



Bath & North East Somerset  
Local Safeguarding Children Board

# Multi-Agency Information Sharing Guidance Part One

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## **1. Summary**

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

## **2. About this guidance**

This advice is non-statutory, and has been produced to support practitioners in the decisions they take when sharing information to reduce the risk of harm to children and young people. This guidance does not deal in detail with arrangements for bulk or pre-agreed sharing of personal information between IT systems or organisations other than to explain their role in effective information governance.

### **Who is this advice for?**

This advice is for all frontline practitioners and senior managers working with children, young people, parents and carers who have to make decisions about sharing personal information on a case by case basis. It might also be helpful for practitioners working with adults who are responsible for children who may be in need.

## **3. How should this guidance be used?**

This guidance supports appropriate information sharing practice. The guidance should be read in conjunction with the Bath & North East Somerset Information Sharing Protocol and agency and organisation-specific policies and procedures

The process to be followed is laid out in the Bath & North East Somerset information sharing protocol which provides the decision making and action to be undertaken when information sharing is needed.

The guidance is to support the decision making process and to provide additional advice in this area.

## **4. Principles of Information Sharing**

The safety and wellbeing of people are the primary considerations when making information sharing decisions.

Information sharing decisions are made on a case-by-case basis using best interest principles and are supported by sound risk assessment.

Gaining a client's consent for information sharing is the ideal and recommended practice, except where to do so would place a person at risk of serious harm or where sharing the information is necessary (see flowchart on page 10).

Working in partnership with parents and other adults to provide safe and supportive family environments directly protects children's and young people's wellbeing.

When information is shared about people, in both verbal and written communication, it is done so respectfully.

Respecting cultural difference' means having the same aims for people's wellbeing and safety but finding appropriate ways of achieving them.

An adult's wellbeing needs should not compromise a child's safety and wellbeing.

## **6. Seven Golden Rules**

1. Remember that the Data Protection Act 1998 and human rights law are not barriers to justified information sharing, but provide a framework to ensure that personal information about living individuals is shared appropriately.

2. Be open and honest with the individual (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so.

3. Seek advice from other practitioners if you are in any doubt about sharing the information concerned, without disclosing the identity of the individual where possible.

4. Share with informed consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, there is good reason to do so, such as where safety may be at risk. You will need to base your judgement on the facts of the case. When you are sharing or requesting personal information from someone, be certain of the basis upon which you are doing so. Where you have consent, be mindful that an individual might not expect information to be shared.

5. Consider safety and well-being: Base your information sharing decisions on considerations of the safety and well-being of the individual and others who may be affected by their actions.

6. Necessary, proportionate, relevant, adequate, accurate, timely and secure: Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those individuals who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely (see principles).

7. Keep a record of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

## **7. Sharing Information**

Sharing information is an intrinsic part of any frontline practitioners' job when working with children and young people. The decisions about how much information to share, with whom and when, can have a profound impact on individuals' lives. It could ensure that an individual receives the right services at the right time and prevent a need from becoming more acute and difficult to meet. At the other end of the spectrum it could be the difference between life and death. Poor or non-existent

information sharing is a factor repeatedly flagged up as an issue in Serious Case Reviews carried out following the death of, or serious injury to, a child.

**Fears about sharing information cannot be allowed to stand in the way of the need to safeguard and promote the welfare of children at risk of abuse or neglect. No practitioner should assume that someone else will pass on information which may be critical to keeping a child safe.**

Professor Munro's review of child protection concluded the need to move towards a child protection system with less central prescription and interference, where we place greater trust in, and responsibility on, skilled practitioners at the frontline. Those skilled practitioners are in the best position to use their professional judgement about when to share information with colleagues working within the same organisation, as well as with those working within other organisations, in order to provide effective early help and to keep children safe from harm.

Lord Laming emphasised that the safety and welfare of children is of paramount importance and highlighted the importance of practitioners feeling confident about when and how information can be legally shared. He recommended that all staff in every service, from frontline practitioners to managers in statutory services and the voluntary sector should understand the circumstances in which they may lawfully share information, and that it is in the public interest to prioritise the safety and welfare of children.

## **8. Being alert to signs of abuse and neglect and taking action**

All practitioners should be alert to the signs and triggers of child abuse and neglect. Abuse (emotional, physical and sexual) and neglect can present in many different forms. Indicators of abuse and neglect may be difficult to spot. Children may disclose abuse, in which case the decision to share information is clear. In other cases, for example, neglect, the indicators may be more subtle and appear over time. In these cases, decisions about what information to share, and when, will be more difficult to judge. Everyone should be aware of the potential for children to be sexually exploited for money, power or status and individuals should adopt an open and inquiring mind to what could be underlying reasons for behaviour changes in children of all ages. If a practitioner has concerns about a child's welfare, or believes they are at risk of harm, they should share the information with the local authority children's social care, NSPCC and/or the police, in line with local procedures. Security of information sharing must always be considered and should be proportionate to the sensitivity of the information and the circumstances. If it is thought that a crime has been committed and/or a child is at immediate risk, the police should be notified without delay.

## 9. Legislative Framework

Key organisations that have a duty under section 11 of the Children Act 2004 to have arrangements in place to safeguard and promote the welfare of children are:

- the local authority;
- NHS England;
- clinical commissioning groups;
- NHS Trusts, NHS Foundation Trusts;
- the local policing body;
- British Transport Police Authority; • Prisons;
- National Probation Service and Community Rehabilitation Companies; 4
- youth offending teams; and
- bodies within the education and /or voluntary sectors, and any individual to the extent that they are providing services in pursuance of section 74 of the Education and Skills Act 2008.

