

# **GUIDANCE ON INFORMATION SHARING FOR CHILD PROTECTION PURPOSES**

**AUGUST 2021**

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# Sharing Personal Information for Child Protection Purposes

## 1. Introduction

1.1 Children have a right to be safeguarded and protected. This is enshrined within the Children (Northern Ireland) Order 1995 (the Children Order) and the United Nations Convention on the Rights of the Child (UNCRC). Effective child protection stands or falls on the quality of assessment and analysis of the risks to an individual child. Effective analysis and assessment of risk in turn relies on the availability of, and access to, relevant, accurate and up to date information. Access to relevant and up to date information for child protection purposes often means that personal, often sensitive, information has to be shared with and by Health and Social Care Trusts (HSCTs).

1.2 This document provides guidance to social workers and their managers on sharing personal information for child protection purposes. 'Personal information' includes:

- information that falls under the General Data Protection Regulation (UK GDPR) definition of personal information - information about a living person who can be identified from that information;
- sensitive personal information – criminal record information (including information about the alleged commission of offences); and personal information that falls under the UK GDPR definition of 'special category personal data' – including about an individual's race, ethnic origin, health, sex life or sexual orientation; and / or
- information where there is an expectation that the common law duty of confidentiality would apply.

When sharing information that could impact on an individual's private life, care has to be taken to ensure that information is shared lawfully and this guidance is intended to help you do that.

1.3 Child protection focuses on safeguarding individual children identified as suffering or likely to suffer significant harm. When we refer to 'child protection purposes' in this guidance, it is a reference to what HSCT children's services do with a concern where, from the point of referral or at any point along the inquiry / investigation pathway, the nature of the concern indicates a possibility of significant harm. This includes when an initial assessment is undertaken to determine if there is reasonable cause to suspect that a child is suffering or likely to suffer significant harm. A concern does not necessarily need to be coded as child protection to be a concern of a child protection nature. For

example, referrals where the “potential risk” is unclear and an initial home assessment is needed by social services in order to clarify the concerns.

HSCTs have a general duty to safeguard children and young people in a Trust’s area. This safeguarding continuum ranges from activity that prevents harm and the early identification of risk and timely intervention, to protecting a child from significant harm. This guidance focuses on the child protection end of the continuum – where the level of risk is greatest. The advice is applicable to sharing personal information for wider safeguarding purposes but the level of attention required to considerations around sharing personal information lawfully *increases* as the level of risk to a child *decreases*. It is easier to justify sharing personal information without consent, for example, when the level of risk to a child is higher.

- 1.4 Sharing personal information which is more sensitive also requires more care. The more sensitive the information you share on an individual, the more the individual’s private life is likely to be impacted by the sharing of that information.

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*‘...the legislation was not the problem. I suggest, however, better guidance is needed on the collection, retention, deletion, use and sharing of information, so that police officers, social workers and other professionals can feel more confident in using information properly.’*

*Sir Michael Richard in his Public Inquiry on child protection procedures in Humberside Police and Cambridgeshire Constabulary following the murders of Jessica Chapman and Holly Wells (2004)*

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- 1.5 This guidance should inform procedure and protocol within HSCTs for sharing personal information. This is a matter for the HSCB. Where it impacts on procedure and protocol between agencies relating to the sharing of information, this is a matter for the SBNI. The guidance replaces circular HSS CC 3/96 (Revised) – Sharing to Safeguard – September 2008 (amended May 2009). It should be considered alongside ‘Cooperating to Safeguard Children and Young People in Northern Ireland’<sup>1</sup>, the overarching policy framework for safeguarding children and young people in the statutory, private, independent, community and voluntary sectors, the SBNI Regional Core Child Protection Policy and Procedures,<sup>2</sup> guidance on the UNOCINI assessment framework<sup>3</sup> and the ‘Code of Practice on Protecting the Confidentiality of Service User Information’<sup>4</sup>
- 1.6 This guidance will be reviewed in autumn 2022 to reflect any further information sharing agreements between HSCB, HSCTs and PSNI.

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<sup>1</sup> <https://www.health-ni.gov.uk/publications/co-operating-safeguard-children-and-young-people-northern-ireland>

<sup>2</sup> The SBNI Regional Core Child Protection Policies and Procedures are available at: <http://www.proceduresonline.com/sbni/>

<sup>3</sup> <https://www.health-ni.gov.uk/publications/understanding-needs-children-northern-ireland-uncocini-guidance>

<sup>4</sup> <https://www.health-ni.gov.uk/publications/code-practice-protecting-confidentiality-service-user-information>

## 2. Quick Reference Guide

- 2.1 This guidance provides detailed advice on sharing personal information for child protection purposes. Key messages from the guidance have been condensed into this summary box to aid day-to-day decision making. While this is useful as a quick reference guide, it is not a substitute for consideration of the guidance in its entirety.

## Sharing Personal Information for Child Protection Purposes

This has been designed as a quick reference guide – the full guidance is available at <file:///C:/Users/2150361/Downloads/REGIONAL%20POLICY%20AND%20PROCEDURES.pdf>

### *Can personal information be shared for child protection purposes?*

- Yes. To share personal information, you must have a lawful basis for doing so. If you need to share personal information for child protection purposes, you have that lawful basis. See sections 3 and 4.
- By ‘child protection purposes’ we mean for the purposes of dealing with a concern where the nature of the concern indicates the possibility of significant harm to an individual child (or children) from point of referral or at any point along the inquiry / investigation pathway.
- Information sharing must be **necessary** to achieve the purpose for which you are sharing it: do not share personal information if there is a less intrusive way to achieve that purpose.
- If you need to share personal information in a situation where there is a risk of harm to children but where no specific child has been identified, you should consider the guidance in Section 5 – Information Sharing for Public Protection Purposes. The PSNI will take the lead in these circumstances. The HSCT’s PPANI Principal Officer should be consulted about adults who may pose a risk to children.

### *What information should be shared?*

- Only personal information which is **relevant** to the purpose should be shared with those who need it.
- Do not share more than is **necessary** to be of use. In other words, the information shared must be **proportionate** to the need and level of presenting risk.
- The information needs to be **adequate**. By that we mean, is it **accurate, verifiable** and **credible**. Consider the **integrity** of the information. Can it be relied upon? Does it clearly distinguish between fact and opinion? You may need to decide and evidence that information is more likely than not to be factual or true, that is, “on the balance of probabilities” – see JR57 case study at page 25. You will also need to be able to demonstrate that you have taken reasonable steps to collect all available information and that you considered the information obtained in full.
- In situations where the threshold for a child protection investigation has not been met, particular care must be given to ensure that only the information that needs to be shared for the purposes of the initial assessment is shared

### *Is it appropriate to seek consent?*

- Where you need to act on concerns of a child protection nature and where that involves sharing personal information, it is likely to be inappropriate to seek consent.
- You should not seek consent to share information if you would share it anyway in the event that consent was refused. Leading an individual to believe that they have a genuine choice by seeking consent is unfair. The key question that you should ask yourself is, “If I was refused consent, would I share this information anyway?”
- You should still seek to be open and honest with families and notify them of your decision to share personal information without consent where it is safe to do so. See section 4(iii) for more information on consent.

