

Bradford Children and Young People's Strategic Partnership

INFORMATION SHARING PROTOCOL FOR CHILDREN AND YOUNG PEOPLE

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<p style="text-align: center;">BRADFORD CHILDREN and YOUNG PEOPLE'S STRATEGIC PARTNERSHIP INFORMATION SHARING PROTOCOL</p>

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1. Introduction

1.1 Background

It is often necessary for agencies to share information so that children and young people can receive the services they need. Sometimes, it is only when information held by different agencies is put together that a child or young person is seen to be in need of additional or alternative services.

The Data Protection Act 1998 and Human Rights Act 1998, incorporating Article 8 of the Convention, place an emphasis on protecting privacy. After its introduction, agencies became very reluctant to share information for fear of breaking the law. Information which should have been shared has been kept within one agency, potentially impeding the effectiveness of the service provided to children and young people. There is concern to redress this balance.

The Green Paper *Every Child Matters* (Sept 03) highlighted the need for agencies working with children to improve their information sharing. The focus being on early intervention and prevention. The resultant Children Act 2004 sets out the legislative framework. In particular:

- **Section 10** defines a statutory framework for co-operation between Local Authorities and partner agencies, including the voluntary and community sector, to improve the well-being of children
- **Section 11** creates a duty for key agencies to put in place arrangements to make sure that they take account of the need to safeguard and promote the welfare of children when doing their jobs
- **Section 12** allows further legislation to be made available for the establishment of child indexes (IS Index*) containing basic information about a child and the details of practitioners working with the child

Clarity about when and what information can be shared is fundamental to the operation of common assessment processes and Children's Trusts.

1.2 Scope

This protocol sets out the principles, practice guidance and legal framework for information sharing between agencies working with children, young people, their families and carers in the Bradford areas.

It is an agreement between all agencies listed in section 1.3 to facilitate and govern the sharing of information to ensure that children living in the metropolitan district of Bradford receive good quality assessments and appropriate services.

It is consistent with and is supported by the overarching protocol pertaining to Information Sharing known as the Bradford Health & Social Care Partnership Inter-Agency Protocol.

Additional operational level protocols may need to be developed for specific areas such as Information Sharing & Assessment (ISA) and these will provide more detail ie. the who/why/where/what /how and clear staff guidance in order to communicate to practitioners and service users the specific operational requirements e.g. privacy / confidentiality statements, fair processing notices, consent procedures, subject access etc.

This document provides guidance to staff who wish to give information to, or obtain information from, other agencies locally or elsewhere, and is a reference document to check on the legality of sharing information in cases of doubt. Appendix A on statutory functions and powers may be particularly helpful for this.

The protocol is governed by Legislation and Guidance which includes the following:

The Children Acts 1989 and 2004
Data Protection Act 1998
Working Together to Safeguard Children 2005
Framework for the Assessment of Children in Need and their Families 2000
Promoting the Health of Looked After Children DOH 2002
The Human Rights Act 1998
Access to Health Records Act 1990 (in respect of deceased persons only)
The Common Law Duty of Confidentiality, and the right to privacy under Human Rights Law.
Crime and Disorder Act 1998 (Particularly Section 115)
SEN Code of Practice, 2002
Disability Discrimination Act, 2005
Safeguarding Children in Education, DfES 2004

1.3 Parties to the Protocol

The partner agencies are all those working with children and families in Bradford, including:

Services to Children and Young People Department
Education Bradford
Strategic Housing, Regeneration Department
West Yorkshire Police
West Yorkshire Probation Service
Bradford and Airedale NHS tPCT
Airedale Hospital NHS Trust
Bradford Hospitals Teaching NHS Trust
Bradford District Care Trust
Bradford Youth Service
Bradford Youth Offending Team
Careers Bradford Ltd
Drug and Alcohol Action Teams
Voluntary Organisations working with Children and their Families
Children's Centres/Sure Start Programmes
Children Fund Services
Children & Family Court Advisory & Support Service

2.0 Objectives

- 2.1 To clarify the purposes for which partner agencies may share information about children and families (Note: you cannot necessarily share information just because you want to "understand a child's needs").

- 2.2 To inform parents and children/young people of the reasons why information about them may need to be shared.
- 2.3 To recognise people's rights to privacy and ensure, where possible, their confidentiality is respected.
- 2.4 To avoid the repetition and duplication of professional effort and minimise the number of times children and parents are asked for the same information about themselves.
- 2.5 To provide clear and unambiguous guidance for staff within partner agencies in order to improve working practices and to afford staff protection against complaint or prosecution by Service Users.
- 2.6 To set out clearly the roles and responsibilities of each partner agency.