There are also a number of other similar duties which apply to other organisations. For example, section 175 of the Education Act 2002 which applies to local authority education functions and to governing bodies of maintained schools and further education institutions, and section 55 of the Borders, Citizenship and Immigration Act 2009 which applies to the immigration, asylum, nationality and customs functions of the Secretary of State (in practice discharged by UK Visas and Immigration, Immigration Enforcement and the Border Force, which are part of the Home Office).

Where there are concerns about the safety of a child, the sharing of information in a timely and effective manner between organisations can reduce the risk of harm. Whilst the Data Protection Act 1998 places duties on organisations and individuals to process personal information fairly and lawfully, it is not a barrier to sharing information where the failure to do so would result in a child or vulnerable adult being placed at risk of harm. Similarly, human rights concerns, such as respecting the right to a private and family life would not prevent sharing where there are real safeguarding concerns.

All organisations should have arrangements in place which set out clearly the processes and the principles for sharing information internally. In addition, these arrangements should cover sharing information with other organisations and practitioners, including third party providers to which local authorities have chosen to delegate children's social care functions, and the Local Safeguarding Children Board (LSCB). One approach to aid effective information sharing is the use of Multi-Agency

Safeguarding Hubs, where teams may be co-located physically or locally. In these settings, it is important that accountability is defined to ensure that teams know who is responsible for making decisions and that actions taken are in the best interest of the child.

Every LSCB should play a strong role in supporting information sharing between and within organisations and addressing any barriers to information sharing. This should include ensuring that a culture of appropriate information sharing is developed and supported as necessary by multi-agency training.

In addition, the LSCB can require an individual or body to comply with a request for information, as outlined in section 14B of the Children Act 2004. This can only take place when the information requested is for the purpose of enabling or assisting the LSCB to perform its functions. Any request for information about individuals should be necessary and proportionate to the reason for the request. LSCBs should be mindful of the burden of requests and should explain why the information is needed.

## **10. The principles**

The principles set out below are intended to help practitioners working with children, young people, parents and carers share information between organisations. Practitioners should use their judgement when making decisions on what information to share and when and should follow organisation procedures or consult with their manager if in doubt. **The most important consideration is whether sharing information is likely to safeguard and protect a child.**

### **Necessary and proportionate**

When taking decisions about what information to share, you should consider how much information you need to release. The Data Protection Act 1998 requires you to consider the impact of disclosing information on the information subject and any third parties. Any information shared must be proportionate to the need and level of risk.

### **Relevant**

Only information that is relevant to the purposes should be shared with those who need it. This allows others to do their job effectively and make sound decisions.

### **Adequate**

Information should be adequate for its purpose. Information should be of the right quality to ensure that it can be understood and relied upon.

### **Accurate**

Information should be accurate and up to date and should clearly distinguish between fact and opinion. If the information is historical then this should be explained.

## **Timely**

Information should be shared in a timely fashion to reduce the risk of harm. Timeliness is key in emergency situations and it may not be appropriate to seek consent for information sharing if it could cause delays and therefore harm to a child. Practitioners should ensure that sufficient information is shared, as well as consider the urgency with which to share it.

## **Secure**

Wherever possible, information should be shared in an appropriate, secure way. Practitioners must always follow their organisation's policy on security for handling personal information.

## **Record**

Information sharing decisions should be recorded whether or not the decision is taken to share. If the decision is to share, reasons should be cited including what information has been shared and with whom, in line with organisational procedures. If the decision is not to share, it is good practice to record the reasons for this decision and discuss them with the requester. In line with each organisation's own retention policy, the information should not be kept any longer than is necessary. In some circumstances this may be indefinitely, but if this is the case there should be a review process.

## **11. When and how to share information**

When asked to share information, you should consider the following questions to help you decide if and when to share. If the decision is taken to share, you should consider how best to effectively share the information. A flowchart follows the text.

### **When?**

#### **Is there a clear and legitimate purpose for sharing information?**

Yes – see next question

No – do not share

#### **Does the information enable an individual to be identified?**

Yes – see next question

No – you can share but should consider how

#### **Is the information confidential?**

Yes – see next question

No – you can share but should consider how

### **Do you have consent?**

Yes – you can share but should consider how

No – see next question

### **Is there another reason to share information such as to fulfil a public function/public interest or to protect the vital interests of the information subject?**