### *Other things to consider when making a decision to share personal information*

- Apply your **professional judgment**. This will require you to balance the interests of the individual to whom the personal information relates against the rights and interests of the child, on a **case-by-case** basis.
- You should ask yourself whether the **rights** of the individual will be endangered as a consequence of you sharing information about them. You also need to respect and protect the rights of the child. Neither individual's entitlement to rights has precedence over the other. However, if there is an apparent conflict between the two, remember that **the welfare of the child is paramount**.
- Ask yourself what impact sharing information will have on the life of the individual to whom it relates. Does it create risks for them? Can these be mitigated? If the risks to the child (potential or confirmed), by not sharing personal information, outweigh the assessed risks to the individual, by sharing it, then it should be shared [subject to all of the above being satisfied].
- The impact on other persons affected by sharing personal information should also be considered, this may require ascertaining the views and interests of the individual and of others who may be adversely affected. Where appropriate, an individual should be informed of allegations or concerns made against him/her and **fairness** requires that individuals are given a right to reply before the information is shared, but only if it is safe to do so, and in consultation with the PSNI - see section 4(iv). Note that consent and right to reply are distinctly different concepts.
- Consider the **magnitude of the risk to the child**: the more serious and imminent the potential risk to the child, the more likely the sharing of personal information is to be justified.
- The ability of the **parent** and others to protect the child may be a factor to consider in making a decision as to whether personal information needs to be shared more widely with others who could act in a protective role for the child.
- Where the information is already in the public domain, it will be easier to justify sharing it.

### *When to share the information*

- Information should be shared in a **timely** fashion to reduce the risk of missed opportunities to protect a child.

### *Who to share the information with*

- The information must be disclosed to the **right person** – the person who needs to know for the purposes of keeping a child safe.
- The person with whom the information is shared must know why they have been given it, understand the confidential and sensitive nature of the information they have received; and how to make use of the information, including the need to manage the information securely and what to do or who to contact should they need to share further information.
- Is there an **Information Sharing Agreement** or protocol in place? More care will be needed if there isn't.
- It is important to consult the PSNI if you are considering sharing personal information on an individual who may pose a risk to children. Discuss this with the HSCT's PPANI Principal Officer in the first instance. See Section 5.

### *Share information securely*

- Whenever possible, personal information should be shared in an appropriate, secure way, following HSCT policy for handling personal information and in line with Information Sharing Agreements that are in place (see Section 4(vi)).

### *Keeping a record*



### 3. Legislative Context

*'The duty to share information can be as important as the duty to protect patient confidentiality'* (Dame Fiona Caldicott's 2013 Information Governance Review.)

#### Common Law Duty of Care

- 3.1 All service providers come under the common law **duty of care** when working with children. This duty requires all that is reasonable to be done to secure the best outcome possible. This includes sharing information when appropriate to do so.<sup>5</sup>
- 3.2 In addition to this, there are specific statutes (laws) that provide powers and places duties on organisations to share personal information and on how that information is shared.

#### Children (Northern Ireland) Order 1995 (the Children Order)

- 3.3 The Children Order is the principal statute governing the care, upbringing and protection of children in Northern Ireland. It applies to all those who work with, and care for children. Part VI in particular provides HSCTs with powers, functions and duties in relation to protecting children.

#### Common Law Duty of Confidentiality

- 3.4 The common law duty of confidentiality means that when someone shares personal information in confidence it must not be normally disclosed without that person's consent. Information **can** be shared where disclosure is in the overriding public interest or where there is a statutory or legal duty to disclose. This is explained in more detail at Section 4(iii).

#### The General Data Protection Regulation and the Data Protection Act 2018<sup>6</sup>

- 3.5 The General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA) place duties on organisations and individuals to process personal information fairly and lawfully. They provide lawful grounds for processing, including sharing, personal information. These are dealt with in detail at Section 4 and Appendix 1.

#### The Human Rights Act 1998 (HRA)

- 3.6 The Human Rights Act (HRA) gives effect in domestic law to the rights and freedoms guaranteed under the European Convention on Human Rights (ECHR). The HRA, makes it unlawful for public authorities to act in a manner which is incompatible with an individual's rights, and places a positive obligation on public authorities to take reasonable action within their powers to safeguard individual rights under the ECHR. The rights and freedoms guaranteed under the ECHR belong to all, there is no distinction between an adult and a child. The rights with particular relevance to this guidance include the Article 2 right to life, the Article 3 right not to be subjected to torture or to

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<sup>5</sup> The Duty of Care, the Information Governance Alliance

<sup>6</sup> The EU GDPR no longer applies in the UK but has been brought into UK law as the 'UK GDPR.'

inhuman or degrading treatment or punishment and, particularly in relation to the sharing of information, the Article 8 right to respect for private and family life.

#### [Children's Services Co-operation Act 2015](#)

- 3.7 Under Section 2 of the Children's Services Cooperation Act (Northern Ireland) 2015, Children's Authorities are required to (i) co-operate with one another and (ii) to co-operate with other children's service providers, in order to contribute to better outcomes for children and young people in regard to well-being. Interim guidance<sup>7</sup> says that 'in line with all legislative requirements Children's Authorities should share information and, where appropriate, access information held by other Children's Authorities if/when it will enhance the effectiveness of service delivery.'

#### [Criminal Justice \(Northern Ireland\) Order 2008](#)

- 3.8 Under Article 50 of the Criminal Justice (Northern Ireland) Order 2008, HSCTs have a statutory obligation to give effect to the Public Protection Arrangements Northern Ireland (PPANI) guidance (see paragraph 5.12).

#### [Criminal Law Act \(Northern Ireland\) 1967](#)

- 3.9 Section 5 of the Criminal Law Act 1967 requires anyone to provide the Police with information on a relevant offence that they know or believe to have been committed where that information is likely to secure or be of material assistance in securing the apprehension, prosecution or conviction of a person.<sup>8</sup>

#### [Safeguarding Board Act \(Northern Ireland\) 2011](#)

- 3.10 Section 11 of the Safeguarding Board Act (Northern Ireland) 2011 places a duty on bodies or persons to supply information requested by the Safeguarding Board Northern Ireland (SBNI) when specific conditions are met, including that the information is requested for the purposes of the SBNI carrying out one of its functions.
- 3.11 Under Section 12 of the Safeguarding Board Act (Northern Ireland) 2011 certain organisations, including HSCTs, PSNI, PSNI, Education Authority, Youth Justice Agency, councils and NSPCC, have a duty to carry out their functions with due regard to the need to safeguard and promote the welfare of children.

#### [Safeguarding Vulnerable Groups \(Northern Ireland\) Order 2007 \(the SVGO\)](#)

- 3.12 Under the SVGO, HSCTs have the power<sup>9</sup> to provide information to the

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<sup>7</sup>Improving the Well-being of Children and Young People, Interim Guidance on the Children's Services Co-operation Act (Northern Ireland) 2015.

[Children's Services Co-operation Act \(NI\) 2015 - CSCA - Final Interim Guidance - November 2018.pdf \(education-ni.gov.uk\)](#)

<sup>8</sup> Doctors are not under a duty to report sexual activity involving a child aged 13 to 15 years old where the other party is under 19. This exclusion does not apply to information about offences against children under 13.