3.0 General Principles of Information Sharing

- 3.1 Safeguarding and promoting the welfare of a child or young person must be the first consideration in all decision making about information sharing.
- 3.2 Professionals can only work together to effectively safeguard and promote the welfare of children if there is a lawful exchange of relevant information between them.
- 3.3 There must be a legal basis for sharing information, a legitimate purpose for doing so, and the action taken must be proportionate to the objective.
- 3.4 Working with children, young people and their families in an open and honest way is a key principle governing the work of all partner agencies. This means that users are informed why information needs to be shared and why particular actions need to be taken, unless to do so would adversely affect the purpose for which the information is to be shared.
- 3.5 Whenever information is disclosed it should be limited to the minimum necessary for the purpose and restricted to those who 'need to know'.
- 3.6 Parents have a right to know that partner agencies will make judgements about the child's health and development, which may be shared with other agencies.
- 3.7 It shall be normal working practice in each agency to obtain the consent of the child or young person, and / or their parent/carer, prior to disclosing information about them to another agency. The exception to this is where this would put someone at risk of harm or prejudice a police investigation into a serious offence, or lead to unjustifiable delay in protecting a child (See section 4.3). Where a professional judgement indicates that consent cannot be obtained, a decision could be made, in most cases, to inform the child or young person and / or their parent/carer that information will be shared, without consent. The reasons for this would need to be explained and that decision recorded. In exceptional situations information will be shared without consent and without the child or young person and / or their parent/carer being informed; that decision and the reasons would need to be recorded.

- 3.8 Where it is necessary to share information without consent, it is important that the information is only shared with those who 'need to know' and is limited to such information that is essential to fulfil the purpose of the disclosure (i.e. to protect a child or other person from significant harm).
- 3.9 The significance or potential significance of information that is held must be considered. Information shared must be relevant to the purpose for which it is being shared and must only be shared with those practitioners / agencies that 'need to know'.
- 3.10 Practitioners should only share as much information as they need to – but should share enough to achieve the purpose for which information is being shared.
- 3.11 Personal information should always be dealt with in a sensitive and non-discriminatory manner. Some information is particularly sensitive, has special status and protection under the Data Protection Act, and attracts a high degree of protection under Human Rights law.
- 3.12 Children, young people and their parents should have the opportunity to gain access to information held about them, in accordance with the Data Protection principles, subject to any exceptions within that Act, and to correct any factual errors that have been made, in line with procedures surrounding access to records.
- 3.13 Where disclosure of a child's information might reveal information about other individuals such as parents or other family members, explicit consent should be sought from these individuals as well. Where it is not practicable to seek consent or where the individual is not competent to give consent, it is important to consider whether disclosure would be justified in the public interest such as to protect others from a risk so serious that it outweighs the individual's right to privacy. This needs consideration in collaboration with the appropriate Caldicott guardian/ equivalent. Consideration must always be given to whether data about third parties needs to be deleted from information about the child, unless that information (such as about a parent/carer is also disclosable under the principles set out in this policy).
- 3.14 People working with children need to take professional decisions based on their understanding of the guidance, and the particular situation, and record their decisions about and reasons for sharing specific information.
- 3.15 A professional who is supplying information held on their records regarding a child or family member should clearly state whether the information being supplied is fact, opinion, or a combination of both.
- 3.16 Where parents or children or young people consider their confidentiality has been breached they have a right to complain via the Internal Complaints Procedure of the agency alleged to have breached the confidence. This will not affect their additional rights of redress as detailed in the Data Protection Act or Human Rights Act.
- 3.17 Good information sharing is based on good information keeping. Records should be accurate, relevant, kept up to date, and kept for no longer than is

necessary for their purpose. Please refer to your own Agency's file retention policies before any records are destroyed.

- 3.18 Each partner agency will have their own File Retention and Access to Records Policies, which will be based on the relevant Legislation and Guidance and can be shared with partner agencies and Service Users.
- 3.19 Where information is required to be exchanged in relation to a deceased person, the Data Protection Act does not apply. In these circumstances the general principles of this protocol will be applied. Careful consideration will be given to the disclosure of information concerning a deceased person and if necessary, legal advice should be sought on each individual case.
- 3.20 All partner agencies will take any necessary steps to ensure the personal data held by them, both paper and electronic records are held securely and are only available on a 'need to know' basis.
- 3.21 All partner agencies need to be aware that information shared may be used in legal proceedings in order to safeguard the welfare of the child.
- 3.22 In complex cases about the sharing of information, or if there is any doubt or dispute about whether information should be stored, disclosed or collected, operational staff should speak to a named senior member of staff or professional e.g. a solicitor.
- 3.23 Any inaccuracies in information should be reported to the relevant partner organisations. The data controller responsible for the information will need to take appropriate steps to amend the details and inform the partners that the information has changed.

4.0 Procedures for the Sharing of Personal Information

4.1 Obtaining Consent

- 4.1.1 For consent to have meaning, service users need to have the necessary information to make 'informed' decisions. Organisations will ensure that service users are made aware of the reasons why information needs to be shared and the possible consequences of their decisions. It is important that explanations include:
 - Clarity about the purpose of approaching other individuals or agencies;
 - Reasons for disclosure of any information, for example about the referral of details about the child or family members;
 - Details of the individuals or agencies being contacted;
 - What information will be sought and shared;
 - Why the information is important;
 - What it is hoped to achieve;
 - Choices that are available to the client or third party in relation to release of their personal information
- 4.1.2 Where consent is required individuals should be told that they have the right to withhold, withdraw or restrict their consent at any time. Objections should be recorded appropriately and each organisation should abide by the refusal, withdrawal or limit on consent.

