

Hampshire Children's Trust

# Information sharing and confidentiality policy



May 2010



Hampshire  
County Council

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

**Article 3** – *all organisations concerned with children should work towards what is best for each child.*

**Article 12** – *children have the right to say what they think should happen when adults are making decisions that affect them, and to have their opinions taken into account.*

**Article 13** – *children have the right to get and to share information, as long as the information is not damaging to them or to others.*

**Article 16** – *children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.*

*“Clear and accurate records are essential to track an agency or practitioner’s involvement with a child/family and to ensure sound decision making. Safeguarding and promoting the welfare of children often requires information to be shared between agencies supporting the child. By doing this, agencies can collaborate to make interventions evidence-based and effective.”*

***Integrated working newsletter,  
Every child matters/Children’s Workforce Development Council,  
January 2009***

*“Effective communication and sharing of information are vital. Recording and communicating information in a clear and timely manner, and systematically gathering information from a range of sources, improves identification of children and young people in need or at risk of harm. Sharing of information in cases of concern about children’s welfare will enable professionals to consider jointly how to proceed in the best interest of the child and to safeguard children more generally, and will inform effective assessments of children’s needs. Supporting tools such as ContactPoint will play an important role in facilitating better communication between practitioners in different services.”*

***The Children’s Plan: Building brighter futures,  
Department for Children, Schools and Families, December 2007***

# Contents

<b>Introduction</b>	<b>1</b>
<b>Aims</b>	<b>2</b>
<b>Objectives</b>	<b>3</b>
<b>ContactPoint</b>	<b>4</b>
<b>Common Assessment Framework</b>	<b>5</b>
<b>Integrated youth services</b>	<b>6</b>
<b>School Census and Individualised Learner Record</b>	<b>7</b>
<b>Key points when sharing information</b>	<b>8</b>
When sharing information	8
When sharing information without consent	9
How this impacts on confidentiality	10
About recording requirements	11
<b>Support for practitioners working in/with the Children's Trust</b>	<b>12</b>
<b>Obtaining information</b>	<b>13</b>
Practitioners must explain the purpose for which information is being sought	13
Practitioners must make it clear to children and young people that they cannot offer unconditional confidentiality	13
<b>Recording information</b>	<b>15</b>
Consent to record	15
Form of record	16

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<b>Right of access to records</b>	<b>18</b>
<b>Sharing of information</b>	<b>19</b>
Deciding to share information	19
Sharing	20
<b>Appendix 1 – Gillick or Fraser competent</b>	<b>23</b>
<b>Appendix 2 – Caldicott Guardian</b>	<b>25</b>
<b>Appendix 3 – Flowchart of key principles for information sharing</b>	<b>26</b>
<b>Appendix 4 – Extracts from <i>HM Guidance: Training on information sharing</i></b>	<b>27</b>
<b>Appendix 5 – Useful guidance</b>	<b>29</b>
<b>Appendix 6 – National and local references</b>	<b>31</b>
<b>Appendix 7 – Purposes of sharing</b>	<b>36</b>

# Introduction

It is imperative that practitioners working with children and young people share information when it is in the interests of the child/young person to do so. This policy underpins the work of the Hampshire Children's Trust and the national *Children's Plan*:

[www.dcsf.gov.uk/childrensplan/](http://www.dcsf.gov.uk/childrensplan/) .

This publication provides practical advice and aims to ensure that any concerns practitioners have about maintaining confidentiality do not prevent justifiable information sharing.

This policy has been approved for staff working with children and young people accessing Hampshire County Council services such as education, early years, social care and youth support. It also covers joint working arrangements between the various local authorities, health and voluntary organisations and is endorsed by the Hampshire Children's Trust. It supports the *Every child matters* agenda:

[www.everychildmatters.gov.uk/](http://www.everychildmatters.gov.uk/)

and *Hampshire's Children and Young People's Plan 2009 – 2012*:

[www.hants.gov.uk/childrens-services/about-cs/cypp.htm](http://www.hants.gov.uk/childrens-services/about-cs/cypp.htm) .