<sup>9</sup> Article 41 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

Disclosure and Barring Service (DBS) about an individual who is, has been, or might in future be, engaged in regulated activity<sup>10</sup> and who has committed a relevant offence or who the HSCT believes may harm a child (or adult who is vulnerable), cause a child (or adult who is vulnerable) to be harmed, put a child (or vulnerable adult) at risk of harm, attempt to harm a child (or adult who is vulnerable) or incite another to harm a child (where the HSCT is the regulated activity provider, it must refer the individual to the DBS<sup>11</sup>). HSCTs also have a duty to provide information on request to the DBS<sup>12</sup>. The DBS may provide relevant information for child protection purposes to a HSCT. It must provide information as to whether a person is barred by the DBS where the HSCT has requested it for child protection purposes.<sup>13</sup>

### United Nations Convention on the Rights of the Child

3.13 The United Nations Convention on the Rights of the Child is an international human rights treaty setting out the civil, political, economic, social and cultural rights of the child. It should be applied in conjunction with the HRA and provides the overarching framework to guide the development of local laws, policies and services so that all children and young people are nurtured, protected and empowered. Articles with particular relevance to this circular include:

- *Article 4 (Protection of rights):* governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled.<sup>14</sup>
- *Article 19 (Protection from all forms of violence):* governments should ensure that children are properly cared for and their right to be protected from harm and mistreatment is upheld.<sup>15</sup>

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<sup>10</sup> Regulated activity is work that a barred person must not do. Regulated activity with children includes activities such as teaching, training, caring, supervising, transporting or providing advice to children, providing health care or personal care to child and work in specified places such as schools, nursery schools and children's homes. See Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, for a full definition of regulated activity. Factual notes on regulated activity with children (and adults) are available at <https://www.health-ni.gov.uk/articles/safeguarding-vulnerable-groups-disclosure-and-barring-service>

<sup>11</sup> Article 37 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

<sup>12</sup> Article 42 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

<sup>13</sup> Paragraphs (IB) and (1C) of Article 52A of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

<sup>14</sup> UNCRC Article 4:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

<sup>15</sup> UNCRC Article 19:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

## 4. Acting in accordance with the Law (including the General Data Protection Regulation and the Data Protection Act 2018) - Key considerations

4.1 When sharing personal information – you must act in accordance with the law. This means sharing information in line with data protection legislation - the General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA) – as well as common law and legal precedent (case law). Consequently, there are a number of key considerations to make when either deciding whether to share personal information or having made a decision to share personal information to protect a child or children from harm. They are as follows:

1. Ensure you have a lawful basis to share personal information;
2. Ensure that it is necessary to share personal information;
3. Consider the need for consent;
4. Ensure, as far as possible, that you engage openly and honestly with individuals and families;
5. Consider what you share– ask whether it is proportionate, relevant, adequate and accurate;
6. Consider how you share– make sure you do share in a timely way, in a secure way and that you keep a robust record; and
7. Consider who you are sharing information with.

### (i) Ensure you have a lawful basis to share information

4.2 HSCTs can only do things where the law gives them authority to do so. There is a range of powers and duties, primarily under, but not restricted to, the Children Order which give HSCTs authority to share personal information because sharing personal information is needed in order to effectively exercise those powers and duties. These include duties to protect children and young people from harm. This can be an *implicit* or *explicit* authority to share information.

4.3 The Article 66 duty to undertake a child protection investigation, for example, will require HSCTs to collect information, including information known to, and held by, other organisations, agencies and professionals, weigh that information (to determine findings of fact - on a balance of probabilities) and then analyse it to assess the risk and to determine if, and what, action should be taken to keep the child safe from harm. To be able to collect information in the course of a child protection investigation, it is more likely than not that a HSCT must share information – providing an *implicit* authority to share. **It is useful to note that Article 66 (9) compels certain bodies including the HSCB, the Education Authority, HSCTs and the Northern Ireland Housing Executive to assist**

**with these inquiries – giving them *explicit* authority in law to share personal information with a HSCT.**

- 4.4 Where a child protection investigation concludes that concerns are substantiated, actions that need to be taken to keep the child safe from harm may necessitate the sharing of personal information with other agencies and, with third parties. For example, sharing personal information on an individual who poses a risk of significant harm to children with a parent who needs to know that information to protect his/her child or sharing personal information on a child's mental health history with another service because the information is relevant and necessary to ensure the child receives a service that is effective in protecting them from harm. There is *implicit* authority for sharing personal information in connection with the Article 66(8) duty on HSCTs to take action to safeguard a child, where the child protection investigation has concluded that action is required.
- 4.5 The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 is an example of *explicit* authority for the sharing of personal information – it gives HSCTs an explicit power to refer an individual to the Disclosure and Barring Service for the purpose of ensuring that unsuitable individuals are prevented from obtaining employment and/or volunteering opportunities with children and/or vulnerable adults.
- 4.6 Where a HSCT needs to share personal information to make an initial assessment of the needs of a child following a referral to social services, the authority to share is also implicit under the Children Order.
- 4.7 This authority to share information, when it is necessary to fulfil functions [powers and duties] that a HSCT has in law, will also satisfy the requirement in data protection legislation (the UK GDPR and the DPA) to have valid grounds to share information, that is, by way of the **public task basis** [see below] which is one of 6 bases under the UK GDPR that permit the sharing of personal information. This is subject to HSCTs adhering to other requirements under the UK GDPR and DPA as they relate to the act or process of sharing personal information [also see below].
- 4.8 By public task basis, we mean:
- 'in the exercise of official authority' [a power to do]; and/or
  - to perform a specific task in the public interest that is set out in law [a duty to do].
- 4.9 A HSCT's powers and duties satisfy the 'official authority' criterion of the public task basis.
- 4.10 For public authorities, the view of the ICO is that the public task basis is likely to

give you a lawful basis for many if not all of your activities: *“If you need to process personal data to carry out your official functions or a task in the public interest – and you have a legal basis for the processing under UK law – you can.”*<sup>16</sup>

- 4.11 For sharing more sensitive personal information (special category data under the UK GDPR or criminal record information) an additional legal basis is required under the UK GDPR, some of which require additional conditions under the DPA. But where more sensitive personal information needs to be shared to protect a child from harm, the UK GDPR and the DPA can be relied on to allow that sharing to take place.
- 4.12 While the focus of this guidance is on child protection, a HSCT has a general duty to safeguard and promote the welfare of children in its area and its authority to share personal information extends beyond protecting a child from harm.
- 4.13 Although the basis or condition used for sharing information may vary, depending on the level of risk to a child, there are UK GDPR bases and DPA conditions that allow the sharing of personal information by a HSCT for wider safeguarding purposes. The more detailed information on DPA conditions as well as the UK GDPR bases in Appendix 1 will be useful in this context.
- (ii) **Ensure that it is necessary to share personal information**
- 4.14 A HSCT should share personal information only if it is **necessary**. The ICO guide advises that ‘necessary’ means that the processing must be a **targeted and proportionate** way of achieving a purpose. In this context, the purpose will be to protect a child or children from harm. To test whether sharing personal information is necessary, a HSCT should consider whether there is another reasonable and less intrusive way to achieve the same result.<sup>17</sup> Only personal information that is needed to achieve the purpose (protect a child or children), should be shared.
- 4.15 A HSCT should demonstrate that its decisions are considered, measured, balanced and proportionate and should **have a clearly articulated rationale for disclosing, or not disclosing, personal information and be able to demonstrate how the sharing of personal information was assessed to be necessary for the purposes of protecting a child from harm**. Accurate, clear and timely record keeping is important. A full record should be made of all discussions, actions and decisions taken. Being able to evidence proper

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<sup>16</sup> ICO UK GDPR Guidance on Consent [When is consent appropriate? | ICO](#)

<sup>17</sup> ICO Guide to the General Data Protection Regulation <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-UK-GDPR/lawful-basis-for-processing/special-category-data/>

consideration behind the decision to share personal information, including being able to show that there was no other reasonable and less intrusive means to achieve the purpose that by sharing the information, is required under the UK GDPR 'accountability principle.' Further information on the accountability principles can be found in the ICO's UK GDPR Guide.<sup>18</sup>