- 4.1.3 Where a decision is taken to conduct an assessment of a child, the family should be provided with a copy of the Information Leaflet which explains the assessment process.
- 4.1.4 Consent to obtain and share information will be undertaken by the agency making the referral or completing the initial assessment (CAF). This will be obtained by asking the child, young person and/ or parent to sign the consent form. If the assessment is under CAF, information can only be shared by consent. If information needs to be shared without consent, that must be under child protection procedures.
- 4.1.5 In some circumstances it will not be possible to obtain written consent in the manner described in 4.1.4. Where consent is obtained through another communication medium to share information this must be clearly recorded in the case records. If possible written consent should then be obtained at the earliest opportunity.
- 4.1.6 Consent obtained only relates to the specific referral made. If a further referral, that is of a different nature (i.e. concerns a new situation or set of circumstances), is made, fresh consent must be obtained.

4.2 Definitions of who can give Consent:

Children:

- 4.2.1 In obtaining consent to seek information from other parties or to disclose information about the child key consideration will be determining whether the child is competent to give consent or whether consent should be sought from a person with parental responsibility. (See Appendix B – Fraser guidelines)
- 4.2.2 Careful consideration would need be given as to whether the child or young person has the ability and understanding to give informed consent. Where a professional makes a judgement in relation to the capacity of a young person to give informed consent they must clearly record their reasons for reaching their decision. The advice of managers, and/or legal advice may need to be sought in particularly complex situations.
- 4.2.3 Where a young person is deemed to be 'Fraser' competent, but is refusing consent for the sharing of information, contrary to the wishes of his/ her parent(s) information may be shared, without the young person's consent, if a professional judgement has been made that the refusal to consent places the young person or other person at risk of significant harm.
- 4.2.4 A parent may only give consent to obtain and share information about themselves or about those children for whom they have Parental Responsibility. They may not give consent on behalf of the other parent or another adult carer of the child. In cases where parents with parental responsibility are separated, the consent of the absent parent should not over-ride the consent of the parent caring for the child without good reasons for doing so.
- 4.2.5 Where a child or young person is deemed to be of sufficient age and understanding to give their own consent they should be asked for consent themselves and the parent's consent would not be necessary. In

circumstances where a competent child or young person refuses consent their parent cannot give consent on his/her behalf. In such circumstances, consultation with a manager should take place and it may be necessary to obtain legal advice.

- 4.2.6 It is still considered good practice to encourage competent young people to involve their families in decision making, unless it is not in the young person's best interests to do so, but if deemed competent and cannot be persuaded to do otherwise, their wishes must be respected unless disclosure can be justified on the grounds of "public interest" such as there is reasonable cause to suspect that the young person is suffering, or is likely to suffer "significant harm". If a decision is taken to disclose, the justification should be noted in the young person's records. Some information, such as sexual health, contraception and terminations, attract a very high degree of privacy protection.

Parental Responsibility:

- 4.2.7 The Children Act 1989 sets out clearly who has parental responsibility including:
- The child's parents if married to each other at the time of conception or birth;
 - The child's mother, but not the father if they were not married unless the father has acquired parental responsibility via a court order or a parental responsibility agreement, his name is on the birth certificate (for births from 1 December 2003) or the couple subsequently marry;
 - The mother's husband/partner if he acquires a parental responsibility order
 - The child's legally appointed guardian (appointed either by the court or by a parent with parental responsibility in the event of their own death)
 - A person in whose favour a court has made a residence order or special guardianship order concerning the child;
 - A local authority designated in a care order in respect of the child; but not where children are accommodated on a voluntary basis under section 20 of the Children Act 1989.
 - A local authority or other authorised person who holds an emergency protection order in respect of the child;
- 4.2.8 Parental consent should always be sought in the first instance as far as this is reasonably possible, although the local authority, if it holds parental responsibility (see above), is able to give consent in the best interests of the child, if this is being unreasonably withheld by the parent. Shortage of time is not, in itself sufficient justification for not attempting to seek parental consent.
- 4.2.9 Foster carers and residential social workers do not hold parental responsibility.
- 4.2.10 Where more than one person (or agency) has parental responsibility for a child, consent is only required from one of them. This is because parental responsibility may be exercised independently. Children Act 1989 s 2(8). But please see above.
- 4.2.11 If a child is subject to a Care Order, Interim Care Order or Emergency Protection Order, the local authority shares parental responsibility with the birth parents. When seeking consent to share information about the child, the

local authority can themselves consent if parents' consent cannot be obtained or has been withheld. This only applies to information about the child/young person themselves and not information about the parent or any other third party.

4.2.12 Aspects of parental responsibility may be delegated by the parent or the Local Authority to give authority to someone who cares for the child on a regular basis to give consent under defined circumstances.

4.3 Sharing Information without Consent:

4.3.1 It may be necessary to share information without obtaining consent from the child or parent / carer when:

- the child is at risk of significant harm (see Appendix B)
- there is a risk of significant harm to another person
- the child needs urgent medical treatment
- the disclosure prevents the child from committing a criminal offence that could place others in jeopardy or places the assessor or any other person at risk of collusion
- information is required as part of a legal proceeding e.g. by order of the Court
- information is requested by the police if investigating a serious crime
- sharing that information is required to undertake a statutory function.

4.3.2 Where these situations apply and it is necessary to share information without consent, the reasons for doing so should be recorded. The record must contain details of any third parties and full details of all the information or evidence they have been given.

4.3.3 Where it is not reasonably practical to obtain consent risk assessments and a proportionality test should be conducted between the individuals right to confidentiality and the need for reasonable intrusion.

