

Isle of Wight Area Child Protection Committee

Information Sharing Protocol

1. INTRODUCTION

The Isle of Wight Area Child Protection Committee endorses the information sharing protocol to ensure that relevant information is shared and appropriately handled between the agencies in order to safeguard children and to provide positive and clear working practices between the agencies on the Isle of Wight. There is a duty to disclose information where there is reason to believe it is relevant to the protection of children.

2. PURPOSE

2.1 To provide a framework for the secure and confidential sharing of information between organisations to enable them to meet the needs of children for care, protection and support.

2.2 To set out the principles and practices involved in sharing information between agencies.

2.2.1 'The Framework for Assessment of Children in Need 2000' and 'Working Together to Safeguard Children: a Guide to Interagency Working to Safeguard and Promote the Welfare of Children (Department of Health) 1999', both stress the importance of working in partnership with children, their parents and the wider family when at all possible.

2.2.2 An aspect of working in partnership with parents is the involvement of parents and children in the assessment process and the obtaining of consent from parents prior to inter-agency information sharing, with reference to Gillick principles.

2.2.3 Working Together (DoH) 1999 states that those providing services to adults and children will be concerned about the need to balance their duties to protect children from harm and their general duty towards their patient or service user. Where there are concerns that a child is, or maybe at risk of significant harm, however the needs of that child must come first. In these circumstances, the overriding objective must be to safeguard the child.

2.2.4 In order to protect children adequately, information about the parent/carer is often critical to the assessment process.

3. THE LEGAL CONTEXT

The legal framework for information sharing includes the Data Protection Act 1998, The Human Rights Act 1998, Crime and Disorder Act 1998 and The Criminal Procedures and Investigations act 1996.

3.1 The Data Protection Act 1998:

i) The guidance issued by the Department of Health sets out the circumstances in which all agencies may disclose personal data and sensitive personal data. Information can lawfully be disclosed without the consent of the subject of that information if in disclosing the information agencies are complying with the legal obligation imposed on that Authority. A legal obligation would include enquiries under Section 47 Children Act 1989.

ii) The Data Protection Act 1998 requires that personal information is obtained and processed fairly and lawfully; only disclosed in appropriate circumstances; is accurate relevant and not held longer than necessary; and is kept securely. ('Working Together' Page 81)

3.2 The Human Rights Act 1998:

Article 8 of the European Convention on Human Rights provides that everyone has the right to private and family life, home and correspondence and that there shall be no interference by a public authority to exercise that right, except in accordance with the law and as is necessary in a democratic society in the interests of national security, public safety or the prevention of disorder or crime, or the protection of health or morals or for the protection of the rights of freedom of others or for the prevention of disorder or crime. Disclosure should, however, be appropriate for the particular purpose and only to the extent necessary to achieve that purpose.

3.3 The Crime and Disorder Act 1998:

Section 1.15 of The Crime and Disorder Act provides that information can lawfully be disclosed to the Police, Local Authorities, Probation Service or Health Authority where the disclosure is necessary or expedient for the purpose of any provision of the Act. The purpose of the Crime and Disorder Act include Anti-social Behaviour Orders, Sex Offender Orders, Parenting Orders, Child Safety Orders and Drug Treatment and Test Orders. The power to disclose information under Section 1.15 does not override other rights, for example, the Common Law Duty of Confidentiality and Obligations under the Data Protection Act.

3.4 The Criminal Procedures and Investigations Act 1996

The Act requires the police to record any information that is relevant to an investigation. The information must be disclosed to the Crown

Prosecution Service, who must in turn disclose it to the defence at the relevant time if it might undermine the prosecution case. In cases where the information is deemed to be of a sensitive nature then the CPS can apply to a judge or magistrate for a ruling as to whether it should be disclosed.

A service level agreement, held by Isle of Wight Council, Hampshire Constabulary and The Crown Prosecution Service specifies procedures around third party disclosure of information in the context of criminal proceedings and involving children as witnesses. This document highlights the responsibility of sharing relevant information with the police to assist in their enquiries into allegations of child abuse and neglect and the obligation on social services to assert Public Interest Immunity from Disclosure subject to any statutory or other exception. In such cases reference must be made to this service level agreement.

