

# 6. Information Sharing

## 6.1 Introduction

Good record keeping is a vital component of professional practice. Whenever a complaint or allegation of abuse is made, all agencies should keep clear and accurate records and each agency should identify procedures for incorporating, on receipt of a complaint or allegation, all relevant records into a file to record all action taken. When abuse or neglect is raised managers need to look for past incidents, concerns, risks and patterns. In many situations, abuse and neglect arise from a range of incidents over a period of time.

Information sharing between organisations is essential to safeguard adults at risk of abuse, neglect and exploitation and is already set out in the common law duty of confidentiality, the General Data Protection Regulations (GDPR), the Human Rights Act and the Crime and Disorder Act. The Mental Capacity Act is also relevant as all those coming into contact with adults with care and support needs should be able to assess whether someone has the mental capacity to make a decision concerning risk, safety or sharing information. Records should be kept in such a way that the information can easily be collated for local use and national data collections.

In this context organisations could include not only statutory organisations but also voluntary and independent sector organisations, housing authorities, the police and the Crown Prosecution Service (CPS), and organisations which provide advocacy and support where these organisations are involved in Safeguarding Adults enquiries, including raising a concern and participating in an enquiry and/or making a contribution to protection plans.

## 6.2 Why do we need to share safeguarding information?

Organisations need to share safeguarding information with the right people at the right time to:

- prevent death or serious harm
- coordinate effective and efficient responses
- enable early interventions to prevent the escalation of risk
- prevent abuse and harm that may increase the need for care and support
- maintain and improve good practice in safeguarding adults
- reveal patterns of abuse that were previously undetected
- identify low level concerns that may identify people at risk of abuse
- help people to access the right kind of support to reduce risk and promote wellbeing
- help identify people who may pose a risk to others, and where possible, work to reduce offending behaviour
- reduce organisational risk and protect reputation

To ensure effective safeguarding arrangements:

- all organisations must have arrangements in place which set out clearly the processes and the principles for sharing information between each other, with other professionals and the Rochdale Borough Safeguarding Adults Board (RBSAB) and,
- no professional should assume that someone else will pass on information which they think may be critical to the safety and wellbeing of the adult. If a professional has concerns about the adult's welfare and believes they are at risk of, or likely to be at risk of, abuse or neglect, then they should share the information with the Rochdale Borough Council Adult Care and, or, the police if they believe or suspect that a crime has been committed.

All agencies should identify arrangements, consistent with principles and rules of fairness, confidentiality and data protection for making records available to those adults affected by, and subject to, an enquiry. If the alleged abuser is using care and support themselves, then information about their involvement in an adult safeguarding enquiry, including the outcome, should be included in their case record.

If it is assessed that the individual continues to pose a threat to other people then this should be included in any information that is passed on to service providers or other people who need to know.

### **6.3 Seven golden rules for information sharing:**

1. **Remember that the GDPR is not a barrier to sharing information** but provides a framework to ensure that personal information about living persons is shared appropriately.
2. **Be open and honest** with the person (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** if you are in any doubt, without disclosing the identity of the person where possible.
4. **Share with 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, that lack of consent can be overridden in the public interest. You will need to base your judgement on the facts of the case.
5. **Consider safety and well-being:** Base your information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.
6. **Necessary, proportionate, relevant, 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 people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.
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.

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In addition, information will be shared within and between organisations in line with the principles set out below.

- Adults have a right to independence, choice and self-determination. This right extends to them being able to have control over information about themselves and to determine what information is shared. Even in situations where there is no legal requirement to obtain written consent before sharing information, it is good practice to do so.
- The person's wishes and desired outcomes should always be considered, and in some situations the person may not want an enquiry to take place, however protecting adults establishes a general principle that an incident of suspected or actual abuse can be reported more widely and that in so doing, some information may need to be shared among those involved for example the police in cases where criminality is concerned or it is in the wider public interest..
- Information given to an individual member of staff belongs to the organisation and not to the individual employee. An individual employee cannot give a personal assurance of confidentiality to an adult.
- An organisation should obtain the adult's consent – unless there is a public interest to override consent - to share information and should routinely explain what information may be shared with other people or organisations.
- Difficulties in working within the principles of maintaining the confidentiality of an adult should not lead to a failure to take action to protect the adult.
- Confidentiality must not be confused with secrecy, that is, the need to protect the management interests of an organisation should not override the need to protect the adult.
- Staff reporting concerns at work ('whistle-blowing') are entitled to protection under the Public Interest Disclosure Act 1998

The RBSAB may request a person to supply information to it or to another person. The person who receives the request must provide the information if:

- the request is made in order to enable or assist the RBSAB to do its job;
- the request is made of a person who is likely to have relevant information and then either:
  - i. the information requested relates to the person to whom the request is made and their functions or activities or;
  - ii. the information requested has already been supplied to another person subject to an RBSAB request for information.