Yes – you can share but should consider how

No – do not share

### **How?**

Identify how much information to share

Distinguish fact from opinion

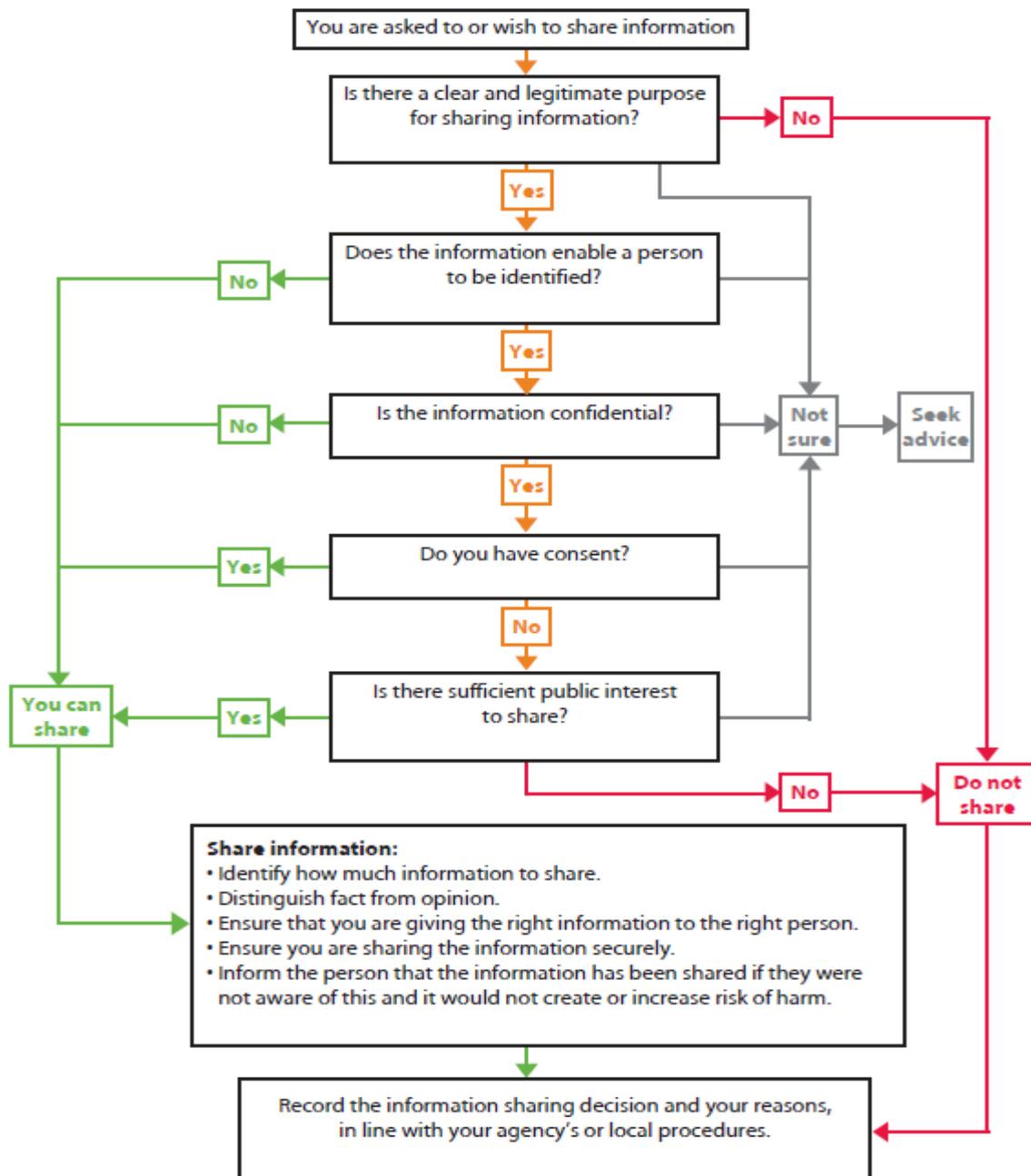
Ensure that you are giving the right information to the right individual

Ensure where possible that you are sharing the information securely

Inform the individual that the information has been shared if they were not aware of this, as long as this would not create or increase risk of harm

All information sharing decisions and reasons must be recorded in line with your organisation or local procedures. If at any stage you are unsure about how or when to share information, you should seek advice and ensure that the outcome of the discussion is recorded. If there are concerns that a child is suffering or likely to suffer harm, then follow the relevant procedures without delay.

# Flowchart of key questions for information sharing



## Other information/questions you may need to consider

Does the person have the capacity to consent to share?

Data protection is not a reason to NOT share information where there are significant risks of harm

Seek advice from your manager, supervisor at any stage during this process where advice is needed

## **12. Myth-busting guide**

Sharing of information between practitioners and organisations is **essential for effective identification, assessment, risk management and service provision**. Fears about sharing information cannot be allowed to stand in the way of the need to safeguard and promote the welfare of children and young people at risk of abuse or neglect. Below are common myths that can act as a barrier to sharing information effectively:

### **The Data Protection Act 1998 is a barrier to sharing information**

No - the Data Protection Act 1998 does not prohibit the collection and sharing of personal information. It does, however, provide a framework to ensure that personal information about a living individual is shared appropriately. In particular, the Act balances the rights of the information subject (the individual whom the information is about) and the need to share information about them. Never assume sharing is prohibited – it is essential to consider this balance in every case. The Information Commissioner has published a statutory code of practice on information sharing to help organisations adopt good practice.

### **Consent is always needed to share personal information**

You do not necessarily need the consent of the information subject to share their personal information. Wherever possible, you should seek consent or be open and honest with the individual (and/or their family, where appropriate) from the outset as to why, what, how and with whom, their information will be shared. You should seek consent where an individual may not expect their information to be passed on and they have a genuine choice about this. Consent in relation to personal information does not need to be explicit – it can be implied where to do so would be reasonable, i.e. a referral to a provider or another service. More stringent rules apply to sensitive personal information, when, if consent is necessary then it should be explicit. But even without consent, or explicit consent, it is still possible to share personal information if it is necessary in order to carry out your role, or to protect the vital interests of the individual where, for example, consent cannot be given. Also, if it is unsafe or inappropriate to do so, i.e. where there are concerns that a child is suffering, or is likely to suffer significant harm, you would not need to seek consent. A record of what has been shared should be kept. ( for further information see appendix 1)

### **Personal information collected by one organisation cannot be disclosed to another organisation**

This is not the case, unless the information is to be used for a purpose incompatible with the purpose that it was originally collected for. In the case of a child at risk of significant harm, it is difficult to foresee circumstances where sharing personal

information with other practitioners would be incompatible with the purpose for which it was originally collected.