4. RELEVANT GUIDANCE

4.1 Common law duty of Confidentiality

All staff working in both the statutory and independent sector are aware that they are subject to a common law duty of confidentiality which applies to identifiable information and not to aggregated data derived from such information or to information that has been effectively anonymised.

The duty requires that unless there is a statutory requirement to use information that has been provided in confidence, it should only be used for purposes that the subject has been informed about and consented to. The duty is not absolute but should only be overridden if the holder of the information can justify disclosure as being in the public interest (eg. to protect others from harm).

4.2 Caldicott Principles

These principles need to be considered by all agencies when information is to be shared:

Justify the purpose for using personally identifiable information.

Don't use personally identifiable information unless it is absolutely necessary.

Use the minimum necessary personally identifiable information.

Access to personally identifiable information should be on a strict need to know basis (ie. professionals should have access to information if the function or role which they are charged with fulfilling at that particular point in time in relation to a particular person cannot be achieved without

access to the information specified).

Everyone should be aware of their responsibilities.

Understand and comply with the law.

5. AGENCIES INVOLVED

All Isle of Wight ACPC (Area Child Protection Committee) Member Agencies.

6. KEY PRINCIPLES

The key principles of this protocol are:

6.1 The importance of working in partnership with children and family members. Family members should normally have the right to know what is being said about them and to contribute to important decisions about their lives and those of their children.

a) Research findings brought together in Child protection: Messages from Research (1995), endorse the importance of good relationships between professionals and families in helping to bring about the best possible outcomes for the children (Working Together to Safeguard Children - 1999, page 75).

b) Where there is compulsory intervention in family life, parents should still be helped and encouraged to play as full a part as possible in decisions about their children.

c) Children of sufficient age and understanding should be kept fully informed of processes involving them and should be consulted sensitively and decisions about their future should take account of their views.

6.2 Personal information about children and families held by agencies is subject to a duty of confidentiality.

6.3 Wherever possible, consent must be obtained from parents, carers or those with parental responsibility for sharing personal information with third parties.

6.4 The need to seek consent can be overridden if seeking consent in itself might place a child at risk of significant harm. Therefore, the needs of the child override the parent or carer's refusal of consent to share information. There may be some circumstances where consent may not be possible or desirable, but the safety and welfare of a child dictate that information should be shared between appropriate agencies.

6.5 When children are being 'Looked After by the Local Authority, information may be shared by and with Social Services in pursuit of its statutory duties. This means in principle, that other agencies should share with Social Services any information they would share with the child's parents and Social Services can share information necessary to carry out their parenting function.

6.6 Research and experience have shown repeatedly that keeping children safe from harm requires professionals and others to share information about a child's health and development, to the exposure of possible harm about a parent who may need help or may not be able to care for a child adequately and safely and about those who may pose a risk of harm to a child. Often it is only when information from a number of sources has been shared and is then put together that it becomes clear that the child is at risk or is suffering harm. (Working Together to Safeguard Children, 1999 - page 80).

7. THE PROTOCOL

All agencies should have their own specific guidelines on Data Protection, Confidentiality and Record Keeping. Staff must refer to these alongside this Protocol.

7.1 Sharing information:

All agencies are required to make the following decision:

- i) Is it necessary to share the information given the duties and responsibilities placed upon the agency?
- ii) Is parental consent required to share information?
- iii) Should parents' permission be overridden in order to share information?

7.2 The sharing of information occurs only:

- i) With the consent of the patient or client.

In seeking consent, the service user/patient must be fully informed of the purpose, the nature of the information being shared, the agency or individual with whom the information is being shared, the date on which the consent was given, the date it is due to expire and the date on which it was withdrawn, if applicable. This information should be clearly recorded.

- ii) Without the consent of the patient or client when the disclosure is required by Law or by order of a Court.

iii) Without the consent of the patient or client when the disclosure is considered to be necessary and in the public interest.

The 'public interest' means the interest of an individual or groups of individuals or of society as a whole and would, for example, cover matters such as a serious crime, child abuse, drug trafficking or other activities which place others at serious risk (Guidelines for Professional Practice (1996) UKCC).