(iii) **Consider the need for Consent**

- 4.16 Too often concerns around seeking consent have got in the way of sharing information to safeguard children. Consent *is* important in making decisions on sharing personal information – it can provide lawful grounds for personal information to be shared under the UK GDPR and DPA and it allows information, which is subject to the common law duty of confidentiality, to be shared<sup>19</sup>
- 4.17 However, information **can** be shared without consent and **the nature of child protection work means it will likely be inappropriate to seek consent.** The UK GDPR definition of consent is: “any freely given, specific, informed and **unambiguous** indication of the data subject’s wishes by which he or she, **by a statement or by a clear affirmative action**, signifies agreement to the processing of personal data relating to him or her.”
- 4.18 The ICO has advised that while there is no ban on public authorities using consent as a lawful basis, it will be more difficult under UK GDPR for public authorities to use consent as a lawful basis for sharing personal information as consent will not be ‘freely given’ where there is an imbalance in the relationship between the individual to whom the information relates and body holding it (the data controller). In addition, the ICO advises that where personal information is likely to be shared regardless of whether consent has been given or not, for example where it needs to be shared in order to protect a child, leading the individual to believe they have a genuine choice by seeking consent is inherently unfair and likely to breach the first data processing principle which states that information must be used fairly and lawfully. The ICO has advised that a **social worker should not seek consent for processing if they will proceed in any way without it.** In these circumstances, consideration should be given as to whether the person should be informed that their personal information has or will be shared.

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<sup>18</sup> <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-UK-GDPR/accountability-and-governance/>

<sup>19</sup> The ICO has published draft guidance on consent under the UK GDPR: <https://ico.org.uk/media/about-the-ico/consultations/2013551/draft-UK-GDPR-consent-guidance-for-consultation-201703.pdf>

### *Common Law Duty of Confidentiality*

- 4.19 When information is provided in circumstances where it is expected that a duty of confidentiality applies, i.e. when someone shares information in confidence, for example health and social care information, that information cannot normally be shared without the information owner's consent. Children have the same rights to privacy as all other persons and there is the same duty of confidentiality to them as there is to adults. However, the sharing of information subject to the common law duty of confidentiality without consent can be justified in some circumstances, including:
- the information owner has given his or her consent; or
  - if there is a statutory requirement to share the information; or
  - the sharing is for a public interest which overrides the public interest in maintaining confidentiality and the private interests of the information owner.
- 4.20 The Code of Practice on Protecting the Confidentiality of Service User Information<sup>20</sup> says that you can share information on a child where, without sharing you would not be acting in the overall best interests of a child, who does not have the understanding to make the decision, and where it is impracticable or inappropriate to obtain consent from the person with parental responsibility.
- 4.21 The Code of Practice also says that consent must always be meaningful and explicitly states that the sharing of personal information for 'the protection of children from harm is in the public interest and can legally justify breaching confidentiality in certain situations .... disclosing information is justified in raising a concern, even if the concern turns out to be groundless, if it is done honestly, promptly, on the basis of reasonable belief and through the appropriate channels.'
- 4.22 You may feel less confident about sharing personal information in situations where the information you have may not meet the threshold of a child protection investigation – what has been called the 'child protection trigger' - but concerns of a child protection nature still exist. Where you need to act on concerns that indicate the possibility of harm to a child, and that involves sharing personal information, including for the purposes of an initial assessment, then it is likely to be inappropriate to seek consent to share personal information.
- 4.23 The introduction of the DPA 'safeguarding children' condition clarifies that sensitive personal information can be shared to protect a child from harm (neglect, physical, mental or emotional) or to protect their well-being (physical,

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<sup>20</sup> Code of Practice on Protecting the Confidentiality of Service User Information, Department of Health, revised April 2019.



mental or emotional) without consent in certain conditions. This includes where the consent:

- cannot be given by the information owner;
- the body seeking to share the information cannot be reasonably expected to obtain the consent of the information owner; or
- seeking consent would prejudice the protection of the child from harm or prejudice the protection of their well-being.

4.24 The Department received further clarity on this issue from the ICO:

*'In a situation where there may be cause to suspect there is at risk of harm but more inquiries are needed, then it seems likely that consent for processing is not appropriate. Therefore... in circumstances where an assessment is needed to establish whether there is a risk of significant harm, this condition for processing is wide enough to permit processing without consent, in order to 'protect the physical, mental or emotional wellbeing' of the individual. 'Consent cannot be given' means the individual is legally or physically incapable of giving consent or is not available to give consent. A controller 'cannot reasonably be expected to obtain consent' in circumstances where it is difficult or inappropriate to do so. This might apply in the situation described where a controller suspects significant harm and is processing data for the purpose of investigating whether it needs to take steps to protect an individual's physical, mental or emotional wellbeing etc. In such circumstances, it is likely to be reasonable that a controller is not expected to gain consent for the processing. We would argue that a social worker should not seek consent for processing if they will proceed in any way without it. We would also suggest that in all circumstances, only information needed to make the initial assessment should be shared.'*

4.25 The ICO also reminded that you cannot use this condition as a fall back option. This condition should only be used if consent is inappropriate, not if consent has been refused: if the level of risk to the child is such that you would share the information anyway, you should not seek consent.

4.26 In situations where the threshold for a child protection investigation has not been met, particular care must be given to ensure that you only share the personal information that is directly related to and proportionate to the making of an initial assessment and only that personal information which is necessary to facilitate an initial assessment should be shared. It is important that these decisions are considered and made on a case-by-case basis. As in all sharing of personal information, care has to be given to the considerations in 4(v) – that the sharing is proportionate, relevant and necessary and justified on a case-by-case basis.

- 4.27 A decision to share personal information without consent, and the reasons for doing so, must be clearly recorded.
- 4.28 It is also important that you engage openly and honestly with families – inform them that you are going to share information and explain why, unless it is unsafe to do so – see 4(iv).
- 4.29 The UK GDPR, the DPA, the Common Law Duty of Confidentiality and the Human Rights Act *do not* prevent the sharing of information without consent but care must be taken as to *what* information you share and *how* the information is shared.

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*The ICO Draft Code of Practice says that it is a misconception that data can only be shared with consent and that 'you can usually share without consent if you have a good reason to do so.'*

*ICO Draft Data Sharing Code of Practice*

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#### *Subject Access Requests*

- 4.30 A data subject's right of access, commonly referred to as subject access, under the UK GDPR, gives individuals the right to obtain a copy of their personal data as well as other supplementary information. Only a data subject has the right to make a subject access request to a data controller (in the case of a young child, this right is likely to be exercised by someone with parental responsibility for them – it depends on the competency of the child). **A subject access request is not an appropriate way to gather information in relation to Article 66 inquiries.** Any request by a public authority to submit a subject access request to obtain information for the purpose of a child protection inquiry or investigation should be challenged in the strongest terms.

#### *(iv) Ensure, as far as possible, that you engage openly and honestly with individuals and families*

- 4.31 HSCTs should strive to engage openly and honestly with families and, where consent is not sought, careful consideration must be given to notifying the individual to whom the information relates **in advance** of sharing personal information. An individual should at least be aware that personal information about them has been, or is going to be shared even if their consent to share is not appropriate providing it is considered safe to do so. It won't always be

possible to get in contact with the individual. In these circumstances a HSCT should be able to demonstrate that they have taken reasonable steps to inform the individual that information is going to be shared.