4.3.4 Keeping children safe from harm requires professionals and others to share information. There will be situations where professional judgement indicates that information be shared without consent in order to build up a picture to determine whether or not a child is at risk of "Significant Harm" and making the family aware of this process may, in itself, increase those risks. Reasons for not making parents aware of concerns and not seeking consent to further information sharing need to be recorded.

5. Specific Information Sharing Situations

This section contains brief guidance about specific recurring information sharing situations. It is likely to be added to over time.

5.1 Assessments of Children in Need and Child Protection Enquiries

The Children Act 1989 s17 and s47 are about assessments of children in need and child protection enquiries undertaken by Social Services Departments. The Act enables Social Services to request help from other local authorities, education authorities, housing authorities, and NHS bodies, and place an obligation on these authorities to cooperate. The Act does not require an unjustified breach of confidence, but an authority should not refuse a request without considering all the circumstances. A clear case needs to be made for sharing information without consent, if the assessment is under Section 17 (child in need) rather than Section 47 (child protection enquiry).

Social Services should inform families that when agencies contribute with a family's permission to an assessment of need, the written assessment will be shared with all contributors.

5.2 Child Protection Strategy Discussions

Strategy discussions generally involve Health, Police, and Social Services where there is a child protection investigation. One of the tasks of the meeting is to decide what information should be shared with relevant individuals. All agencies involved must receive feedback on decisions made.

Any written material disclosed to the Police is disclosable by them to the Crown Prosecution Service, and may then fall within their duties pursuant to s3 of the Criminal Procedure and Investigation Act 1996. This means that in any subsequent prosecution they have a positive duty to consider disclosing any information which may be of assistance to the defence. Legal advice may be necessary.

5.3 Serious Case Reviews (Child Protection)

Where a Serious Case Review into the death or injury of a child is being conducted, the Local Safeguarding Children Board will plan when and how information will be shared with the family and relevant others, and inform the family and relevant others that information will be shared without consent. All agencies must provide information into this process, whether consent has been obtained or not, on the grounds of possible future risk to other children.

5.4 Interviewing Children without Parental Consent

Working Together para 5.65 provides as follows:

'Exceptionally, a joint enquiry/investigation team may need to speak to a suspected child victim without the knowledge of the parent or caregiver. Relevant circumstances would include the possibility that a child would be threatened or otherwise coerced into silence; a strong likelihood that important evidence would be destroyed; or that the child in question did not wish the parent to be involved at that stage and is competent to take that decision. As at paragraph 5.41, in all cases where the police are involved, the decision about when to inform the parent or caregiver will have a bearing on the conduct of police investigations, and the strategy discussion should decide on the most appropriate timing of parental participation.'

5.5 Sharing Information about People who are Convicted of Offences against Children and Potential Offenders

All agencies must alert Social Services if they become aware of a person convicted of an offence against children potentially having contact with children. Social Services must hold an initial strategy discussion with the Police and, where appropriate, Probation.

5.6 Multi Agency Case Meetings

Where a number of agencies are meeting to discuss a number of different children or young people with a view to coordinating services, consent should be obtained in advance, or the need for such consent overridden, as advised in this guidance. It should be noted that if discussions extend beyond the original purpose then fresh consent may be required.

When such meetings are set up on a regular basis, the workability of removing or anonymising children or young people's information before discussion should be considered.

5.7 Multi Agency Teams

It is good practice for multi agency teams to inform service users at the beginning of a service of the nature of the team and the information sharing which occurs within the team, and to obtain written consent to this (unless there are grounds for overriding the need for consent, as in this guidance).

If a new situation or set of circumstances is made then fresh consent must be obtained.

5.8 Children and Young People moving out of an Agency's Geographical Area

When a child or young person who is in need of a continuing service moves outside of an agency's geographical area, and the new area is known, it is important that the agency contacts its counterpart in the child's new area in writing (following the guidance on consent) to ensure that the child or young person's needs are known.

If the new location of the child or young person is unknown, and the risk to the welfare of the child would warrant sharing information without consent, enquiries should be made to find out the new location, so that information may be passed on.

5.9 Use of Interpreters

When using an interpreter, the person working with a child, young person or parent/guardian should discuss the necessity of confidentiality with the interpreter in advance, and then discuss this with the service user through the interpreter at the beginning of any meeting.

6.0 Access and Security Procedures

6.1 Partners will ensure that their internal protocols and guidance for information sharing are consistent with this agreement.

- 6.2 All partner agencies will ensure that appropriate security measures are in place to protect, store and transmit the information it processes.
- 6.3 Guidance on the exchange of personal information is given in Appendix D of this document.
- 6.4 Each partner agency will have their own file retention and access to records policies which will be based on relevant legislation and guidance.

7.0 Protocol Management Procedures

7.1 Formal Approval and Adoption

- 7.1.1 The CAF/ISA Steering Group is responsible for the approval, maintenance and review of this protocol.
- 7.1.2 This protocol applies to the organisations detailed in section 1.3. It also applies to all staff, agency workers, sub contractors, volunteers, students and third parties working within these organisations.
- 7.1.3 All partner agencies are responsible for ensuring that this protocol is circulated to all relevant staff within their organisation and that appropriate training is provided. Each partner agency will keep sufficient copies to enable the protocol to be readily available to members of staff and members of the public who require it.