This publication is formulated in light of a number of recent developments, such as:

- the decision to raise the age for leaving education/training to 18 years of age and the associated 14 to 19 agenda
- the transfer of responsibility for education/training until the age 18 (Year 13) from the Learning and Skills Council to local authorities
- the Mental Capacity Act changes which came into force during October 2007
- updated Common Assessment Framework guidance
- the issue of revised national guidance.

# Aims

To ensure that all practitioners<sup>1</sup> in or working with the Hampshire Children's Trust:

- have a common understanding of information sharing guidance
- know the procedures to follow when sharing information
- understand the accompanying need for appropriate confidentiality when working with children, young people, their parents/carers and fellow professionals
- have a clear understanding of what they, as individuals, can expect from working with the Children's Trust.

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<sup>1</sup> Practitioners refers to managers, practitioners, professionals and all providers, eg: foster carers, child minders and volunteers.

# Objectives

The objectives of this policy guidance are to:

- outline what is meant by *information sharing* and provide links to both national and local guidance on the legal framework
- outline what is meant by *confidentiality* and provide links to both national and local guidance on the legal framework
- provide an understanding of the relationship between confidentiality and the requirement to share information, and the circumstances in which the duty of confidentiality is subordinate to the requirement to share information
- provide an understanding of the different levels of confidentiality that can be offered to children, young people and their parents/carers
- provide information on relevant linking policies for staff
- reduce confusion amongst multi-agency teams and the children/young people and families to whom they provide a service.

The policy applies to all practitioners working within the Hampshire Children's Trust workforce. All staff will be made aware of the policy through each partner's:

- recruitment and induction programmes
- training opportunities
- staff meetings
- newsletters and other forms of communication.

# ContactPoint

ContactPoint became available to a small group of practitioners working in Hampshire in early 2010. It was scheduled to cover the wider workforce by summer 2011. This national index (containing details of practitioners working with children, facilitating the creation of the *team around the child*) has recently been scheduled for closure. A small team has been set up in the Department for Education to build on the work done by the ContactPoint team, as it is still expected that it will become routine for staff to share appropriate information about a child/young person or their family between the practitioners working with them. This practical guidance is issued to support sharing appropriate information.

Further information about ContactPoint can be found on the DfE's website at:

[www.education.gov.uk/news/news/~media/files/lacuna/news/contactpointv2.ashx](http://www.education.gov.uk/news/news/~media/files/lacuna/news/contactpointv2.ashx) .

Within Hampshire, enquiries should be sent to the implementation team's e-mail address:

E-mail: [contactpoint@hants.gov.uk](mailto:contactpoint@hants.gov.uk) .

# Common Assessment Framework

The Common Assessment Framework (CAF) is a key part of delivering frontline services that are integrated and focused around the needs of children and young people. The CAF is a standardised approach to assessing a child/young person's additional needs and deciding how those needs should be met. It can be used by practitioners across the children's workforce in England.

The CAF will promote more effective, earlier identification of additional needs, particularly in universal services. It is intended to provide a simple process for a holistic assessment of a child/young person's needs and strengths, taking account of the role of parents/carers and environmental factors on their development. Practitioners will then be better placed to agree with the child/young person and family what support is appropriate. The CAF will also help to improve integrated working by promoting co-ordinated service provision.

The CAF processes rely on the CAF completer contacting other practitioners working with the child/young person, those whose skills and expertise may be required, and the creation of a *team around the child* to support the child/young person and their family in identifying appropriate support services and agreeing actions. A lead professional is nominated to co-ordinate actions agreed and to provide the main point of contact for the child/young person and family. The CAF process cannot function without appropriate sharing of information between the practitioners concerned. Multi-agency training is available to support this process, and workers can access the CAF completers course at:

<http://htlc.hants.gov.uk/courses/search.asp>

(enter *CAF* in to the keywords box).

Further information about the Common Assessment Framework process can be found at:

[www.everychildmatters.gov.uk/deliveringservices/caf/](http://www.everychildmatters.gov.uk/deliveringservices/caf/)

and the local Hampshire policy and practice guidance is available at:

[www.hants.gov.uk/childrens-services/practitioners-information/caf-and-locality-teams](http://www.hants.gov.uk/childrens-services/practitioners-information/caf-and-locality-teams) .

# Integrated youth services

Connexions services are now an integral part of the children's workforce, being part of Hampshire Children's Services. However, our duty of confidence to the young people we are working with means that only appropriate information is shared between services, ie: the information required to support the young person effectively.