4.32 This extends to children. Children should be provided with the same information about what you do with their personal information as adults. This should be provided in age-appropriate terms and in the context of a child's level of understanding.<sup>21</sup>

4.33 Providing notification to an individual that personal information about them will be shared is distinctly different from seeking their consent to share. However, the act of sharing in these circumstances still requires to comply with the requirements of UK GDPR and the DPA. HSCTs have a general obligation to provide privacy information to data subjects, including children, on how their information will be processed.

4.34 However, an individual **must not** be informed/notified in advance of sharing personal information, where:

- it would put a child at increased risk of significant harm<sup>22</sup> or an adult at risk of serious harm<sup>23</sup>;
- the delay in notifying the individual would increase the risk of harm to the child;
- it would undermine the prevention, detection or prosecution of a serious crime including where seeking consent might lead to interference with any potential investigation.

(v) **Ensure that what you share is in keeping with the law – ask whether it is proportionate, relevant, adequate and accurate**

#### *Proportionality*

4.35 The information shared must be **proportionate** to the need and level of risk. This requires professional judgment in weighing the relevant interests and considerations to make reasonable decisions. The decision maker must take reasonable steps to ensure this decision is based on all available information.

Consider:

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<sup>21</sup> ICO Children and the UK GDPR Guidance <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-UK-GDPR/children-and-the-UK-GDPR/how-does-the-right-to-be-informed-apply-to-children/>

<sup>22</sup> See section 2.3 of *Co-operating to Safeguard Children and Young People* and the *Regional Child Protection Policies and Procedures* for more on 'significant harm'

<sup>23</sup> See the adult safeguarding policy for Northern Ireland – *Adult Safeguarding: Prevention and Protection in Partnership* - for further information on 'serious harm' in relation to adults.

<https://www.health-ni.gov.uk/articles/adult-safeguarding-prevention-and-protection-partnership>

- Whether the **rights** of an individual (most commonly an individual's Article 8 ECHR rights to privacy and right to confidentiality) are endangered as a consequence of sharing personal information. The child also has rights that must be respected, protected and fulfilled; neither individual's entitlement to rights has precedence over the other, but, where there is an apparent conflict, in line with the principles on which the Children Order is based, the welfare of the child is paramount.
- The impact the sharing may have on the life of the subject of the information. The risk to the individual should be considered and mitigated as far as possible, but it should not outweigh the potential risk to the child were the personal information not to be shared. The impact on other persons affected by sharing personal information should also be considered, this may require ascertaining the views and interests of the individual and of others who may be adversely affected. Where appropriate an individual should be informed of allegations or concerns made against him/her and given the opportunity to make representations before the information is shared, for example in relation to allegations of abuse - see paragraph 4.37.
- Where the information is already in the public domain, it may be easier to justify the sharing of it. Consideration should be given to who made the information public, when and how. For example, if it was the individual who chose to make the information public was this unmistakably a deliberate act on their part?
- The vulnerabilities of the child or children who may be at risk.
- The magnitude of the risk: the more serious the potential risk to the child, the more likely the sharing of personal information is to be justified.
- The ability of the parent and others to protect the child may be a factor to consider in making a decision as to whether personal information needs to be shared more widely with others who could act in a protective role for the child.

#### *Relevance*

- 4.36 Only personal information which is **relevant and necessary** to achieve the purposes should be shared with those who need it.

#### *Adequacy and Accuracy*

- 4.37 Information should be **accurate, verifiable and credible** and clearly distinguish between fact and opinion. Assessing the credibility of the information may require the decision maker to "find facts on the balance of probabilities" – see JR57 case study at page 25. In some situations, **fairness** will require that individuals are given a **right to reply** but only if it is appropriate and safe to do so. This includes in relation to allegations of abuse, so that an individual can understand what is being alleged and can respond. Decisions as to whether an

individual should be put on notice of allegations or concerns made in respect of him /her must be made jointly with PSNI on a case by case basis and will depend on a number of factors including the nature of the information. Where the accuracy or validity of information is not in dispute, it may not be necessary to seek representations.

(vi) **Ensure that how you share is in keeping with the law – make sure you do share in a timely way, in a secure way and that you keep a robust record.**

4.38 How you share personal information is as important as whether and what you share. The key points to consider are:

- Do it in a **timely** way. Information should be shared in a timely fashion to reduce the risk of missed opportunities to offer protection or promote the welfare of a child.
- Do it in a **secure** way. **Personal information should be shared in an appropriate, secure way, following HSCT policy for handling personal information and in line with Information Sharing Agreements that may be in place (see paragraph 4.40).**
- **Keep a robust record.** You must be able to account for what you have shared (or not). Keep a record of decisions and the reasons behind them. If you decide to share, then record what you have shared, with whom and for what purpose.

(vii) **Ensure that you share the information with the right person**

4.39 The HSCT must ensure that the information is being disclosed to the right person and for the right reasons. The right person will be the person who needs to know for the purposes of protecting the child from harm. The person with whom the information is shared must know **why** they have been given it, understand the confidential and sensitive nature of the information they have received; and be informed on how to make use of the information, including the need to manage the information securely and what to do or who to contact should they need to share further information.

4.40 HSCTs should have established ways to share personal information with other agencies, practitioners and organisations with whom they share information with regularly. This could be by way of an **information sharing agreement** or protocol that ensures that proper processes for sharing information are identified and in place so that organisations can share personal information in a lawful and efficient way. Bodies which provide services under contract to HSCTs should also have such processes in place and those who have a statutory duty to cooperate with HSCTs under Article 66(9) of the Children Order should have procedures in place to comply with this. Sections 8 and 14

of the ICO Data Sharing Code of Practice<sup>24</sup> provides guidance on what an information sharing agreement should cover. Some information sharing agreements and protocols already in place are referenced in the references section.

- 4.41 The Information Sharing Agreement between the HSCB (on behalf of the 5 HSCTs, Children’s Services Directorate) and the Protective Disclosure Unit (PDU) and Central Referral Unit (CRU) of the PSNI facilitates the sharing of information in order to safeguard children.  
The ‘Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse – Northern Ireland (March 2018)’ (“the Joint Protocol”) supports the exchange of information between PSNI and social services to safeguard children in the investigation or alleged or suspected child abuse.
- 4.42 The considerations set out in this section must be more arduously applied when a HSCT is making a decision to share personal information outside of sharing information with other professionals or organisations and agencies where there are no agreed information sharing agreements or protocols / processes in place.
- 4.43 **A HSCT must not take a decision to share information in respect of an individual believed to pose a risk to a child to a third party without consulting the PSNI. Such action could prejudice a police investigation or place others at risk of harm.**

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<sup>24</sup> The ICO Data Sharing Code of Practice is currently being reviewed in light of UK GDPR and the DPA 2018.

