or about a child whose welfare might be compromised by not sharing information.

Q3. Does the Data Protection Act stop us sharing information?

No. The Data Protection Act 1998 does not prevent information sharing. It is in place to make sure that personal information is handled and shared properly. Complying with the Data Protection Principles can actually strengthen the information sharing process.

Q4. Do I need consent to share personal information within my organisation?

No, as long as the information is still going to be used for the purpose it was originally obtained for and the intended use is a legitimate purpose which does not cause unjustified prejudice to the person it is about.

Q5. Is some information more sensitive?

Yes. Sensitive personal data is information about someone's:

- racial or ethnic origin
- political opinions
- religious or other beliefs of a similar nature
- trade union membership
- physical or mental health or condition
- sexual life
- criminal offences committed or alleged to have been committed.

Q6. When should I raise information sharing with the service user?

The answer to this will vary according to your agency.

- Schools will provide a leaflet on this issue to parents of children.
- GPs may choose to provide a health leaflet on this issue to all patients on registration with the practice.
- Care managers should discuss and give a leaflet to service users at an initial assessment stage.
- Youth and play service workers should discuss and give a leaflet to service users on registration for a service.
- Connexions provide information directly to all young people (13-19) through the Connexions Information Sharing Agreement and other publications.

Q7. When should I get consent to share information?

Before you share the information unless you have a valid reason not to.

Q8. How much information should I share?

Only the minimum amount of information which is necessary for the intended purpose. The information shared must be adequate, relevant and not excessive for the purpose.

Q9. What should I do if I am suspicious about the situation of a child but am not sure whether I have grounds to share information?

Contact other relevant professionals and seek advice. If you aren't sure at that time whether you have grounds to share information about the child, even when seeking advice, keep the child and their family's identity anonymous.

Q10. How should I share information?

- Only share information which is necessary.
- Only share information with the person or people who need to know.
- Check that the information is accurate and up to date. Make sure you share information in a secure way.
- Establish with the recipient whether they intend to pass it on to other people and ensure they understand the limits of any consent which has been given.
- Inform the person the information is about or the person who provided the information of the sharing, if it is safe to do so.

Q11. If I am working with a child or young person on an ongoing basis, should I continue to share information with other agencies who work with the child?

Where a number of agencies or workers are involved with a child or young person, for instance school, youth worker and a care manager, it is good practice to identify a **lead practitioner** who will act as the co-ordinating point for the sharing of this person's information. This should be discussed with the service user and the guidance on obtaining consent should be followed.

Q12. What should I do if a service user wants to see information which another agency has shared with me?

Everyone has a general right to see or receive a copy of the personal information which is held about them (subject to conditions and exemptions). The right of **Subject Access** is given to all of us under Section 7 of the Data Protection Act 1998. Your organisation will probably have a procedure in place for handling these types of requests and usually this is dealt with by a data protection team or an information compliance team. You should find out who this is within your organisation and contact them about any intended disclosure.

Q13. What do I do if I think a disclosure might affect the safety of staff or another service user?

If you have information which suggests that as a consequence of sharing information, an employee or another service user's safety might be at risk, you must bring this to the attention of the person who is going to make the disclosure. You or the person making the disclosure must seek advice and guidance from an appropriately senior manager.

Q14. Are there different rules for voluntary sector workers when they share information?

Yes, sometimes. If you work in the voluntary sector it is unlikely that you will have a statutory duty to share information, unlike public authorities in certain circumstances. Therefore you must be able to identify what your legal power is for sharing information, for example what act of law allows you to share information such as the *Crime and Disorder Act 1998*. Voluntary organisations usually rely on consent as their lawful basis.

If you don't have consent, there may be other ways in which you can still share the information, see legitimate and lawful purpose in this guidance.

Q15. Do I need to record the disclosures I make?

Yes. You should record:

- what information was shared
- why it was shared
- who it was shared with.

If you shared the information without consent, you should record the reason for this and the lawful basis you used for sharing information without consent.

If you shared personal information with informed consent, usually using a signed consent form, this consent form should be kept on the service user's file.

Q16. Why should I get consent to share information?

- It is a lawful basis for sharing the information.
- It is also best practice. It gives the service user a sense of control and increases trust and openness.

Q17. What is informed consent?