## 6.4 Checklist for Staff

### 1. Sharing information with someone else

- a. Does the person requesting the information need it to do their job?
- b. Have you got the client's consent to pass the information on?
- c. If not, can you justify passing on the information without consent?
- d. Are you sure the person requesting the information is who they say they are?
- e. Will anonymised information do?
- f. Do you need to pass on the whole record/file? (Try to pass on the minimum information necessary)

### 2. When you are requesting personal information

- a. Do you need the information to do your job?
- b. Can you use anonymised information?
- c. Do you need the whole file/record?

If you only need minimum details, or a summary, please only request this.

## 6.5 What if a person does not want you to share their information?

Frontline workers and volunteers should always share safeguarding concerns in line with their organisation's policy, usually with their line manager or safeguarding lead in the first instance, except in emergency situations. As long as it does not increase the risk to the individual, the member of staff should explain to them that it is their duty to share their concern with their manager. The safeguarding principle of proportionality should underpin decisions about sharing information without consent, and decisions should be on a case-by-case basis.

Individuals may not give their consent to the sharing of safeguarding information for a number of reasons. For example, they may be frightened of reprisals, they may fear losing control, they may not trust social services or other partners or they may fear that their relationship with the abuser will be damaged. Reassurance and appropriate support along with gentle persuasion may help to change their view on whether it is best to share information.

If a person refuses intervention to support them with a safeguarding concern, or requests that information about them is not shared with other safeguarding partners, their wishes should be respected. However, there are a number of circumstances where the practitioner can reasonably override such a decision, including:

- the person lacks the mental capacity to make that decision – this must be properly explored and recorded in line with the Mental Capacity Act
- other people are, or may be, at risk, including children
- sharing the information could prevent a crime
- the alleged abuser has care and support needs and may also be at risk
- a serious crime has been committed
- staff are implicated

- the person has the mental capacity to make that decision but they may be under duress or being coerced
- the risk is unreasonably high and meets the criteria for a multi-agency risk assessment conference referral
- a court order or other legal authority has requested the information.

If none of the above apply and the decision is not to share safeguarding information with other safeguarding partners, or not to intervene to safeguard the person:

- support the person to weigh up the risks and benefits of different options
- ensure they are aware of the level of risk and possible outcomes
- offer to arrange for them to have an advocate or peer supporter
- offer support for them to build confidence and self-esteem if necessary
- agree on and record the level of risk the person is taking
- record the reasons for not intervening or sharing information
- regularly review the situation
- try to build trust and use gentle persuasion to enable the person to better protect themselves.

If it is necessary to share information outside the organisation:

- explore the reasons for the person's objections – what are they worried about?
- explain the concern and why you think it is important to share the information
- tell the person who you would like to share the information with and why
- explain the benefits, to them or others, of sharing information – could they access better help and support?
- discuss the consequences of not sharing the information – could someone come to harm?
- reassure them that the information will not be shared with anyone who does not need to know
- reassure them that they are not alone and that support is available to them.

If the person cannot be persuaded to give their consent then, unless it is considered dangerous to do so, it should be explained to them that the information will be shared without consent. The reasons should be given and recorded.

If it is not clear that information should be shared outside the organisation, a conversation can be had with safeguarding partners in the police or local authority without disclosing the identity of the person in the first instance. They can then advise on whether full disclosure is necessary without the consent of the person concerned.

It is very important that the risk of sharing information is also considered. In some cases, such as domestic violence or hate crime, it is possible that sharing information could increase the risk to the individual. Safeguarding partners need to work jointly to provide advice, support and protection to the individual in order to minimise the possibility of worsening the relationship or triggering retribution from the abuser.

Domestic abuse cases should be assessed following the SafeLives DASH risk assessment and referred to the Multi- Agency Risk Assessment Conference where appropriate. Cases of domestic abuse should also be referred to local specialist domestic abuse services.

## 6.6 Powers or obligations to share information

### 6.6.1 Referring to the Disclosure and Barring Service (DBS)

The Safeguarding Vulnerable Groups Act (2006) places specific duties on those providing 'regulated activities'. They must refer to the DBS anyone who has been dismissed or removed from their role because they are thought to have harmed or pose a risk of harm to a child or adult with care and support needs; this applies even if they have left their job and regardless of whether they have been convicted of a related crime. There is a DBS factsheet to help people with data protection and security when making referrals.

There are also DBS factsheets on:

- When to refer
- The DBS and professional regulators
- Local authority: Referral duty and power
- Harm, Relevant Conduct and Risk of Harm

See the DBS website for further information.