### **The common law duty of confidence and the Human Rights Act 1998 prevent the sharing of personal information**

No - this is not the case. In addition to considering the Data Protection Act 1998 local responders need to balance the common law duty of confidence and the rights within the Human Rights Act 1998 against the effect on individuals or others of not sharing the information. If information collection and sharing is to take place with the consent (implied or explicit) of the individuals involved, providing they are clearly informed about the purpose of the sharing, there should be no breach of confidentiality or breach of the Human Rights Act 1998. If the information is confidential, and the consent of the information subject is not gained, then the responder needs to satisfy themselves that there are grounds to override the duty of confidentiality in these circumstances. This can be because it is overwhelmingly in the information subject's interests for this information to be disclosed. It is also possible that an overriding public interest would justify disclosure of the information (or that sharing is required by a court order, other legal obligation or statutory exemption). To overcome the common law duty of confidence, the public interest threshold is not necessarily difficult to meet – particularly in emergency situations. Confidential health information carries a higher threshold, but it should still be possible to proceed where the circumstances are serious enough. As is the case for all personal information processing, initial thought needs to be given as to whether the objective can be achieved by limiting the amount of information shared – does all of the personal information need to be shared to achieve the objective?

### **IT Systems are often a barrier to effective information sharing**

Professional judgment is the most essential aspect of multi-agency work, which could be put at risk if organisations rely too heavily on IT systems. There are also issues around compatibility across organisations along with practitioners who may not have the knowledge/understanding of how to use them. Evidence from the Munro review is clear that IT systems will not be fully effective unless individuals from organisations co-operate around meeting the needs of the individual child.

### **13. Frequently Asked Question**

**You need to ensure that you have read the Bath & North East Somerset Information Sharing Protocol which goes through the requirements of sharing information.**

#### **Is there a legitimate purpose for sharing the information?**

To decide if there is a legitimate purpose for seeking or providing information, service providers should ask themselves if they believe it will help:

Divert a person from offending or harming themselves

Protect a person or groups of people from potential harm, abuse or neglect

Protect service providers in situations of danger

Help a service provider more effectively address risks to safety and wellbeing

Alert another service provider to an individual's need for assistance.

If the answer is 'yes' to any of these questions, then the purpose for sharing information may be legitimate and the flowchart on page 10 needs to be followed.

**When making a professional judgement about the level of adversity being experienced, or whether there are threats to safety or wellbeing in a particular case, it is important to assess both the risk and protective factors present. Central to this judgement is determining how the person may be affected by their circumstances and whether intervention is in their best interest.**

#### **What is meant by public interest?**

A public interest can arise in a wide range of circumstances. For example, to protect children or other people from harm, to promote the welfare of children or to prevent crime and disorder.

There are also public interests, which in some circumstances may weigh against sharing, including the public interest in maintaining public confidence in the confidentiality of certain services. The key factor in deciding whether or not to share confidential information is proportionality, i.e. whether the proposed sharing is a proportionate response to the need to protect the public interest in question. In making the decision you must weigh up what might happen if the information is shared against what might happen if it is not, and make a decision based on a reasonable judgement.

It is possible however to identify some circumstances in which sharing confidential information without consent will normally be justified in the public interest. These are: when there is evidence that the child is suffering or is at risk of suffering significant harm; or where there is reasonable cause to believe that a child may be suffering or at risk of significant harm; or to prevent significant harm arising to children and young

people or serious harm to adults, including through the prevention, detection and prosecution of serious crime. Serious crime means any crime, which causes or is likely to cause significant harm to a child or young person or serious harm to an adult. However there will be other cases where practitioners will be justified in sharing some confidential information in order to make decisions on sharing further information or taking action – the information shared should be proportionate.

In deciding whether the public interest justifies disclosing confidential information without consent, you should be able to 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 local authority the Caldicott Guardian or Information Governance/Data Protection Manager may be helpful. Advice can also be sought from professional bodies, for example the General Medical Council or the Nursing and Midwifery Council.

### **How do you respect a client's trust regarding confidentiality?**

It is essential when working with children, young people, families and vulnerable adults that you are clear from the outset the limitations that may exist around confidentiality and information sharing.

Trust is important to the success of all client relationships. Overriding a person's confidentiality wishes, therefore, must occur only when it is necessary to share information for the safety of the client or it is in the public interest.

Best practice is for providers to:

- Be clear at the start that some circumstances necessitate sharing confidential information with other people and, wherever it is reasonable and practicable, to seek a client's consent to do so

- Work hard to help clients appreciate why the disclosure is necessary – particularly with adult clients when the concerns relate to the children and young people they care for or work/volunteer with

- Act promptly when they first have concerns, so that the client is more likely to feel supported by the actions

- Keep the client informed of and involved in everything the provider is trying to achieve, unless that information will place the client or others at risk of harm.

### **Has consent been given?**

Where information sharing is going to be needed regularly when working with children, young people and families it is good practice to seek signed consent to share information in order to provide the best service.

It is important to promote and advocate the value of gaining informed consent for information sharing at the earliest possible point in a person's engagement with a service. The key elements of consent are:

- The individual is adequately informed before giving consent

- The individual gives consent voluntarily

- The consent is current and specific

The individual has the capacity to understand and communicate their consent.

#### General considerations

Consent needs to be 'explicit', meaning agreement is given in writing; seeking consent needs to be inherent in the service you provide.