7.3 Article 8 of the European Convention on Human Rights, states that; Disclosure should be appropriate for the purpose and only to the extent necessary to achieve that purpose'. No agency should provide confidential information until the identity of the recipient has been confirmed and the use to which the information will be put has been clarified and this needs to be clearly recorded.

7.4 The name, address and date of birth of the subject should accompany requests for information wherever possible.

7.5 When information is disclosed, advice and guidance should be given on the action to be taken by the person receiving the information. The person making the disclosure should explain this, in confidence and make sure the recipient understands the reasons for having been given the information, what use they are to make of it and any restrictions applying to its further dissemination.

7.6 When disclosing information about an individual, professionals should clearly state whether the information being supplied is fact, opinion or a combination of the two.

7.7 All agencies must ensure they maintain a written record of all discussions and actions. The record must be contemporaneous and be a complete record of actions taken, decisions made, their reasons and justification.

7.8 Agencies should take every precaution to ensure that in a secure manner.

7.9 Verbal information should be followed through with a written report of the information within 5 working days of the initial discussion. Correspondence intended to be confidential should be marked "Strictly Confidential".

7.10 All agencies must take responsibility for ensuring that all confidential information is kept in a private and secure place.

7.11 In many cases, professional judgement will need to be exercised.

Any decision regarding disclosure will need to be relevant and proportionate. Legal advice should be sought in cases of doubt.

8. CHILDREN'S PERMISSION

8.1 When seeking permission to share information from children, the following points should be borne to mind:

- a) The parents permission is sought before speaking to children and that they are fully involved.
- b) Where it is thought necessary not to involve parents, staff should consider the age and understanding of the child (Gillick Principles).
- c) When children approach an agency and the child does not want the information shared with their parents, Gillick principles should be applied. If the information suggests the child or other are likely to be at risk of significant harm a strategy meeting or discussion between the police and social services should decide whether a child victim should be spoken to without the knowledge of the parent/carer.

Relevant circumstances would be:

- The possibility a child would be threatened or coerced into silence
 - A strong likelihood that important evidence would be destroyed
 - Or that a child did not wish the parent to be involved at that stage and is competent to take that decision (Para 5.37, p.48, Working together, DoH 1999).
- d) The level of complexity of the information should be considered when deciding if any agency have a right or a duty to override the child's refusal to share the information, i.e. is the subject matter complex and are their long-term implications that the child could not understand.

8.2 'Working Together to Safeguard Children' states that children are entitled to the same duty of confidence as adults, provided that in the case of those under 16 years of age, they have the ability to understand the choices and their consequences relating to any treatment (Gillick Competence). In exceptional circumstances, it may be believed that a child seeking advice, for example on sexual matters, is being exploited or abused, in such cases, confidentiality may be breached following discussions with the child even if a child refuses to give consent.

Where there are any concerns that a child is or may be at risk of significant harm, or that a sibling of a child is, or may be at risk of significant harm, the needs of that child must come first. In these circumstances, the overriding objective must be to safeguard the child.

9. SPECIFIC RESPONSIBILITIES

9.1 Social Services:

9.1.1 Social Services are the lead Statutory Agency for Child Protection and have a duty to investigate in accordance with 'Working Together to Safeguard Children (1999)'.

9.1.2 When a referral is first made to Social Services the Social Worker has to assess the seriousness of the referral and the risk to the child. In a minority of cases, this will mean swift action to secure the immediate safety of the child. In order to do this, the Social Worker has to quickly collate information from a variety of sources that immediately sets the incident in context and allows them to decide whether to take further action or not, or whether Police involvement is necessary. The course of action will be taken within 24 hours following discussion with other professionals, looking at existing records.

9.1.3 To do this effectively, they need the help of other agencies. Section 47 places a statutory duty to assist upon any Local Authority, and LEA and Housing Authority and any Health Authority and any person authorised by the Secretary of State.

9.2 Health Professionals:

9.2.1 Health professionals have a vital role to play in promotion of children's health and development and the protection of children. They may be the first professional to be aware a child may be at risk.

9.2.2 Health professionals will be contacted by Social Services for information relating to a child who is known to them, in order that the

Social Worker can ascertain whether there are any grounds for suspicion or not. This information is often within a very tight timescale.