7.2 Review Process

- 7.2.1 During the initial six months any problems identified will be analysed and changes will be considered if the procedures are felt to be a significant barrier to information exchange or if any of the procedures are shown to provide insufficient levels of confidentiality.
- 7.2.2 The first formal review of the protocol will be held six months following the date of its adoption. Thereafter, reviews will be held at twelve monthly intervals unless legislative changes require immediate action.
- 7.2.3 Prior to the review date, all parties to the protocol will be required to submit feedback on the use of the protocol and propose options for addressing problems or amending procedures. Reviews will be co-ordinated by the CAF/ISA Steering Group.

7.3 Monitoring Process

- 7.3.1 This will take the form of exception reporting. Caldicott Guardian's / equivalent within each organisation will be responsible for monitoring compliance with this protocol. Instances of internal non-compliance should be logged and be dealt with in a prompt manner. Non compliance by other organisations should be reported to the appropriate Caldicott Guardian and to the CAF/ ISA Steering Group.

The following incidents should be logged and reported:

- refusal to disclose information
- conditions being placed on disclosure
- delays in responding to requests

- disclosure of information to members of staff who do not have a legitimate 'need to know'
- inappropriate or inadequate use of personal data
- disregard for procedures
- unauthorised use or disclosure of personal data
- the emergence of any conflict between this protocol and departmental policies and procedures associated with existing legislation

7.4 Reporting Breaches of the Protocol

- 7.4.1 The CAF/ISA Steering Group will investigate all breaches reported to Caldicott Guardians/ equivalent. Recommendations for amendment or additions to the protocol will be formulated and submitted for formal approval.
- 7.4.2 Any complaint received from, or on behalf of, a service user containing allegations of inappropriate disclosure of information will be dealt with through the internal complaints procedure of the organisation that received the complaint. Any disciplinary action will be an internal matter for the organisation.
- 7.4.3 Each organisation must report complaints regarding inappropriate disclosure to their Caldicott Guardian/ equivalent who must inform the CAF/ISA Steering Group of the outcome of these complaints so that it can fulfill its duties and responsibilities with regard to compliance with the protocol.
- 7.4.4 Agencies working with this protocol should ensure that staff are complying with this protocol and that problematic issues relating to information sharing are being addressed as part of every day working practices.

8. Agreement

8.1 Declaration

- 8.1.1 The parties to the protocol will sign a declaration (see Appendix E) to accept that the procedures laid down in this document will provide a secure framework for the sharing of information between organisations/agencies in a manner which is compliant with both statutory and professional responsibilities.

8.2 Expectations

- 8.2.1 Organisations should have appropriate Information Governance mechanisms in place, working towards compliance with ISO 17799.
- 8.2.2 Where organisations share pooled information the information governance requirements should be clearly stated.
- 8.2.3 All organisations which support the protocol should nominate a senior member of staff with responsibility for IG issues.
- 8.2.4 Where common protective markings are used e.g. restricted, confidential, organisations should identify and agree procedures to ensure storage and transmission of information is secure.

8.3 Indemnity

- 8.3.1 Partner organizations should strongly consider having indemnities for claims, losses, liability or costs suffered as a consequence of any information being wrongly disclosed or as the result of any negligent act or omission by any other partner.

Appendix A

OUTLINES OF STATUTORY POWERS AND DUTIES

1.0 The Children Act 1989

Sections 17 and 47 of the Children Act 1989 place a duty on local authorities to provide services for children in need and make enquiries about any child in their area who they have reason to believe may be at risk of serious harm. Section 27 says that the local authority may request the help of any authority or person in:

- Any local authority
- Any local education authority
- Any health authority
- Any person authorised by the Secretary of State for assistance in the exercise of their statutory functions which includes the provision of services for children in need and the sharing of information for these purposes.

The Act also enables the local authority to request help from other local authorities, education and housing authorities and NHS bodies and places an obligation on these authorities to cooperate if to do so would not compromise the carrying out of their functions and the request is lawful. You may be approached by social services and asked:

- To provide information about a child, young person or their family where there are concerns about a child's wellbeing, or to be involved in an assessment under s17 or a child protection enquiry.
- To undertake specific types of assessments as part of a Core Assessment or to provide a service for a child in need.
- To provide a report and attend a child protection case conference. The Act does not require an unwarranted breach of confidence, but an authority should not refuse a request without considering the lawfulness of the request, the relative risks of sharing information, if necessary without consent, against the potential risk to a child if information is not shared.

2.0 The Children Act 2004

Under Section 11 of the Children Act 2004, Local Authorities with responsibilities for Children's Services, and all partner agencies, have a responsibility for making arrangements to ensure their normal functions are discharged having regard to safeguarding and promoting the welfare of children in their area.

The key people and bodies are:

- Local authorities (including district councils)
- The police
- The probation service
- NHS bodies
- Connexions
- Youth Offending Teams
- Governors / Directors of Prisons and Young Offender Institutions
- Directors of Secure Training Centres
- The British Transport Police

Section 10 of the Act places a duty on each children's services authority to make arrangements to *promote co-operation* between itself and relevant partner agencies to improve the wellbeing of children in their area in relation to:

- Physical and mental health, and emotional wellbeing
- Protection from harm and neglect
- Education, training and recreation
- Their positive contribution to society
- Social and economic wellbeing

The Section 11 duty does not give agencies any new functions, nor does it override their existing functions, it simply requires them to

- carry out their existing functions in a way that takes into account the need to safeguard and promote the welfare of children.
- Ensure that the services they contract out to others are provided having regard to that need

In order to safeguard and promote the welfare of children, arrangements should ensure that:

- All staff in contact with children *understand what to do and the most effective ways of sharing information* if they believe a child and family may require targeted or specialist services in order to achieve their optimal outcomes

All staff in contact with children *understand what to do and when to share information if they believe that a child may be in need*, including those children suffering or at risk of significant harm

3.0 Local Government Act 2000

The Local Government Act 2000 aims to improve the wellbeing of people and communities.