When seeking consent from the client the following needs to be considered:

Help clients understand why information sharing is important, whom it is designed to support and the intended outcomes

Explain what circumstances may arise where information may be shared without the person's consent

Be honest and explain that acting without consent is almost always to protect the client, their family members or members of the community from serious harm (the more trust that exists in the relationship, the easier it will be for the client to have faith in the provider's judgement about this)

Revisit consent if the information sharing under consideration differs from the original examples discussed or if a significant amount of time has passed since consent was first given

Tailor the approach to ensure good communication with people with compromised intellectual capacity or clients from culturally and linguistically diverse backgrounds.(for further information see appendix 1)

#### **What role do parents or carers play when information is shared about their children and young people?**

The ideal approach is to involve parents and carers when information is being shared about children and young people. However, some children and young people will express a wish for their circumstances to be kept confidential from their parents.

Because of its importance to children's and young people's wellbeing and/or safety, parental involvement should be incorporated into a provider's work in the following ways:

Respect children's and young people's reasons for not wanting their parents involved in information sharing decisions. However, do not let their initial reluctance mean that the topic is never discussed again

Use opportunities as they arise with children and young people to discuss parental involvement and the beliefs about why and how it can help

Avoid making children and young people feel that their right to help or support via information sharing is conditional on the consent of their parents/carers

If a child or young person is judged to have given informed consent to information sharing, then their consent should be respected. Where a parent or carer disagrees, further assessment should be undertaken to determine what is in the child's or young person's best interests. (Note: It is wise in these cases to involve a senior staff member in the management and documentation of this situation.)

Additional considerations applying to children and young people

The first consideration is determining whether a child or young person has given informed consent to information sharing. Providers are encouraged to base this assessment on evidence of the child's or young person's ability to understand both the information given to them and the implications of consent. A useful way of determining whether they have fully understood the request is for the provider to ask them to explain in their own words:

What the request is and why it has been made

What the child or young person understands will happen if they do or do not consent

Why he/she has either given or withheld consent.

The clarity and consistency of the answers children and young people give to these questions will help determine whether or not their consent is genuinely informed. Using this form of checking allows the provider to focus on the capabilities of the child or young person rather than relying on their chronological age.

### **What if a child or young person cannot give informed consent?**

If a service provider judges that a child or young person is not able to give informed consent, the provider should:

Seek the consent of a parent, carer or guardian, where it is safe to do so

Consider sharing information without consent

### **How do you seek consent / share information without consent as the adult lacks mental capacity to give it?**

Some adults may not always be able to give informed consent for their information to be shared because they are assessed as lacking capacity to do so. This may occur as a result of physical illness, substance use or abuse, frailty, age, disability, acute distress or mental illness.

In these situations it is important to consider who else may need to be included in the discussion and decision making. For example, whether someone has power of attorney, deputyship, a representative, advocate or someone who may know the persons views and wishes, a case worker who may help to clarify for the service user what is happening and why information needs to be shared, consideration will be given to whether the sharing of the information is in their 'best interests'.

It may still be necessary to share without consent if there is reasonable suspicion of harm and the flowchart page 10 is followed.

### **Are you able to obtain consent?**

A person's informed consent to share information must be sought in all situations where it is considered reasonable and practicable to do so. However, service providers should not seek consent if it would place a child, young person or adult at increased risk of serious harm.

Below are examples of situations where people may face increased risk of serious harm if consent is pursued. The person may:

Cease to access a service seen to be necessary for their own or their children's safety or health

Move themselves and their family out of the agency's view

Encourage covering up harmful behaviour to themselves or others

Abduct someone or abscond

Harm or threaten to harm others

Attempt suicide or self-harm

Destroy incriminating material relevant to a person's safety.

Recognising that these risks are present does not necessarily mean that a service provider will feel comfortable about not seeking consent. This dilemma is lessened if there has already been a discussion with the client about the possibility that information may need to be shared without consent where there are serious threats to safety and wellbeing.

There may also be occasions where it is not reasonable or practicable to seek consent. If, for example, the client cannot be located after reasonable attempts it will be necessary to decide if there is sufficient reason to share without consent.

Seek informed consent to share information wherever it is considered reasonable and practicable to do so.

### **What do I do if I ask but the client refuses to give consent?**

Generally, if a client withdraws consent or refuses to give consent for their information to be shared, their wishes must be followed. However, when working with clients with high and complex needs, you may find circumstances frequently change; and levels of adversity can fluctuate and client participation in service planning and delivery can be proactive and engaging one moment and then shift to resistant and uncooperative the next.

It is not uncommon for a person to refuse consent for their information to be shared with others if they wish to continue or cover up their behaviour. For example, it would be very unlikely that a domestic violence perpetrator or an adult who is abusing or neglecting their child would give consent for information sharing or encourage service intervention. In fact it is often the case that, where at-risk or unlawful behaviour is occurring, clients will withdraw from services to cover their tracks. In these circumstances, obtaining consent may be unsafe, impracticable, unreasonable or impossible, but you are obliged to share information in order to prevent serious harm or possibly death, and consent is not required.

Sharing information is essential to provide effective multi-agency practice when working with children, young people and families. It is therefore most effective if consent to share can be sought. It is not good practice to use lack of consent to share information when consent has not been attempted. It is important to seek consent to share in order that where circumstances change (as they often do when working with vulnerable children, young people and adults) consent has been sought and does not delay or excuse information sharing.

## **Should the client be informed that information has been shared without their consent?**

Clients should not be informed of information sharing if to do so would create further risks to them or to others. However, there will be some circumstances where the risk is no longer present after information has been shared because a service response has been successful and subsequent discussion between the provider and client may significantly enhance the longer term outcomes. Service providers should exercise their professional judgement in each circumstance, apply relevant risk assessment tools and draw on the expertise of senior colleagues.