### Case Study – JR 57 – Necessary and Proportionate

In JR57 the court found that the HSCT did not act outside its powers in sharing information but it did find that the decision to share personal information was a breach of the applicant's Article 8 right: there was no **pressing need** to disclose the information which related to allegations of sexual abuse against a minor to third parties. The sharing had not been lawful nor proportionate. Following the alleged report of abuse in September 2010 no decision was taken to share it with any other person or body until September 2011. '...the actions of the Trust do not suggest that there was any pressing need for the retention of this information nor its disclosure to third parties. I have still not been provided with an explanation for the delay which occurred between the first meeting which was held in October 2010 following the allegations of abuse and the next meeting 5 months later in March 2011. In the evidence presented to the court there was a complete hiatus which even today remains unexplained. There was then a further substantial delay until a decision was made on 1 August 2011. I have certainly not been satisfied on the basis of the evidence adduced in this case that there was any pressing need for its disclosure to third parties.' J Horner

## 5. Information Sharing on Individuals Who May Pose a Risk to Children

- 5.1 HSCTs will receive information that indicates that an individual may pose a risk of significant harm to children. This can include:
- information related to historical allegations of abuse;
  - information on individuals who have been held or interviewed in connection with, charged with, or cautioned for, a violent or sexual offences against a child (or in certain circumstances a violent offence against an adult);
  - information on individuals who have been convicted of a violent or sexual offence against a child (or in certain circumstances a violent offence against an adult) or have been subject to a hospital order;
  - information from other sources which indicates that a child or children is/ are at risk of significant harm as a result of an individual's activities or behaviour (can include a young person displaying sexually harmful behaviour) ;
  - Information on any individual who meets the relevant criteria for consideration of PPANI risk management.

5.2 Where a HSCT receives information that indicates that an individual may pose a risk to a specific child, for example, because they share / intend to share their place of residence with a child or children or have ongoing contact with another adult which provides ongoing access to children, child protection policy and procedure should be followed and the HSCT's PPANI Principal Officer, who can advise and assist in accessing information, should be consulted.

#### Information Sharing for Public Protection Purposes

5.3 Where a HSCT has received information that an individual may pose a risk of harm but where it is not appropriate to undertake a child protection investigation, for example, where the risk is to children generally, the HSCT should make inquiries within the HSCT and with other agencies as appropriate based on the information received. Where a HSCT has reason to suspect that a criminal offence may have been committed or may potentially be committed against a child or children, a referral must immediately be made to the PSNI.

5.4 Sharing information between professionals and agencies may contribute to a clearer understanding of the circumstances of an individual and may lead to the identification of a specific child or children who may be at risk of significant harm. Where after these preliminary inquiries it remains that no child has been identified as suffering or likely to suffer harm, it is for the PSNI to decide what further action, if any, they require to take.

5.5 As set out in the Joint Protocol, the PSNI has statutory responsibility to prevent and detect crime and to gather evidence in the investigation of alleged or suspected offences committed against children. Investigations by PSNI may lead to circumstances where a HSCT needs to undertake a child protection investigation and take action under Article 66 of the Children Order to keep a child or children safe. When this occurs the PSNI will inform the relevant HSCT who should then initiate child protection procedures and a joint investigation may be commenced under the Joint Protocol.

#### Information Sharing in relation to individuals working or volunteering with children

5.6 Where a HSCT has cause to suspect that an individual may pose a risk of harm to children, including from allegations of historical abuse, and the HSCT is aware that the individual works or volunteers with children, the information should be shared with the PSNI.

5.7 A HSCT should also use its powers under the SVGO to refer an individual who it is aware has been, or may be engaged in regulated activity and who has committed a relevant offence or who the HSCT believes may harm a child (or



vulnerable adult), cause a child (or vulnerable adult) to be harmed, put a child (or vulnerable adult) at risk of harm, attempt to harm a child (or vulnerable adult) or incite another to harm a child to the DBS. Where a HSCT, as a regulated activity provider has removed an individual from regulated activity because of concerns that they may harm a child or vulnerable adult, the HSCT has a *duty* to refer to the DBS. HSCTs also have duties to provide information on request to the DBS.

- 5.8 The Joint Protocol requires that once a decision is made to conduct a joint investigation, every effort should be made from the outset to determine if the alleged perpetrator is in paid or voluntary employment with children; has been AccessNI checked; DBS (Disclosure Barring Service) checked; or subject of a Bench Warrant or European Arrest Warrant. The DBS must provide information as to whether a person is barred by the DBS where the HSCT has requested it for child protection purposes.<sup>25</sup>

#### Common Law Police Disclosure

- 5.9 Common Law Police Disclosure (CLPD) is a scheme that ensures that where there is a public protection risk, the PSNI will pass relevant information to an employer or regulatory body to enable them to act swiftly and put in place measures to mitigate any danger. The focus of CLPD is to provide timely and relevant information which might indicate that a person poses a public protection risk. Information is passed on at the time someone is arrested or charged, rather than on conviction as happened previously.
- 5.10 Where the HSCT has concerns about an individual who works closely with children in a voluntary or paid capacity, the HSCT should ensure that the information is formally shared with the PSNI, and that the sharing, including the details of what has been shared, when, and with whom in PSNI, is recorded.
- 5.11 The Department of Education Circular 2014/27 outlines the arrangements that are in place between schools and the PSNI in relation to sharing information on individuals who may pose a risk to children in, or in connection with attendance, at school.

#### Public Protection Arrangements Northern Ireland (PPANI)

- 5.12 Certain sexual and violent offenders are managed on a multi-agency basis within the Public Protection Arrangements Northern Ireland (PPANI). HSCTs have a statutory obligation to give effect to PPANI guidance under Article 50 of the Criminal Justice (Northern Ireland) Order 2008. The HSCT PPANI Principal Officer can be a useful source of advice to HSCT professionals and should

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<sup>25</sup> Paragraphs (1B) and (1C) of Article 52A of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

always be consulted when considering issues on sharing information about individuals who may pose a risk of harm to children. When making a decision to share or disclose information in relation to offenders being managed by PPANI, a HSCT should act in accordance with PPANI guidance and the Regional Child Protection Policy and Procedures. The PPANI Manual provides clear guidance on disclosure of information. The principles outlined in this document on the sharing of information, however, will still apply.

### Child Protection Disclosure Arrangements

- 5.13 The Child Protection Disclosure Scheme provides a process for anyone who has concerns about an individual who may pose a risk to children to request that information relating to relevant sexual / violent offences be disclosed to the person responsible for the child. This scheme builds on existing PPANI processes by offering a direct route for a member of the public to bring any concerns they may have to the police about someone they know who has access to a child. Information about relevant convictions will only be provided to the person with primary care responsibility for the specific child (children) and only if considered as necessary to protect that child.<sup>26</sup> Where there is information that may indicate a child protection concern the police will consult with the relevant HSCT as set out in PPANI guidance.<sup>27</sup>

### Notification and Referral Arrangements for Individuals Held, Charged or Convicted of a Relevant Offence

- 5.14 Notification arrangements for PSNI, Probation Service, Northern Ireland Prison Service, Youth Justice Agency and Social Services to share information with each other when an individual is held, charged, convicted, or is transferred or released (including temporary release) from prison or youth justice custody will be developed in 2021. These notification arrangements will require approval by SBNI Board and uploaded on the SBNI website. The following sections on the SBNI website outline the current generic process of Management of Offenders.
- Management and use of Information in respect of an Individual of Concern:  
[https://www.proceduresonline.com/sbni/p\\_manage\\_info\\_concern.html](https://www.proceduresonline.com/sbni/p_manage_info_concern.html) and
  - Public Protection Arrangements for NI  
[https://www.publicprotectionni.com/app/uploads/2018/04/PPANI\\_MoP\\_2016\\_v2.pdf](https://www.publicprotectionni.com/app/uploads/2018/04/PPANI_MoP_2016_v2.pdf) & (2)

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<sup>26</sup> Child Protection Disclosure Arrangements [https://www.psni.police.uk/advice\\_information/child-protection/child-protection-disclosure-arrangements/](https://www.psni.police.uk/advice_information/child-protection/child-protection-disclosure-arrangements/)

<sup>27</sup> Appendix 9 of PPANI Manual of Practice 2016 (Revised July)

- Manual of practice and Guidance to Agencies on PPANI:  
<https://www.justice-ni.gov.uk/sites/default/files/publications/doj/guidance-to-agencies-on-public-protection-arrangements-ppani.pdf>

### Case study – JR57 – Finding Facts on the Balance of Probabilities

In JR57 'A' challenged the sharing by a HSCT of with third parties of allegations that 'A' had been guilty of abusive behaviour with a minor and was a risk to their children. The court found that the HSCT was not acting outside its powers in sharing this information but it did find that the decision to share information was irrational.