Informed consent is consent given by someone who fully understands what they are consenting to. They must also understand what the consequences may be if they give consent and if they refuse consent.

Q18. Who should give consent to share information?

- A parent or a person with parental responsibility if the child is under 12.
- The child, if they are over 12 but under 16 as long as they are competent.
- The young person, if they are 16 or over, unless they are not competent.
- A parent or a person with parental responsibility, if a child or young person of any age, is not considered to be competent.
- The person who provided the information, whether or not the information is considered to be confidential.

It is good practice to seek the consent of everyone whose personal information you propose to share, unless there is an overriding reason not to.

The consent of one person with parental responsibility is generally regarded as sufficient. For Children in Care, parental responsibility may lie with Devon County Council.

Q19. What do I do if consent is withheld or withdrawn?

Service users can refuse to give consent for their information to be shared, with anyone, with specific agencies or they can withhold consent for certain information to be disclosed.

If this happens talk to them about their concerns and, if appropriate, explain the consequences of them not providing consent for their information to be shared.

If consent is withheld or withdrawn ask yourself whether you feel there is a need or a legal power to share their information without their consent.

In deciding this, you should consider whether the harm that could be caused by not disclosing their information outweighs the harm that could be caused by disclosing it without their consent.

If you need assistance with making this judgment, speak to your line manager who may consider seeking advice from your data protection officer, Caldicott Guardian or legal services team.

If you decide to override a refusal of consent, let the service user know and tell them why. You should also keep them involved in any other decisions affecting them.

Q20. How should I get consent to share information?

- Ask the service user to complete a consent form where possible. You may have a standard form that your organisation uses. If you don't, consider using the template consent form included in this guide.
- It is best practice to get consent in writing but consent can also be given verbally or it can be inferred from the circumstances in which it is given - see Section 4.6 on page 24.
- Explain what will happen to their information if they give you consent and what could happen if they don't.
- Be clear about who you wish to share their information with, and why.
- Be clear about how sharing their information will mean a better service to the child, young person or family.
- Allow the service user to identify particular information which he or she does not want to be shared or particular agencies that he or she does not want their information to be shared with.
- Explain that in some circumstances you do not need consent to share information - such as if you have a legal obligation to share their information.

Q21. Can general consent to share information be obtained in advance?

Yes, but only when the implications of this are clearly explained to the person and where a high level of co-ordinated inter-agency services will be needed over a long period - such as in the case of a severely disabled child.

Q22. Does general consent need to be renewed?

Yes. Consent should be checked with adults and competent children and young people at each review meeting, and the outcome recorded in the notes of that meeting.

If a consent form has been used, consent will be valid for the duration of the purpose outlined on the form or the retention period specified.

Q23. Where should I record consent or refusal of consent?

Record consent or refusal of consent on the service user's records. You should also record any decisions made about sharing their information and any disclosures made. A template disclosure record can be found in this guide if you do not have a system already in place.

Q24. When can I share sensitive personal information without consent?

The categories of sensitive personal data are listed in Question 5. You may share sensitive information as long as you can satisfy at least one of the lawful basis conditions stated in Appendix Two of the *Devon Children's Information Sharing Protocol* and at least one of the conditions stated in Appendix Three of the Protocol.

Q25. If I have legal grounds to share personal information do I still need to talk to the child, young person or parent about this?

Yes. It is good practice to keep people informed of what is happening to their information even if this is difficult. Experience shows that this increases trust and openness in relationships and gives the service user a sense of control over what is happening to them.

The individual should be told before their information is shared, unless this would place someone at risk, prejudice a police investigation, or lead to unjustifiable delay.

If one of these applies, let the person know the information has been shared as soon as it is safe and possible to do so.

Q26. What if I feel reluctant to ask for consent?

Ask yourself why you feel reluctant. Would seeking consent place someone at risk of harm or prejudice a police investigation? If so, you probably have legal grounds for sharing the information without consent.

Consider whether the harm that could be caused by not disclosing their information would far outweigh the harm that could be caused by disclosing it without their consent.

If in doubt, discuss this with your line manager.