## **Is there a legitimate reason to share without consent?**

Service providers need to consider this question if they have decided that there is a legitimate purpose for sharing information but they do not have consent or they consider it unreasonable or impracticable to seek it.

There is a legitimate reason to share information without consent if it is believed failure to share information will lead to risk of serious harm.

Disclosure of information without consent is permitted if:

- (1) it is authorised or required by law, or
- (2) (a) it is unreasonable or impracticable to seek consent; or consent has been refused; and  
(b) the disclosure is reasonably necessary to prevent or lessen a serious threat to the life, health or safety of a person or group of people.

Questions that may help focus a provider's judgement in considering this question are:

What might be the consequence for the client and others if no one shares information or coordinates services?

If information is not shared, will a person or group of people be more likely to engage in offending?

If information is not shared, will a person or group of people be at increased risk of serious harm from others or from themselves?

When making these decisions, consult with managers and make sure you follow the flowchart. This will ensure conclusions are not subjective but are evidence based. Decisions to share without consent or refuse a request to share information from another agency or organisation must also be approved by an appropriate supervisor or manager.

Decisions to share without consent or refuse a request to share information with another organisation must be based on sound risk assessment and approved by an appropriate supervisor or manager.

**For more information on confidentiality and consent please see appendix 1**

**Are there any obligations for information sharing that must be met?**

Bath & North East Somerset encourage providers to work together and coordinate services so that potential adverse outcomes are prevented or lessened, and to do that from an early intervention perspective. However, in high risk cases where there is risk of serious harm, and help is needed urgently to protect safety, information must be shared without delay and consent is not required.

If at any stage of information sharing and service coordination a provider's concern about a child or young person leads them to suspect, on reasonable grounds, that a child or young person has been or is being abused or neglected, they must report it to the police or children's social care. When providers make a report, it does not mean that the planned information sharing or existing coordination of services should stop. In the information services provide when they report services need to include any plans they have in place for the individual concerned.

When working with other agencies and organisations to support clients with high and complex needs and fluctuating levels of risk and a threshold of serious risk of harm is reached, the instructions of the lead agency must be followed to ensure there is no compromise to investigation, operation and possibly prosecution.

### **How should you record information sharing decisions?**

It is important to record information sharing decisions at all significant steps in the process. This includes documenting:

- Seeking and gaining consent

- Reasons for overriding the client's wishes or for not seeking consent

- Record any advice received from others (including staff at Children's Social Care, Police or the Mental Health services)

- Reasons for not agreeing to an information sharing request

- What information was shared, with whom and for what purpose?

- Any follow-up action required.

### **If I'm asked, can I share the same information again and again?**

Be aware that circumstances for clients can change quickly and information may only be *accurate* and *relevant* at the time it is initially shared. Just because information has been shared once does not mean it is appropriate for the same information to be shared repeatedly.

When a new request for information sharing is received about a client for whom information has previously been shared, you need to revisit the information sharing protocol and determine the purpose of this new information sharing request

- Have circumstances changed significantly?

- Are other service providers involved?

- Should consent be sought from the client again?

- Is the information still *relevant* and *accurate*?

However, if the original sharing of information is for a longer term purpose (such as a client's ongoing case management), that information may continue to be shared with the relevant parties.

### **Can information be shared if a client's file is closed or there is no current relationship between the person and an agency or organisation?**

Yes, information can be shared regarding past clients as long as there is a justifiable reason for the disclosure and only *relevant* information is shared that responds to the risk identified at this particular time. In these circumstances it is also imperative for you to explain that the information is not current but was considered *accurate* at the time it was recorded. It may be that it is impracticable to gain consent because the client cannot be located; however, you should still follow the information sharing flow chart and protocol to decide if there is a justified reason for the disclosure.

### **Can information be shared about someone who is not a client of an agency or organisation?**

When working with clients and assessing or responding to risks to safety and wellbeing, you may reveal information about the people clients relate to. This additional information is often necessary to paint a complete and accurate picture of risks and protective factors. It can also identify other agencies and organisations involved, potentially leading to improved service collaboration. It is a common occurrence that a client will disclose information about their family or another person that exposes serious risk of harm and requires action. Sometimes information about a person other than the client must be shared to protect the safety of service providers or where there is a serious threat to the life, health or safety of a person or group of people.

### **Why are providers of services for adults and children included?**

Providers working in family violence, correctional services, disability, mental health, and drug and alcohol services are aware that their observations of the lives of their adult clients may also be observations relevant to the lives of the children and young people or other family members in their clients' care. The opposite also applies where children provide support and care to a vulnerable parent or carer.

The exchange of information between providers of services to adults and children is almost always a mutually beneficial exercise. A major factor in the wellbeing of an adult with children is their confidence about themselves as parents or carers. A major factor in children's and young people's wellbeing and safety is having a protective and supportive home environment. All efforts to join up this work will benefit the whole family. For example, a mental health worker who routinely assesses and affirms an adult's capacity to care for their children will be contributing to the wellbeing and safety of both carer and children.

Adults who have no direct connection to children and young people but who may pose a risk to themselves or others will also benefit from earlier and more effective risk assessment and service coordination.

### **How does the information sharing protocol support intervention for at risk or vulnerable adults?**

B&NES promote appropriate information sharing to support the provision of well-coordinated and effective services where there is risk of serious harm. Agencies

should make use of organisational risk assessment tools, policies and procedures when determining whether an adult is at risk, what protective factors are in place, and whether service intervention is required. Seeking advice and following relevant risk assessment tools will safeguard against unnecessary disclosure in situations where, for example, an adult may not make the wisest lifestyle choice but has the right to make that choice and has the capacity to give or deny informed consent for information sharing or service intervention.