Section 2

Gives local authorities 'a power to do anything which they consider is likely to achieve any one or more of their objectives':

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

It has been argued that Section 2 (1) provides a wide basis for sharing information wherever that information is required to enable the local authority to fulfil its functions, which promote the well being of people [including children] within its area. It is of particular relevance because it is designed to ensure that service delivery is coordinated in ways which minimise duplication and maximise effectiveness.

Section 2 (5) makes it clear that a local authority may do anything for the benefit of a person outside their area, if it achieves one of the objectives of Section 2 (1).

However, the actual disclosure of any information to achieve these objectives must be conducted within the framework of the Data Protection Act and the Human Rights Act and give due consideration given to the Common Law Duty of Confidence. It is also subject to any express prohibition in legislation.

4.0 Education Act 2002

The Section 11 duty of the Children Act 2004 complements the duty placed by Section 175 of the Education Act 2002 on Local Education Authorities and the governing bodies of both maintained schools and further education institutions to make arrangements to carry out their functions with a view to safeguarding and promoting the welfare of children and follow the guidance in 'Safeguarding Children in Education (DfES 2004).

Proprietors of Independent Schools also have a duty to safeguard and promote the welfare of pupils at the school under **Section 157 of the Education Act 2002 and the Education (Independent Schools Standards) Regulations 2003.**

5.0 Education Act 1996

Section 13

An 'LEA' shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community, by securing that efficient primary and secondary education is available to meet the needs of the population of the area. Details of the number of children in the local authority's area and an analysis of their needs is required in order to fulfil this duty so there may be an implied power to collect and use

information for this purpose.

Section 434 (4)

Provides for regulations containing implied powers for LEA to obtain information about school attendance.

6.0 Learning and Skills Act 2000

Section 117: Sets out the duties on maintained schools and LSC funded providers to provide relevant information in order to help ensure continuity of service for Young People who move to another area.

Section 119: Enables the Secretary of State to supply info to any person for the purposes of the provision of the Connexions Service, specifically social security information.

The Education (SEN) (England) (Consolidation) Regulations 2001: Regulation 6

When the local education authority are considering making an assessment of a child's special educational needs, they are obliged to send copies of the notice to social services, health authorities and the head teacher of the school (if any) or a head of SEN where the child is receiving education from an early education provider asking for relevant information.

Regulation 18 provides that authorities shall serve notices on schools the Connexions services, health authorities listing those children with statements of SEN and for whom the authority is responsible.

7.0 Children (Leaving Care) Act 2000

The Act's main purpose is to help young people who have been looked after by a local authority move from care into living independently in as stable a fashion as possible. To do this it amends the Children Act 1989 (c.41) to place a duty on local authorities to assess and meet need. The responsible local authority is to be under a duty to assess and meet the care and support needs of *eligible* and *relevant* children and young people and to assist *former relevant children*, in particular in respect of their employment, education and training.

Sharing information with other agencies will enable the local authority to fulfil the statutory duty to provide after care services to young people leaving public care.

8.0 Protection of Children Act 1999

The Act creates a system for identifying persons considered to be unsuitable to work with children. It introduces a 'one stop shop' to compel employers designated under the Act (and allows other employers) to access a single point for checking people they propose to employ in a child care position.

This will be achieved by checks being made of criminal records with the National Criminal Records Bureau and two lists maintained by the Department of Health and the Department for Education and Skills.

9.0 Immigration and Asylum Act 1999

Section 20 : Range of information sharing for the purposes of the Secretary of State

- To undertake the administration of immigration controls to detect or prevent criminal offences under the Immigration Act
- To undertake the provision of support for asylum seekers and their dependents.

10 .0 Crime and Disorder Act 1998

Section 17 applies to a local authority (as defined by the Local Government Act 1972); a joint authority; a police authority; a National Park authority; and the Broads authority. As amended by the Greater London Authority Act 1999 it applies to the London Fire and Emergency Planning Authority from July 2000 and to all fire and rescue authorities with effect from April 2003, by virtue of an amendment in the Police Reform Act 2002.

Section 17 recognises that these key authorities have responsibility for the provision of a wide and varied range of services to and within the community. In carrying out these functions, section 17 places a duty on them to do all they can to reasonably prevent crime and disorder in their area.

The purpose of section 17 is simple: the level of crime and its impact is influenced by the decisions and activities taken in the day to day business of local bodies and organisations. Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across a wide range of local services that influence and impact upon community safety and putting it at the heart of local decision making. Section 17 is a key consideration for these agencies in their work in Crime and Disorder Reduction Partnerships, Drug Action Teams, Youth Offending Teams, Children's Trusts and Local Safeguarding Boards.