### 6.6.2 Professional codes of practice

Many professions in health and social care are registered with a professional body and governed by a code of practice or conduct. These codes often require those professionals to report any safeguarding concerns in line with legislation.

Care workers or care assistants are not registered but there is a code of conduct published by Skills for Care. The code states that as a Healthcare Support Worker or Adult Social Care Worker in England, you must:

- report any actions or **omissions** by yourself or colleagues that you feel may compromise the safety or care of people who use health and care services and, if necessary use **whistleblowing** procedures to report any suspected wrongdoing.
- challenge and report dangerous, abusive, discriminatory or exploitative behaviour or practice.
- report things that you feel are not right, are illegal or if anyone at work is neglecting their duties. This includes when someone's health and safety is in danger; damage to the environment; a criminal offence; that the company is not obeying the law (like not having the right insurance); or covering up wrongdoing.



### 6.6.3 Duty of Candour

Regulations under the Care Act place a duty of candour on all service providers registered with the Care Quality Commission. The duty:

- aims to ensure transparency and honesty when things go wrong
- requires providers to tell the person when something has gone wrong as soon as possible and provide support to them
- includes giving an apology and keeping the person informed about any further enquiries.

### 6.6.4 Commissioning

Commissioning services should consider whether contracts should place an obligation on service providers to share safeguarding information. Any specifications would need to be in line with policy, regulation and the law.

### 6.6.5 Sharing information on prisoners

The statutory guidance to the Care Act 2014 requires Rochdale Borough Council to share information about people with care and support needs in, or in transition from or to, prison or custodial settings. This includes “the sharing of information about risk to the prisoner and others where this is relevant.”

### 6.6.6 What if a safeguarding partner is reluctant to share information?

There are only a limited number of circumstances where it would be acceptable not to share information pertinent to safeguarding with relevant safeguarding partners. These would be where the person involved has the mental capacity to make the decision and does not want their information shared AND:

- nobody else is at risk
- there is no wider public interest
- no serious crime has been or may be committed
- the alleged abuser has no care and support needs
- no staff are implicated
- no coercion or duress is suspected
- the risk is not high enough to warrant a MARAC referral
- no other legal authority has requested the information

## 6.7 Legal basis of Information Sharing

### 6.7.1 The common law duty of confidentiality

Confidentiality is an important principle that enables people to feel safe in sharing their concerns and to ask for help. However, the right to confidentiality is not absolute. Sharing information with the right people at the right time is vital to good safeguarding practice.

All staff should be familiar with their internal safeguarding procedures for raising concerns. Any member of staff can also contact either the police or the local authority safeguarding lead for advice, without necessarily giving an individual's personal details, if they are unsure whether a safeguarding referral would be appropriate.

### 6.7.2 The Caldicott principles

The sharing of information in health and social care is guided by the 'Caldicott' principles. A Caldicott Guardian is a senior role for an organisation which processes health and social care personal data. They make sure that the personal information about those who use the organisation's services is used legally, ethically and appropriately, and that confidentiality is maintained.

Caldicott Guardians should be able to provide leadership and informed guidance on complex matters involving confidentiality and information sharing. These principles are reflected in the General Data Protection Regulations (GDPR) and are useful to other sectors:

- Justify the purpose(s).
- Don't use personal confidential data unless it is absolutely necessary.
- Use the minimum personal confidential data necessary for purpose.
- Access to personal confidential data should be on a strict need-to-know basis.
- Everyone with access to personal confidential data should be aware of their responsibilities.
- Comply with the law.
- The duty to share information can be as important as the duty to protect patient confidentiality.

### 6.7.3 The Human Rights Act

- Under Article 8 of the European Convention on Human Rights, individuals have a right to respect for their private life.
- This is not an absolute right and can be overridden if necessary and in accordance with the law.
- Interference must be justified and for a particular purpose.
- Justification could be protection of health, prevention of crime, protection of the rights and freedoms of others.
- A decision to share information and reasoning should be recorded.

### 6.7.4 The General Data Protection Regulations (GDPR)

The General Data Protection Regulations sets out the parameters for sharing information appropriately and safely.

#### **The basic principles**

Any personal information should be shared on the basis that it is:

- necessary for the purpose for which it is being shared
- shared only with those who have a need for it
- accurate and up to date
- shared securely and in a timely fashion
- not kept for longer than necessary for the original purpose.

### 6.7.5 The Crime and Disorder Act

Any person may disclose information to a relevant authority under Section 115 of the Crime and Disorder Act 1998, 'where disclosure is necessary or expedient for the purposes of the Act (reduction and prevention of crime and disorder)'. (Mandelstam



2011) Relevant authorities, broadly, are police, local authorities, health authorities and local probation boards.

There is an overarching information sharing protocol to which all partners to the RBSAB are signatories, and reference to this should be made for further guidance.