Useful resources

Every Child Matters

Information Sharing: Practitioners' Guide

www.ecm.gov.uk/resources-and-practice/IG00065/

Working Together to Safeguard Children

www.ecm.gov.uk/safeguarding/

Children Act 2004 Guidance

www.ecm.gov.uk/strategy/guidance

Website also includes case studies, training materials and information on powers and legislation.

www.ecm.gov.uk/informationsharing

Department for Children, Schools and Families

Adoption and Children Act Regulations 2003

www.dfes.gov.uk/adoption/lawandguidance

Department for Constitutional Affairs

Privacy and Data-sharing: the way forward

www.dca.gov.uk/foi/sharing

Department of Health

Confidentiality and Disclosure of Information 2005: Code of Practice

www.dh.gov.uk/04107304.pdf

General Medical Council

Confidentiality: Protecting and Providing Information

www.gmc-uk.org/guidance/library/confidentiality.asp

Nursing and Midwifery Council

The NMC code of professional conduct: standards for conduct, performance and ethics (NMC 2004)

www.nmc-uk.org/aFramedisplay.aspx?documentID=2a

Youth Justice Board

Sharing Personal and Sensitive Personal Information on Children and Young People at Risk of Offending: A Practical Guide (Youth Justice Board 2005)

www.youth-justice-board.gov.uk/Publications/Downloads/infosharing0305.pdf

National Probation Service

Multi-Agency Public Protection Arrangements and Annual Report 2004-5

www.probation.homeoffice.gov.uk/output/page30.asp

Information Commissioners Office

The UK's independent authority set up to promote access to official information and to protect personal information.

www.ico.gov.uk

Anonymous information - information from which a person cannot be identified.

Confidential information - should not normally be 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 the likely consequences. All consent must be informed. The person the information is about 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 - clearly states what the consent is for. This can be given verbally or in writing.

Health professional includes:

- registered medical practitioner
- registered dentist
- registered optician
- registered pharmaceutical chemist
- registered nurse, midwife or health visitor
- registered osteopath
- registered chiropractor
- clinical psychologist, child psychotherapist or speech therapist
- music therapist employed by a health service body
- scientist employed by a health service body as a head of department.

This is not an complete list.

Implied consent - the person has been informed about the information to be shared, the purpose for sharing and that they have the right to object and their agreement to sharing has been signalled by their behaviour rather than verbally or in writing.

Personal data - information about an identified or identifiable living individual and includes any expression of opinion about the individual and any indication of the intentions of the organisation processing their personal data.

Practitioner - the generic term used in this guidance to cover everyone who works with children and young people.

Proportionality - the key factor in deciding whether or not to share confidential information without consent. Is the information you wish to share, or have been 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 bodies - any public service, for example a local authority, health service or school.

Public interest - the interests of the community as a whole, a group within the community or individuals.

Public interest test - the process a practitioner uses to decide whether to share confidential information without consent. It requires you to consider the competing public interests – for example, 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 sharing against the risk of not sharing.

Safeguarding and promoting welfare - the process of protecting children from abuse or neglect, preventing impairment of their health and development and ensuring that they grow up in circumstances consistent with the provision of safe and effective care which is undertaken so as to enable children to have optimum life chances and enter adulthood successfully.

Serious crime - in this guide means any crime which causes, or is likely to cause, significant harm to a child or young person or serious harm to an adult.

Serious harm - in this guide can be either physical or mental trauma to an adult.

Significant harm - there are no absolute criteria to rely on when judging what constitutes significant harm. Consideration of the severity of ill-treatment may include the degree and extent of physical harm, the duration and frequency of abuse and neglect, the extent of premeditation, and the presence or degree of threat, coercion, sadism and bizarre or unusual elements.

Each of these elements has been associated with more severe effects on the child, and/or relatively greater difficulty in helping the child overcome the adverse impact of the maltreatment. Sometimes a single traumatic event may constitute significant harm, for example a violent assault, suffocation or poisoning. More often, significant harm is a compilation of significant events, both acute and longstanding, which interrupt, change or damage the child's physical and psychological development.

Some children live in family and social circumstances where their health and development are neglected. For them, it is the corrosiveness of long-term emotional, physical or sexual abuse that causes impairment to the extent of constituting significant harm. In each case, it is necessary to consider any maltreatment alongside the family's strengths and supports.

Wellbeing - has a legal definition based on the five Every Child Matters outcomes; the achievement of these outcomes is in part dependent upon the effective work to safeguard and promote the **welfare** of children.

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 enquiries 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.