Situations where a person may be considered vulnerable include where they:

- Are unable to safeguard their own wellbeing, property (including money or financial interests), legal rights or safety

- Are engaging (or likely to engage) in conduct that causes or is likely to cause self-harm or harm to others

- Are in a situation where another person's conduct is causing or is likely to cause the individual or groups of other people to be harmed or exploited

- May have impaired capacity around specific decision making areas that may be temporary or permanent due to mental impairment, disability, mental health needs, brain injury or disease

- Have a physical impairment due to illness or disability that requires assistance of others for daily care and living

- Have very limited or dysfunctional family or community support

- Suffer social or financial hardship, and who may be vulnerable to exploitation as a result of this hardship (social hardship includes a wide range of situations and experiences including homelessness, a history of domestic or family violence, bullying, sexual abuse, racial abuse, problem gambling, drug and alcohol abuse, and torture or trauma)

- Cannot communicate, or have difficulty communicating in English.

In all these situations a risk assessment should be carried out to determine the likelihood of the person suffering harm. Once an assessment has been completed, case planning and case management will be enhanced by utilising the information sharing protocol to inform safeguarding decisions. Where applicable, an appointed medical agent, advocate or guardian should be involved.

Service providers should seek to make decisions based on evidence and be guided by appropriate risk assessment frameworks and not personal values.

## **14. How to get help**

What should be done when there is disagreement between agencies or organisations about information sharing?

The first response to a disagreement about information sharing should be to revisit the original concerns and the reason for information sharing, and follow through the steps of the information sharing flow chart process. Revisiting risk assessments and discussing concerns gives service providers a starting point for discussion and will help clarify where the difference of opinion lies. To focus thinking, they should consider what the consequences might be for the client and others if information is

not shared and no action is taken. Is it reasonable to suspect an individual or group may be at increased risk of harm (to themselves or others)? The more discussion there is between providers about how the request connects with these 'checks and balances', the greater the likelihood that an understanding will be reached about what or how much information should be shared.

Efforts to negotiate with each other are particularly appropriate in the area of information sharing. For example, the purpose of a specific information sharing request may sometimes be met without exchanging as much information as was originally sought, if providers are willing to talk about what is relevant information.

Despite goodwill and genuine efforts to appreciate different perspectives, providers will sometimes disagree about how much information they should share with another agency or organisation. In these situations, providers should seek the advice of the senior personnel nominated within their agency or organisation to provide assistance with information sharing. If the worker making the enquiry still believes they are justified in seeking information, it is acceptable for them to ask for the enquiry to be escalated to a higher level of management within the organisation. This ensures decisions are not made in isolation; rather, they can be based on the experience or knowledge of the organisation.

Consider what the consequences might be for the client and others if information is not shared.

### **Other relevant Bath & North East Somerset documents**

[http://www.bathnes.gov.uk/sites/default/files/siteimages/bnes\\_lsab\\_multi-agency\\_consent\\_policy\\_june\\_16\\_-\\_final.pdf](http://www.bathnes.gov.uk/sites/default/files/siteimages/bnes_lsab_multi-agency_consent_policy_june_16_-_final.pdf)

[http://www.bathnes.gov.uk/sites/default/files/siteimages/lscb.lsab\\_mental\\_capacity\\_act\\_policy\\_statement\\_2016.pdf](http://www.bathnes.gov.uk/sites/default/files/siteimages/lscb.lsab_mental_capacity_act_policy_statement_2016.pdf)

### **Useful resources and external organisations**

<https://www.ico.org.uk/for-organisations/guide-to-data-protection/data-sharing/>

<http://informationsharing.co.uk/>

<http://www.scie.org.uk/care-act-2014/safeguarding-adults/>

### **Other relevant departmental advice and statutory guidance**

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

<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

<https://www.gov.uk/government/publications/what-to-do-if-youre-worried-a-child-is-being-abused--2>

[http://www.foundationyears.org.uk/files/2013/11/Good\\_Practice\\_Support\\_in\\_Information\\_Sharing.pdf](http://www.foundationyears.org.uk/files/2013/11/Good_Practice_Support_in_Information_Sharing.pdf)

[http://www3.hants.gov.uk/8662-dcsf-nhs\\_services\\_child\\_centres-full..pdf](http://www3.hants.gov.uk/8662-dcsf-nhs_services_child_centres-full..pdf)

## **CONFIDENTIALITY AND CONSENT GUIDANCE**

Many of the data protection issues surrounding disclosure can be avoided if the informed consent of the individual has been sought and obtained. Consent can be given verbally or in writing but must be freely given after the alternatives and consequences are made clear to the person from whom permission is being sought. It is envisaged that consent will be obtained at the stage when the individual is first in contact with services, and will be revisited whenever requested or if their circumstances change.

In circumstances where the child or young person is deemed to lack the capacity to give consent, organisations will have to operate within the framework of the Mental Capacity Act 2005. Under the Act all decisions must be made in the best interests of the person who lacks capacity. The Act is accompanied by a Code of Practice that provides details on how to determine what is in someone's best interests. Guidance will need to be provided to staff and other agents to enable them to comply with this. Establishing the need for consent in order to share personal information about children, young people and their families, each participating organisation will need to consider their statutory powers and the relevant legislation and service specific guidance which will dictate when and in what circumstances consent is required to be obtained. The consent of the individual will normally be required to share information. This consent must be established for each episode of care or at the point of contact with a new service. There will be circumstances where consent is not required or cannot be given, and these are referred to below.