9.2.3 The Health Professional should always telephone the Social Worker back to confirm true identity.

9.2.4 Specific information should be shared in a way that is relevant appropriate and timely to Social Workers in order for them to undertake their responsibilities including the date the child was last seen. This in itself may be a significant factor. The Social Worker may also ask if the Health Professional thinks there is anything relevant about the parent or carer that may inform the risk assessment and the decision-making process.

9.2.5 Disclosure will remain a matter for professional judgement, following consultation with relevant managers within own professional discipline.

9.3 General Practitioners:

9.3.1. General Practitioners work closely with Health Visitors and other members of the Primary Healthcare Team and are well placed to identify at an early stage, family stress, which may indicate risk to a child, or to observe in the child, harm or likelihood of significant harm. 'General Practitioners' often extensive knowledge of the family background enables them to make a particular contribution to Child Protection Conferences and to the longer-term support of the child and family.

9.3.2. While General Practitioners have responsibilities to all their patients, the welfare of the child must come first. The General Medical Council (GMC) has produced guidance entitled "Confidentiality 1995" and "Confidentiality: Protecting and providing Information' September 2000. Both documents emphasise the importance in most circumstances of obtaining a patient's consent for the disclosure of personal information, but makes clear that information may be released to third parties if necessary without consent in certain circumstances.

9.3.3. In cases where you have considered all the available means of consent, but you are satisfied that it is not practicable to do so, or that the patients are not competent to give consent, or exceptionally, in cases where patients withhold consent, personal information may be disclosed in the public interest where the benefits to an individual or society of the disclosure outweigh the public and the patients interest in keeping the information confidential. ('Confidentiality: Protecting and Providing Information' 2000)

9.3.4. In all such cases you must weigh the possible harm (both to the patient and the overall trust between doctors and patients) against the benefits which are likely to arise from the release of the information. (Confidentiality; Protecting and Providing Information' 2000) .

9.3.5. You should generally inform the patient that information is being disclosed

These circumstances include the following:

1) Disclosure is in the patient's medical interests: If the General Practitioner believes the patient to be a victim of neglect or physical or sexual abuse and unable to give or withhold consent to disclosure, the General Practitioner should usually give this information to an appropriate responsible person or statutory agency in order to prevent further harm to the patient. In these and similar circumstances, the General Practitioner may release information without the patient's consent, but only if he or she considers that the patient is unable to give consent and the

disclosure is in the patient's best medical interests. (Paragraph 11, Confidentiality, 1995; London, GMC)).

2) Disclosure may be necessary in the public interest, when a failure to disclose information may expose the patient or others to risk of death or serious harm. In such circumstances, General Practitioners should disclose the information promptly to the appropriate person or Authority. (Paragraph 18, Confidentiality, 1995 GMC).

3) The GMC has confirmed that its guidance on the disclosure of information which may assist in the prevention or detection of abuse. It applies both to information about third parties, e.g. adults who may pose a risk of harm to a child and about children who may be the subject to abuse. Further guidance on the timing of referral to a statutory agency is given in Child Protection: Medical Responsibilities (Paragraphs 2.5 and 2.6, Confidentiality, 1995).

9.3.6. Where there is clinical uncertainty, concerns may be discussed with colleagues experienced in working in Child Protection cases. Usually this would be the Designated Doctor for Child Protection, the Designated Nurse for Child Protection or the Named Doctor for Child Protection for PCT.

9.3.7. When a critical threshold of professional concern is reached, Doctors must be prepared to share these concerns with Social Services within a time-frame which is consistent with the child's best interest.

9.3.8. The Medical Defence Union (MDU) has confirmed that a Doctor must be able to justify his/her actions in Court by the sharing of information or not sharing of information and they should always act in the child's best interest. They will always advise the individual doctor member who is concerned, about what action to take. This guide is also relevant to other health professionals.

9.3.9. In some circumstances, the General Practitioner may delegate responsibility of sharing of information with other members of the Primary Healthcare Team, and brief the Health Visitor prior to attendance at case conference.

