

INFORMATION SHARING IN CHILD PROTECTION

1. Introduction

Keeping children safe from harm requires professionals and others to share information. This includes information that identifies personal characteristics of the child and qualitative or descriptive information such as their health and development and exposure to possible harm, information about their parents or carers who may not be able to care adequately or safety for them and those who may pose a risk of harm to a child or unborn child.

The purpose of this information sharing protocol is to facilitate the secure exchange of information, between WSCB members and partners in order to ensure the health, well-being and safeguarding of children and young people in Warwickshire.

No single professional can have a full picture of a child's needs and circumstances and, if children and families are to receive the right help at the right time, everyone who comes into contact with them has a role to play in identifying concerns, sharing information and taking prompt action

The effective sharing of information between professionals and local agencies is essential for effective identification, assessment and service provision. The early sharing of information is the key to providing effective early help where there are emerging problems. At the other end of the continuum, sharing information can be essential to put in place effective child protection services. Serious Case Reviews (SCRs) have shown how poor information sharing has contributed to the deaths or serious injuries of children.

The WSCB is committed to supporting information sharing between and within organisations and to addressing any barriers to information sharing.

This information sharing protocol provides specific details for information sharing in the safeguarding children context. It is a tier 2 agreement and should be read in conjunction with the Warwickshire Information Sharing Charter which sets the standards for obtaining, holding and using and sharing information

The Data Protection Act 1998 controls the sharing of personal and sensitive information. Personal information is data which can identify an individual and sensitive information includes the person's race or ethnicity, political opinions, religious beliefs, trade union membership, physical or mental health, sexual life, the commission or alleged commission of any offences and details of criminal proceedings.

2. Sharing information with consent

Where there is consent from the data subject there is no difficulty about the sharing of information. Seeking consent to the sharing of information should be the first option if appropriate. Many issues surrounding the disclosure of consent can be avoided if the consent of the individual has been sought and obtained.

Data protection law (at European and domestic level) does not draw any explicit distinction between data subjects who are adults and those who are children the Data Protection Act 1998 confers rights on the Data Subject, i.e. the child. These rights should only be exercised by another on their behalf if they are not capable of exercising them independently. Therefore it is the child who has a right of access to the information held about them or the right to consent or refuse to consent to share information. When a child is exercising this right a professional needs to be satisfied that the child understands what it means to consent or refuse to consent to the sharing of information. In the absence of a child being able to consent to share his own data it is usual that someone with parental responsibility would make a decisions on his behalf.

Practitioners should seek to explain at the outset, openly and honestly, what and how information will or could be shared and the reasons why such information will be shared. Individuals will therefore be provided with sufficient information about how their data will be shared. Professionals should ensure that discussions and consents or refusals to share information are appropriately recorded

3. Sharing information without consent

Where possible the wishes of children, young people or families who do not consent to sharing confidential information should be respected. However, information may still be shared if the judgement on the facts of the case are that there is sufficient need to override the absence of consent in order to protect the welfare of a child

Consent should not be sought when the sharing of information is required by law through a statutory duty or by a court order. Consent should also not be sought if doing so would place a person at risk of significant harm, prejudice the prevention, detection or prosecution of a serious crime or lead to an unjustifiable delay in making enquiries about allegations of significant harm to a child.

Personal information held about children and families is subject to a legal duty of confidence. That duty is not absolute but is a balance between the public

interest in maintaining the confidentiality and the public interest in disclosing information.

The Data Protection Act makes provision for the non-consensual disclosure of personal and sensitive information providing it is obtained and processed fairly and lawfully, disclosed in appropriate circumstances, is accurate and relevant, is not held longer than necessary and is kept securely.

When considering the disclosure of information in the context of child protection, under the Human Rights Act, three Articles should be considered;

- No one may be subject to torture or inhuman or degrading treatment or punishment;
- Everyone has the right to a fair trial;
- There shall be no interference by a public body with the right to respect for private and family life except for the prevention of disorder or crime, for the protection of health and morals or for the protection of rights and freedoms of others.

Information can be shared if it is in the public interest to do so. A public interest can arise in a wide range of circumstances such as to protect children or other people from harm or to promote the welfare of children. The key factor in deciding whether or not to share sensitive information is proportionality; is the proposed sharing a proportionate response to the need to protect the public interest in question. (Please see checklist 1)

A practitioner must make a judgement on the facts of the individual case when considering whether the sharing of information without consent will be justified. However there are some circumstances in which sharing information without consent will normally be justified in the public interest

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

There is nothing within the principles of common law relating to confidentiality, the Data Protection Act 1998 or the Human Rights Act 1998 to prevent the justifiable and lawful exchange of information for the protection of children.

Fears about sharing information cannot be allowed to stand in the way of the need to promote the welfare and protect the safety of children. No professional should assume that someone else will pass on information which they think may be critical to keeping a child safe. If a professional has concerns about a child's welfare and believes they are suffering or likely to suffer harm, then they should share the information. Where there are concerns that a child or unborn child is, or may be at risk of significant harm, the needs of the child must come first. The overriding objective must be to safeguard the child. There is no insurmountable legal barrier to prevent the lawful and justifiable disclosure of personal, sensitive and confidential information between professionals and agencies to protect children and/or to ensure serious crimes against them detected and prosecuted.

Information must be accurate and necessary for the purpose for which it is being shared and shared only with those who need to see it.

4. A checklist to assist WSCB members and partners to make decisions to share information

Safeguarding and promoting the welfare of a child or young person is a primary consideration in all decision making about information sharing

Is the sharing justified?

Key points to consider:

- Do you think you should share the information?
- Have you assessed the potential benefits and risks to individuals and/or society of sharing or not sharing?
- Do you have concerns that an individual is at risk of serious harm?
- Do you need to consider an exemption in the DPA to share?

Do you have the power to share?

Key points to consider:

- The type of organisation you work for.
- Any relevant functions or powers of your organisation.
- The nature of the information you have been asked to share (for example was it given in confidence?).
- Any legal obligation to share information (for example a statutory requirement or a court order).

If you decide to share

Key points to consider:

- What information do you need to share?
 - Only share what is necessary.
 - Check the information is accurate and up-to-date

- How should the information be shared?
 - Information must be shared securely.
 - Ensure you are giving information to the right person.
- Consider whether it is appropriate/safe to inform the individual that you have shared their information.

Record your decision

Record your data sharing decision and your reasoning – whether or not you shared the information.

If you share information you should record:

- What information was shared and for what purpose.
- Who it was shared with.
- When it was shared.
- Your justification for sharing.
- Whether the information was shared with or without consent.