### **What should be considered before consent to share is sought?**

Be sure you are complying with legislation and that your intention to share personal information is justifiable in the circumstances. Consider the intended and unintended outcomes of the disclosure. Be sure you are authorised to share the information (once consent is obtained if required) and that there isn't someone else designated as responsible for managing this particular disclosure of personal information. If in doubt, consult your senior.

Be sure that what you are doing is proportionate to the purpose, i.e. that you couldn't achieve it by sharing less or no personal information, and that it is necessary, i.e. that the end result cannot be achieved in some other way.

### **When should individuals be informed about the uses of their information?**

Individuals should be informed on first contact with a service, and whenever their circumstances change.

### **How should individuals be informed?**

Individuals should be provided with sufficient information to ensure they are aware of all the uses and potential uses/disclosures of their personal information. Information leaflets and posters should also be distributed as appropriate throughout the organisations to inform service users their representatives/carers and other members of the public. It is important to ensure that information is available in appropriate languages, large print, braille, on tape, etc to meet the diverse needs of

service users and that the Information Standard is met. It is also important to consider the most appropriate time to share the information, i.e. information sharing issues should be considered during referral and assessment stages rather than waiting until a multi-agency response to service delivery is required. Any specific practitioner guidance should stipulate the most appropriate times to raise awareness with service users.

### **Can a child give consent?**

Children have the same rights in respect of their own personal data as adults, and the same rights of privacy. Whether a child can give valid consent for the disclosure of their information will depend on the legal capacity of children as defined by the law in the relevant country. There is no minimum age in English law. However current practice accepts that, provided a child is considered capable of giving consent, a child of or over the age of 12 years shall be considered to have 'legal capacity'. This does not rule out receipt of valid consent from a child of a younger age, as each case should be considered on its merits on an individual basis. When consent is sought from a child it will need to be judged whether the child has the capacity to understand the implications of the consent and of the information provided as a result of that consent. If the child does understand then their consent will be dealt with in the same way as that of an adult. If a parent or legal guardian gives consent on behalf of a child, assurances should be received that the child has authorised the action and that their consent was not obtained under duress or on the basis of misleading information. In cases where children are considered incapable of understanding or exercising their rights, for instance because they are too young or suffer from a severe mental disorder, then consent may be given by parents or other persons who are legally able to act on their behalf. Consent provided in this way will only be complied with when assurances are received that they are acting in the best interests of the child.

### **How will consent be gained?**

An individual and/or their authorised representative will be asked to indicate consent to the use of information, which will be recorded manually and/or electronically in the service user record. They may also be asked to provide a signature if they are present and able to do so.

### **How will consent be kept up-to-date?**

At each new episode of care or point of contact with a new service, or when circumstances change, individuals should be given the opportunity to reconfirm their consent. Each organisation is responsible for keeping personal information accurate and up to date. This applies to personal information relating to staff, service users, and associated individuals, in computer records, manual files and all other media.

### **Other disclosures which can occur without consent:**

- Where the request is accompanied by a Court Order
- For the prevention and detection of crime (Section 115, Crime and Disorder Act (1998))
- Whenever there is judged to be significant risk of harm to self or other people.

### **When should you not seek consent?**

There will be some circumstances where you should not seek consent, for example where to do so would:

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

Sharing confidential information without consent (and therefore also requesting disclosure of information from other services or organisations) will normally be justified in the public interest:

- When there is evidence that the child is suffering or at risk of suffering significant harm; or
- Where there is reasonable cause to believe that a child may be suffering or at risk of suffering significant harm; or
- To prevent significant harm arising to children and young people or harm to adults, including through the prevention, detection and prosecution of serious crime.

### **Providing operational guidance to staff - In order to support staff, each organisation should have procedures which address the following issues:**

- Explaining the meaning of informed consent
- Establishing the capacity of a person to give consent (see below)
- The circumstances under which information may be disclosed without consent
- Determining who can authorise the disclosure of information without consent and how this authorisation should be requested and recorded
- The procedures for recording and storing consent to share information
- The procedures for recording limitations of consent to share
- Identification of people eligible to seek consent and how their training needs will be assessed and appropriate training provided.

### **Working with individuals who lack capacity**

The Mental Capacity Act 2005 (MCA) provides a statutory framework to empower and protect people with care and support needs who are not able to make their own decisions. It makes it clear who can take decisions, in which situations, and how they should go about this. It also enables people to plan ahead for a time when they may lose capacity.

The MCA has five key principles which emphasise the fundamental concepts and core values of the Act, and which must always be borne in mind when working with or providing care or treatment for people who lack capacity.

The five principles are:

- 1 Every individual has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is demonstrated otherwise. This means that you cannot assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability.

- 2 People must be supported as much as possible to make their own decisions before anyone concludes that they cannot make their own decisions. This means that you should make every effort to encourage and support the person to make the decision for him/herself. If a lack of capacity is established, it is still important that you involve the person as far as possible in making decisions.
- 3 People have the right to make what others might regard as unwise or eccentric decisions. Everyone has their own values, beliefs and preferences which may not be the same as those of other people. You cannot treat them as lacking capacity for that reason.
- 4 Anything done for or on behalf of a person who lacks mental capacity must be done in their best interests. (The MCA Code of Practice will provide guidance on how to go about deciding what is in the best interests of the person you are providing care or treatment for.)
- 5 Anything done for, or on behalf of, people without capacity should be the least restrictive of their basic rights and freedoms. This means that when you do anything to or for a person who lacks capacity you must choose the option that is in their best interests and interferes the least with their rights and freedom of action.