Section 37 Sets out that the principal aim of the youth justice system is to prevent offending by children and young people and requires everyone carrying out youth justice functions to have regard to that aim.

Section 39(5) of the Crime and Disorder Act 1998 sets out the statutory membership of **Youth Offending Teams** and consists of the following:

- At least one probation officer
- At least one police officer
- At least one person nominated by a health authority
- At least one person with experience in education
- At least one person with experience of social work in relation to children.

Youth Offending Teams have a statutory duty to deliver youth justice services including advising courts, administering community sentences and interventions, and working with juvenile custodial establishments. Youth Offending Teams are responsible for the supervision of children and young people subject to statutory disposals.

As Youth Offending Teams are multi-agency teams, members will also need to be aware of the need to safeguard and promote the welfare of children that relates to their constituent agency.

Section 115 provides a power but not an obligation for disclosure of information sharing to responsible public bodies (e.g. police, local and health authorities) and with cooperating bodies (e.g. Domestic Violence Support Groups, Victim Support Groups) participating in the formulation and implementation of the local crime and disorder strategy.

The police have an important and general power to share information to prevent, detect and reduce crime. However, some other public organisations that collect information may not have had the power previously to share it with the police and others. Section 115 clearly sets out the power of any organisation to share information with the police authorities, local authority, Probation Service and Health Authority (or anyone acting on their behalf) for the purposes of the Act.

This enables information to be shared for a range of purposes covered by the Act e.g. for the functions of the Crime and Disorder Reduction Partnerships and Youth Offending Teams, the compilation of reports on parenting orders, antisocial behaviour orders, sex offender orders and drug testing orders. Section 115 was amended by the Police Reform Act 2002 to include parish councils and community councils, therefore enhancing the benefits to share information with partner agencies.

11.0 The National Health Service

The role of the NHS in safeguarding and promoting the welfare of children.

Section 11 of the Children Act 2004 applies to a number of NHS organisations in England

- Strategic Health Authorities
- Designated Special Health Authorities
- Primary Care Trusts
- NHS Trusts
- NHS Foundation Trusts

As part of their duties under Section 11 of the Children Act 2004 all NHS staff need to ensure as part of their work with children and families, and with adults who are parents or carers who are experiencing personal problems, that the needs of their children are considered and that where necessary they are assessed and appropriate referrals made.

National Health Service Act 2006

To provide a comprehensive health service to England and Wales to improve the physical and mental health of the population and to prevent, diagnose and treat illness.

Share information with other NHS professionals and practitioners from other agencies carrying out health service functions that would otherwise be carried out by the NHS.

Share information in order for Health to exercise their health service function and for the local authority to exercise its function in order to secure and advance the health and welfare of the people of England and Wales.

12.0 The Health and Social Care (Community Health and Standards) Act 2003

Core Standard 2 is relevant to safeguarding and promoting the welfare of children and states 'Health care organisations protect children by following national child protection guidance within their own activities and in their dealings with other organisations'.

The National Service Framework

The National Service Framework sets out in Standard 1 – Promoting health and wellbeing, identifying needs and intervening early: As part of the promotion of the positive mental health of all children and young people, assessment of need and early intervention where children are at greater risk (e.g. Children whose parents are unsupported by wider family) can make a significant difference.

The National Service Framework sets out in Standard 5 what should ensure the safeguarding of children and young people and the promotion of their welfare.

(Based on the Cross Government Guidance – Sharing Information on Children & Young People 2005)

Appendix B

“Fraser Competence”

Although they do not acquire full adult rights to make their own decisions until they are 18, young people are increasingly, with age, presumed to be competent to give consent and should then be treated as such unless there is evidence to suggest otherwise.

Consent to assessments and interventions for children lacking Fraser competence is normally obtained from parents who have “Parental Responsibility”, and the child’s views and wishes are, where possible, sought, and taken into account.

The government has suggested that children as young as 10 or 12 may be competent to give consent. This is a developmental concept, does not fluctuate from day to day, and implies that professional judgement should be used.

This situation will arise in instances where the young person wishes to consent but does not wish the parents to be involved, or the parents are unavailable or decline or are unable to consent. In such instances, the young person should **first** be assessed as to whether they have the capacity to consent. This is known as “Fraser Competence” after the landmark legal judgement which stated that “the parent’s right yields to the child’s right to make his own decision as he reaches sufficient understanding and intelligence”. A useful checklist for decisions about Fraser Competence has been developed and is shown below:

<p>Does the young person have a satisfactory understanding of?</p> <p>The reasons for and nature of the proposed intervention?</p> <p>Their own needs, and the needs of others involved?</p> <p>The risks and benefits of the outcomes of the proposed intervention?</p> <p>Their own identity, feelings and self-concept?</p> <p>The significance of time (past, present, and future)?</p>	<p><i>Other factors to consider:</i></p> <p>Is the parent-child relationship supportive and affectionate?</p> <p>Is there trust and confidence in the worker/child relationship?</p> <p>Whose opinion influences the child, and how?</p> <p>How serious/significant is the risk to the child’s welfare?</p> <p>Is more time/information needed?</p> <p>Is a second opinion required?</p>
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[From the work of Pearce (1994); Doora, Parkin, Gale, & Franke (2002)]

Appendix C

A definition of “Significant Harm”

The Children Act of 1989 introduced the concept of Significant Harm as the threshold that justifies compulsory intervention in family life in the best interests of the children.