9.4 Police

9.4.1 The Police do have a commitment to sharing information in intelligence with other agencies where this is necessary to protect children. Where persons are assessed as being a high risk to the general public at large, then the procedures on the convening of a multi-agency risk assessment panel should be followed. However, there are other circumstances where disclosure of an offender or suspected offender's

previous history is being considered. This needs to be considered on a day-by-day basis by the Police.

9.4.2 The police have a common law duty to prevent and detect crime and a corresponding power to disclose information where necessary for the prevention and detection of crime. In exercising this power they must act fairly, having regard to the circumstances of the case and bearing in mind that such disclosure is an exception to the general principle of confidentiality. This means that any one proposing to disclose information not publicly available and obtained in circumstances giving rise to a duty of confidence will need to establish whether there is an overriding justification for doing so. If not, it is still necessary to obtain the informed consent of the person who supplied the information. This will need to be assessed on a case by case basis and legal advice should be sought in cases of doubt.

9.4.3 General principles are:

Sharing information or further disclosure of personal information about individual offenders should be an exception to a general policy of confidentiality.

Each decision on sharing information or further disclosure should be justified on the basis of likelihood of the harm that might result.

Sharing information and further disclosure should be seen as part of an overall plan for managing the risk posed by a potential offender and the need to protect an individual child, group of children or other vulnerable persons.

Decisions should be based on an assessment of the seriousness of the risk; of displacing the offending; of the continuing visibility of the offender and any other operational considerations in respect of the management of the risk posed by the offender. (Working Together, DoH, 1999)

9.5 Education

9.5.1 If the concern regarding an individual child arises within school or any other educational establishment, the staff member would need to seek advice from senior staff, they in turn should discuss their concern with the Education Directorate of Social Services who will assess whether or not the information given to them constitutes a Child Protection Referral. All staff must work within the Isle of Wight Child Protection Procedures.

9.5.2 Through their day-to-day contact with pupils and direct work with families education staff have a crucial role to play in noticing indicators of

possible abuse or neglect and in referring concerns to the appropriate agency.

9.5.3 The Education Service have an important role in sharing information on the child and about whom there are concerns about abuse or neglect.

9.5.4 All education staff should be mindful of the following principles when being asked to share information:

- 1) To clarify the purpose of the information being sought.
- 2) To establish why the information is important and what it is hoped to achieve.
- 3) The staff member should seek advice from the designated teacher in Child Protection in cases of uncertainty.
- 4) The staff member should call the recipient of the information back in order to confirm identity.

10. MONITORING OF THE PROTOCOL

The Professional Issues Working Group (ACPC) will undertake to monitor the operation of the Protocol.

All agencies have a responsibility to monitor compliance with this protocol.

Agencies will need to make arrangements for the following incidents to be logged;

- Refusal to disclose information.
- Conditions being placed on disclosure.
- Delays in responding to requests
- Disclosure of information to staff who do not have a legitimate reason for access
- Non- delivery of agreed reports.
- Disregard for procedures

11. INFORMATION SHARING DIFFICULTIES

In cases where there is or has been difficulties and disagreements about sharing information, the following persons should be contacted for each agency.

Jimmy Doyle - IOW Social Services Department
Tel. 520600

Mary Brimson	-	IOW Social Services Department Tel. 525790
Prue Grimshaw	-	IOW Social Services Department Tel. 525790
Jane Dowdell	-	St Mary's Hospital Tel. 524081
Sally Stewart	-	St Mary's Hospital Tel. 524081
Dr A Hayes	-	Tel. 840625
Detective Superintendent - Kevin Walton	-	Police Tel. 023 80 745011
Rob Faulkner	-	Local Education Authority Tel. 821000
Margaret Blamey	-	For the Voluntary sector Tel. 821999

12 Bibliography

Confidentiality; London; General Medical Council;1995.

Framework for the Assessment of Children in Need and their Families; Department of Health;2000

Working Together to Safeguard Children; A guide to inter-agency working to safeguard and promote the welfare of children; Department of health;1999.

Websites: www.doh.gov.uk/ipu/confiden/guard/guidance.pdf
HSC199/012 caldicott
guardians;http://tap.cta.gocv.uk/doh/coin4.nsf/
www.gmc.uk.org/standards

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