The court found that this decision had been taken 'exclusively on the basis of general and unspecified allegations by 'S' which had neither been scrutinised nor investigated.'

Horne J in considering the proof required to share information concluded that it is the *evidence* that must be established on the balance of probabilities, not whether there is a real or serious *risk* of harm. If this was the case the HSCT would only act on the illogical premise that the risk of abuse was 51% or greater. He quoted an earlier case:

"What is in issue is the prospect, or risk, of the child suffering significant harm. When exposed to this risk a child may need protection just as much when the risk is considered to be less than 50/50 as when the risk is of a higher order."

"In every day usage one meaning of the word *likely*, perhaps its primary meaning, is probable, in the sense of more likely than not. **This is not its only meaning.** If I am going walking on Kinder Scout and ask whether it is likely to rain, I am using likely in a different sense. I am enquiring whether there is a real risk of rain, a risk that ought not to be ignored".

The Court found that the HSCT did not establish the *evidence* on the balance of probabilities - it could not have: 'no attempts had been made to find out the nature of the alleged abuse, the circumstances in which it had taken place and whether there was any person involved, such as 'C' who 'S' had claimed had witnessed the abuse, who could provide corroboration or contradiction of the allegations made against 'A'.' It did not test the evidence or engage in a fact-finding exercise to find any other evidence. No investigation had taken place. Horne J said that [the correct interpretation of Circular 3/96 should have been] before information is shared with third parties the Trust must first consider the evidence and make findings of fact on the balance of probabilities. On the basis of those findings, the Trust must then determine whether there is a "real" or "serious" risk of significant harm being caused by the un-adjudicated individual to a child/children. If the answer is that such a "real" or "serious" risk does exist, then it is entitled to share the information with the appropriate third parties.

## 6. What to do when a Safeguarding Partner is reluctant to share information

- 6.1 Where there is disagreement over the sharing of information, the SBNI Resolution of Professional Differences Protocol should be consulted. If there are concerns that a child is at immediate risk of significant harm, concerns must be escalated to senior management, in line with this policy, without delay.
- 6.2 Social workers can also speak about difficulties to the PPANI Principal Officers, co-located CSE SPSW and MARAC SPSW.
- 6.3 Under Joint Protocol, line managers should be engaged when disagreements between agencies occur: 'Where practitioners encounter disagreements that cannot be negotiated and agreed upon, the matter will be brought to the attention of line management who will immediately liaise directly with their counterpart in the other agency to resolve the disagreement.'<sup>28</sup>

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<sup>28</sup> Paragraph 4.46

## 7. Summary: Do's and Don'ts of Information Sharing for Child Protection Purposes

<b>Do:</b>
Do make sure you have a lawful basis for sharing personal– to protect a child from harm is a lawful basis, as is fulfilling HSCT duties to safeguard children.
Do make sure that the sharing is necessary to achieve that purpose and that you only share personal information that is necessary and relevant.
Do ask yourself if there is another reasonable and less intrusive way to achieve the same result.
Do keep a record of why you shared personal information – why you considered it to be necessary and, if shared without consent, why you thought that was justified.
Do consider if consent is appropriate – it is likely to be inappropriate to seek consent if you are sharing to protect a child - ask yourself 'would I share this information anyway even if consent was refused?'
Do engage openly and honestly with individuals and families about personal information about them that you are going to share, if it is safe to do so.
Do give individuals a right to reply to allegations made against them, if it is safe to do so and after consultation with PSNI.
Do share personal information proportionate to the need and level of risk – considering the impact on the individual if the information is shared and the impact on a child if it is not shared
Do remember that the welfare of the child is paramount.
Do take reasonable steps to make sure you can obtain all available information before making your decision to share personal information
Do think about whether the information is accurate, verifiable and credible, distinguishing between fact and opinion.
Do share in a timely way.
Do share in a secure way.
Do keep a robust record of what you do or do not share, the decisions and the reasons behind them.
Do liaise with your HSCT's PPANI Principal Officer when considering sharing personal information on individuals who may pose a risk of harm.
<b>Do not:</b>
Do not share more personal information than is necessary to achieve the purpose.
Do not seek consent if you are not offering a real choice – i.e. if, because of the risk to the child, you would share the personal information anyway.
Do not seek consent or tell an individual you are going to share personal information about them if it is not safe to do so.
Do not tell individuals about allegations made against them if it is not safe or you have not consulted with PSNI.
Do not seek personal information by way of a subject access request – this power gives a data subject the right to request information about them, it is not an appropriate way to gather information by a HSCT for child protection purposes.
Do not delay in sharing information if it could put a child at increased risk of harm.

## 8. References and Further Information

Adult Safeguarding: Prevention and Protection in Partnership, DHSSPS (2015).

<https://www.health-ni.gov.uk/articles/adult-safeguarding-prevention-and-protection-partnership>

Child Protection Disclosure Arrangements

[https://www.psnipolice.uk/advice\\_information/child-protection/child-protection-disclosure-arrangements/](https://www.psnipolice.uk/advice_information/child-protection/child-protection-disclosure-arrangements/)

Circular (OSS) 1/2018: Role and Responsibilities of Directors of the Health and Social Care Board and Health and Social Care Trusts for Children in Need, Children in Need of Protection and Looked After Children.

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Code of Practice on Protecting the Confidentiality of Service User Information, DOH (2019).

<https://www.health-ni.gov.uk/sites/default/files/publications/health/user-info-code2019.pdf>

Common Law Police Disclosure, Home Office

<https://www.gov.uk/government/publications/common-law-police-disclosure>

Co-operating to Safeguard Children and Young People in Northern Ireland DHSSPS (2017). <https://www.health-ni.gov.uk/publications/co-operating-safeguard-children-and-young-people-northern-ireland>

Centre of Excellence on Information Sharing. <http://informationsharing.co.uk/>

Circular 2014/27 Managing Information on Persons who pose a Risk to Pupils, Department of

Education (2014). <https://www.education-ni.gov.uk/publications/circular-201427-managing-information-persons-who-pose-risk-pupils>

Guidance on Disclosure and Barring under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 <https://www.health-ni.gov.uk/articles/safeguarding-vulnerable-groups-disclosure-and-barring-service>

<https://www.health-ni.gov.uk/articles/safeguarding-vulnerable-groups-disclosure-and-barring-service>

Guidance to HSC Trust Staff and Police Regarding the Information Sharing Agreement (ISA) for Concurrent Care and Criminal Proceedings.