Under the Children Act the Local Authority is under a duty to make enquiries, or cause enquiries to be made, where it has reasonable cause to suspect that a child is suffering, or likely to suffer significant harm (Section 47). It is then under a duty to consider whether to use any of its powers, including legal intervention and/or provision of services.

The decision to conduct an assessment under Section 47 of the Children Act should be made if:

The child is suffering, or is likely to suffer significant harm and the likelihood of harm is attributable to shortcomings in the care provided, which can be by acts or omissions.

"Harm" means *ill treatment* or the impairment of *health* and *development*.

"Ill treatment" includes sexual abuse and forms of ill treatment, which are not physical.

"Health" means physical or mental health.

"Development" means physical, intellectual, emotional, social or behavioural development.

Harm can include the effect of seeing or hearing another person harmed, such as during domestic violence.

The issue of what is “**significant**” is a matter of judgement for practitioners and the Courts; where the question of whether harm suffered by a child is significant turns on the child’s health and development, his health or development shall be compared with that which could reasonably be expected of a similar child.

Appendix D

Guidelines for the exchange of personal information

Organisations/ agencies should ensure that all personal files and confidential information are kept in secure, controlled locations when unattended e.g. locked storage cabinets, appropriate protection for computer systems, lap-tops etc. Keys to locked storage should only be held by staff who require regular access to the information.

Organisations/ agencies should take every precaution to ensure that information identifying individual service users is transferred and shared in a secure manner. Procedures for the transfer of personal information are given below.

1. Transfer of information by fax

- Where possible minimise the amount of information included in the fax. The “two fax” approach can be useful where personal details without identification details are sent through on one fax, with the identifier sent on a separate fax. If the first fax went astray for any reason the second would not be sent.
- Send information to a “safe haven” fax where possible. A safe haven fax is one that is managed in such a way that its security is enhanced. These safeguards should include that:
 - The fax is sited in a secure room or cupboard
 - The recipient organisation has a written policy for handling faxes which staff have been informed about and understand
 - Identified staff are responsible for waiting by the machine until the fax is sent and for collecting and delivering the faxed information to the appropriate person
- Telephone the recipient to ensure that they are aware a confidential fax is sent and to confirm that an identified individual will collect and deliver it and that safe receipt will be confirmed.
- Ensure that the fax is sent with a cover sheet stating that it is strictly confidential. The cover sheet should also state that the fax is for the intended recipient only and in the event of error the sender should be notified immediately.
- Use pre-installed numbers wherever possible to minimise the risk of mis-dialing. Double check the fax number before sending. If possible send a test fax first.
- There are some types of personal information that should never be transmitted by fax. These include, details relating to HIV status, venereal disease, drug abuse, psychiatric history (except in limited circumstances where allowed by concessions) or incriminating evidence.
- A report sheet should be requested to confirm that the transmission was successful.
- Personal information must not be left unattended whilst the fax is being transmitted.

2. Transfer of information by email

- Transfer of personal information by email should be avoided unless the information is encrypted i.e. transmitted in a coded format. Organisations that want to use email for the transfer of personal information will need to agree between themselves a suitable form of encryption.

3. Transfer of information verbally

- A considerable amount of information sharing takes place verbally, often on an informal basis. Difficulties can arise because of this informality particularly in modern open plan offices. Care should be taken to ensure that confidentiality is maintained in such discussions.
- If information is to be shared by phone, then steps need to be taken to ensure the recipient is properly identified. This can be done by taking the relevant phone number, double checking that it is the correct number for that individual / organisation and then calling the recipient back.
- Where information is transferred by phone, or face to face, care should be taken to ensure that personal details are not overheard by other staff who do not have a 'need to know'. Where possible, such discussions should take place in private locations and not in public areas, common staff areas, lifts etc.
- Messages containing personal information should not be left on answer machines since these may be replayed by unauthorised persons, stored on communal systems or stored incorrectly as a result of mis-dialling.
- Messages containing confidential / sensitive information should not be written on white boards / notice boards.

4. Transfer of information by post

- Written communications containing personal information should be transferred in a sealed envelope and addressed by name to the designated person within each organisation. They should be clearly marked "Personal and Confidential- to be opened by the recipient only".
- The designated person should be informed that the information has been sent and should make arrangements within their own organisation to ensure that the envelope is delivered to them unopened and that it is received within the expected timescale.
- If an organisation has a policy that all mail is to be opened at a central point this policy must be made clear to all partners. An alternative means of transfer should be arranged where it is essential that the information is restricted to those who have a 'need to know'.
- The personal information contained in written transfers should be limited to those details necessary in order for the recipient to carry out their role.

Appendix E

Information Sharing Protocol

DECLARATION OF ACCEPTANCE & PARTICIPATION

I, the undersigned, on behalf of the organisation named below, agree to support the implementation of this Protocol and associated Information Sharing Arrangement/s in accordance with the conditions detailed in this document; including the successful resolution of any action points arising.

Name:	
Position:	
Organisation:	
Address:	
Tel No:	
Email:	
Signature:	
Date:	

DESIGNATED LIAISON OFFICER

The person named below is the nominated contact for this organisation in respect of any enquiries relating to this Protocol. These details will be distributed to all other Partner Organisations who are signatories to this Protocol

Name:	
Position:	
Address:	
Tel No:	
Email:	