Specific issues arise for young people who are tracked to the future education or training leaving age at the end of academic Year 13, and from there into their subsequent employment or further education. Information on these young people is collected by The Information Authority and the Young People's Learning Agency, and a return to the Government on these activities is required by statute. This does not seriously impact on confidentiality as no case notes are provided, just the training or employment status of the young person. For further information on these tracking exercises please see:

[www.thedataservice.org.uk/about/dataprotection/](http://www.thedataservice.org.uk/about/dataprotection/)

and the Young People's Learning Agency publications at:

[http://readingroom.ypla.gov.uk/ypla/guide\\_to\\_school\\_sixth\\_form\\_data\\_collection.pdf](http://readingroom.ypla.gov.uk/ypla/guide_to_school_sixth_form_data_collection.pdf).

The creation of the integrated Services for Young People from the old Connexions and Youth Service teams will be supported by a new system designed for this work.

# School Census and Individualised Learner Record

For all children and young people in maintained sector educational provision the Department for Education (DfE) collects regular information about them. This is limited to items such as name, address, parent/carer details, ethnicity, school attendance and educational attainment.

For young people in Year 11 and below, this information is collected through the School Census. Details on this are available at:

[www.teachernet.gov.uk/management/ims/datacollections/](http://www.teachernet.gov.uk/management/ims/datacollections/) .

For young people in Year 12 and above, this information is collected through the Individualised Learner Record (ILR). Details on this are available at:

[www.theia.org.uk/ilr/](http://www.theia.org.uk/ilr/) .

# Key points when sharing information

## When sharing information

- Information sharing is essential to enable early intervention. Such interventions help children, young people and families who need additional services to achieve positive outcomes, thus reducing inequalities between disadvantaged children and others. Interventions could include additional help with learning, specialist health services, help and support to move away from criminal or anti-social behaviour, or support for parents in developing parenting skills. As local areas move towards integrated working, the professional and confident sharing of information between services is becoming increasingly important in delivering benefits for children, young people and their families.
- Information sharing is also vital to safeguarding and promoting the welfare of children and young people. A key factor in many serious case reviews has been a failure to record information, to share it, to understand the significance of the information shared, and to take appropriate action in relation to known or suspected abuse or neglect.
- Practitioners should explain to children, young people and families at the outset, openly and honestly, what and how information will or could be shared and why, and seek their agreement. The exception to this is where to do so would put that child, young person or others at increased risk of significant harm or if it would undermine the prevention, detection or prosecution of a serious crime.
- Practitioners should ensure that any information shared is:
  - accurate and up to date
  - necessary for the purpose for which it is being shared
  - shared only with people who need to see itand
  - shared securely.
- Practitioners should always record the reasons for their decision in the child/young person's case file – whether the decision is to share information or not.

- Whilst maintaining confidentiality with the child/young person being worked with, they must be encouraged to share the information being discussed with their parents/carers if this is felt to be appropriate.

## **When sharing information without consent**

- Practitioners must always consider the safety and welfare of a child/young person when making decisions on whether to share information about them. Where there is concern that the child/young person may be suffering, or is at risk of suffering, significant harm, the child/young person's safety and welfare must be the overriding consideration.
- Practitioners should, where possible, respect the wishes of children, young people or families who do not consent to share confidential information. However, information may still be shared if, in their judgement on the facts of the case, there is sufficient need to override that lack of consent.
- Practitioners should seek advice when in doubt, especially where their doubt relates to a concern about possible significant harm to a child or serious harm to others. The sharing of information should always be done in the best interest of the child/young person and his/her family, taking into consideration recent legislation and in line with the Caldicott Guardian's principles. (See Appendix 2, page 25.)
- If confidentiality is to be broken, the practitioner should share the information in line with their organisational procedures. The decision to release information should be recorded as follows:
  - what information was provided and to whom
  - the reasons why it was shared
  - evidence that a thorough risk assessment was undertaken
  - who authorised the disclosure of the record.
- As children and young people mature they are able to take more responsibility for their own decisions about confidentiality. The exception to this is where a learning disability impairs an individual's capacity to consent. If a young person is Gillick competent, or Fraser competent in the case of access to contraception and other health care, their decision overrides their parents/carers. (See Appendix 1, page 23.)