Information Commissioner's Office Data Sharing Code of Practice (currently being revised): [https://ico.org.uk/media/for-organisations/documents/1068/data\\_sharing\\_code\\_of\\_practice.pdf](https://ico.org.uk/media/for-organisations/documents/1068/data_sharing_code_of_practice.pdf)

[https://ico.org.uk/media/for-organisations/documents/1068/data\\_sharing\\_code\\_of\\_practice.pdf](https://ico.org.uk/media/for-organisations/documents/1068/data_sharing_code_of_practice.pdf)

Information Commissioner's Office Guide to Data Protection:

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

Information Commissioner's Office Guide to General Data Protection

Regulation: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-UK-GDPR/>

The General Data Protection Regulation: Guidance on Consent, Information Governance Alliance, February 2018

[General Data Protection Regulation \(UK GDPR\) guidance - NHS Digital](#)

Inter-jurisdictional Protocol for Transfer of Children's Care Cases between Northern Ireland and the Republic of Ireland, 2011.

<https://www.health-ni.gov.uk/publications/inter-jurisdictional-protocol-transfer-children%E2%80%99s-social-care-cases-between-northern>

Information sharing: Advice for practitioners providing safeguarding services to children, young people and carers, HM Government (2018)

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## Appendix 1

### General Data Protection Regulation and Data Protection Act 2018

There are 7 principles for the processing (including sharing) of personal data set out under Article 5 of the UK GDPR. In summary they are that data should be:

1. processed fairly, lawfully and in a transparent manner;
2. collected for purposes that are specified, explicit and legitimate (purpose limitation);
3. adequate, relevant and limited to what is necessary for the purposes for which it is processed (data minimisation);
4. accurate and kept up to date;
5. kept no longer than is necessary for the purposes for which the personal data is processed (storage limitation); and
6. processed in a secure manner.

A 7<sup>th</sup> principle, 'the Accountability principle' requires the data controller to demonstrate compliance with the first 6 principles.

Under the General Data Protection Regulation (UK GDPR) there must be a lawful basis for sharing personal data.

The UK GDPR provides 6 lawful bases for sharing personal data: consent; contract; legal obligation; vital interests; public task; legitimate interests. The table below sets out the most relevant lawful bases for the sharing of personal information for child protection purposes. Where you are sharing **special category personal data** both a lawful basis and an additional condition for processing special category data (found in Article 9(2) of UK GDPR) must be identified. Some of the conditions can be used directly, and some are dependent on further conditions in the DPA. The table below is useful for identifying conditions. Article 10 of the UK GDPR provides that personal data relating to criminal convictions and offences or related security measures can only be shared where it is being shared in an official capacity or where there is specific legal authorisation to do so. In the UK this authorisation is found in a condition under Part 1, 2 or 3 of Schedule 1 to the DPA. The table below can be used to identify relevant conditions for sharing this type of information.

<p>UK GDPR Article 6 Lawful Bases for processing personal data relevant to sharing information for child protection purposes</p>	<p><b>Article 9 Conditions re: processing of special category personal data relevant to sharing information for child protection purposes.**</b></p>	<p><b>“Substantial Public Interest” Conditions relevant to sharing information for child protection purposes: Part 2 of Schedule 1 to the Data Protection Act 2018.</b></p>	<p><b>“Additional Conditions Relating to Criminal Convictions Etc”: Part 3 of Schedule 1 of the Data Protection Act 2018.***</b></p>
<ul style="list-style-type: none"> <li>• Consent (6(1)(a));*</li> <li>• Contract (6(1)(b));</li> <li>• Legal Obligation (6(1)(c));</li> <li>• Vital Interests (6(1)(d));</li> <li>• Public Task (6(1)(e));</li> <li>• Legitimate Interests (only available to public authorities in very limited circumstances, which would not include sharing for child protection purposes) (6(1) (f)).</li> </ul>	<ul style="list-style-type: none"> <li>• Necessary for reasons of public interest in the area of public health (9(2)(i));</li> <li>• <i>Explicit</i> consent(9(2)(a)) ;</li> <li>• Necessary for carrying out obligations or exercising rights under employment, social security, or <b>social protection law</b> (9(2)b))</li> <li>• Vital interests (9(2)(c))</li> <li>• Information has been made public by the individual (9(2)(e))</li> <li>• Necessary for establishment, exercise or defence of legal</li> </ul>	<ul style="list-style-type: none"> <li>• Statutory and government purposes: <b>sharing is necessary for the exercise of a function conferred on a person by an enactment or rule of law</b>; the exercise of a function of the Crown, a Minister of the Crown or a government department and is necessary for reasons of substantial public interest (paragraph 6).</li> <li>• Administration of justice (paragraph 7(a))</li> <li>• <b>Preventing or detecting unlawful acts (paragraph 10)</b></li> <li>• Counselling (paragraph 17)</li> </ul>	<ul style="list-style-type: none"> <li>• Consent (paragraph 29)</li> <li>• Vital interests (paragraph 30)</li> <li>• The information has been made public by the individual (paragraph 32)</li> <li>• Necessary in connection with legal proceeding; obtaining legal advice; establishing, exercising or defending legal rights (paragraph 33)</li> <li>• Administration of accounts used in commission of indecency</li> </ul>

	claims or by courts acting in judicial capacity (9(2)(f)) <ul style="list-style-type: none"> <li>• <b>Substantial public interest (9)(2)(g)</b></li> <li>• Necessary for preventative / occupational medicine; medical assessments; diagnosis; <b>health or social care</b> treatment; management of health or social care systems and services (9(2)(h))</li> <li>• Necessary for archiving purposes (9(2)(j))</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Safeguarding of children and of individuals at risk</b> where consent cannot be obtained or inappropriate (paragraph 18)</li> <li>• Publication of legal judgments (para 26).</li> </ul>	offences involving children (para 35); <ul style="list-style-type: none"> <li>• Where processing would meet a Part 2 condition except for the express requirement for the sharing to be necessary for substantial public interest (para 36).</li> </ul>
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This table shows the lawful conditions **most relevant** to sharing information by HSC bodies for child protection purposes. It does not list all the UK GDPR conditions for sharing special category personal data nor all the conditions for processing under the DPA.

\* Public authorities, employers and other organisations in a position of power over individuals should avoid relying on consent unless they are confident they can demonstrate it is freely given.

\*\* special category personal data can be lawfully shared under Article 6, where a condition under Article 9 for processing special category personal data under Article 9 are met.

When using some conditions under Article 9, additional conditions under the DPA must also be met. Article 9(2)(g) -processing is necessary for reasons of **Substantial Public Interest** can be used where a condition in Part 2 of Schedule 1 to the DPA is met.

Article 9(2) (h) – **health and social care** – can be used if a condition in Part 1 of Schedule 1 to the DPA is met. Processing that is necessary for health and social care purposes is a condition in Part 1 when carried out by or under the responsibility of a health or social work professional or by another person who in the circumstances owes a duty of confidentiality under an enactment or rule of law.

To use conditions under Article 9(2) (b), (i) or (j) additional conditions under Part 1 of Schedule 1 to the DPA 2018 must also be met.

\*\*\* Criminal conviction personal data can be shared when a condition under Part 1, 2 or 3 of Schedule 1 to the Data Protection Act 2018 is met.

The Data Protection Act 2018 (para 5(1) of Part 2 of Schedule 1 and paras 38 and 39 of Part 4 of Schedule 1) require data controllers to have a policy document in place for the processing of special category personal data and personal data relating to criminal conviction information in certain circumstances, including when the information is shared using the additional condition of substantial public interest.

The document must explain the controller's procedures for securing compliance with the principles in Article 5 of the UK GDPR, the controller's policies as regards the retention and erasure of personal data processed in reliance on the condition, with an indication of how long the personal data is likely to be retained. The controller must, during the relevant period, keep the policy document under review and updated and must make it available to the Commissioner on request.