## How this impacts on confidentiality

- All practitioners who have access to information about children and young people have a duty to preserve confidence. Each individual's right to confidentiality must be respected. All personal information must be treated with care and kept securely; this means not disclosing it to people who do not need to know.
- In normal circumstances the child/young person who is the subject of the information will be required to give consent before information about them can be shared. The consent of the provider of the information may also be required.
- Irrespective of the age and level of maturity of the child/young person, if information is disclosed which indicates that the child/young person involved (or another person) is at serious risk of harm, then confidentiality cannot be preserved as safeguarding procedures must take precedence.
- All service users (and their families, where appropriate) should be made aware of the level of confidentiality offered by practitioners working with them. This should include:
  - what information will be recorded
  - where and for how long it will remain recorded
  - the circumstances in which it may be shared with other people
  - the other people and agencies who may have or obtain access to the information

and

- the reasons for all of the above.

These privacy statements should be well publicised through information on the service provided, websites, family services directories (the Hampshire Family Information Directory), leaflets, posters and handbooks in a wide range of settings.

- Children and young people have a right to confidentiality if there is no risk of serious harm to themselves or any other person, but practitioners are encouraged to support the child/young person in talking with their parents/carers on all issues.

## About recording requirements

- Practitioners providing a service to children/young people have a duty to record information about meetings, telephone calls, interviews, correspondence received, etc. There are two reasons for this:
  - all staff are accountable to their organisation and should be able to provide a thorough record of their work and the service they are providing. This is one way of making sure that any service being provided is of the best possible quality
  - the law says that everyone who is given a service should be able to see a written record of decisions which are taken concerning them and why those decisions have been taken. This information should be kept securely and confidentially and each record should describe the service given only to one person, so that person can ask to see the information that is kept on them.
- The sort of information that should be kept includes the dates and times of any meetings, telephone conversations, letters sent and received (with actual copies kept) and face-to-face meetings. In addition to this, at the very least, a short account of the nature of the discussion should also be kept.
- When a child/young person is looked after, practitioners are obliged to keep more detailed information to enable proper communication between key workers. Children/young people will be made aware of that information.
- Every child/young person has the right to ask for their record to be deleted if it is not subject to a statutory service. If this occurs it is the responsibility of the person working with them to point out that such an action will probably adversely impact on the services offered to them.

# Support for practitioners working in/with the Children's Trust

- All practitioners can normally expect that their personal situations and health will remain confidential unless:
  - it impinges on their terms of contract
  - it endangers children or young people
  - there is a legal obligation to disclose such information
  - it is necessary for legal proceedings
  - despite the duty of confidence, the practitioner's interest or the wider public interest justifies disclosure.
- All practitioners will be encouraged to share information appropriately and will be supported by senior management if there are any complaints that they have shared information inappropriately, providing that such sharing has followed advice provided in this booklet or national professional guidance.

# Obtaining information

## **Practitioners must explain the purpose for which information is being sought**

- Information which is obtained for one purpose may not generally be used for another without first informing the child/young person of the planned change in use, and if possible obtaining their consent to this subsequent use.
- The exception to this is where to do so would put that child/young person or others at increased risk of significant harm or an adult at risk of serious harm, or if it would undermine the prevention, detection or prosecution of a serious crime, including where seeking consent might lead to interference with any potential investigation.

## **Practitioners must make it clear to children and young people that they cannot offer unconditional confidentiality**

- When talking with children and young people, it is important for practitioners to maintain their professional boundaries. Whilst being supportive where they can, distancing techniques should be used when appropriate and children/young people should be encouraged or supported to access confidential services if that is felt to be more appropriate to their needs (see penultimate bullet on next page).
- Children and young people should be aware that if there is a Child Protection issue where they (or others) are likely to be at risk of significant harm, practitioners are under a duty to follow safeguarding procedures and cannot offer confidentiality. It is important that each practitioner deals with such occurrences sensitively and explains to the child/young person that they must inform the appropriate people who can help them, but that they will only tell those who need to know.
- Practitioners can only offer confidentiality to children and young people on issues that do not involve significant illegal activities, eg: drug trafficking, arson. If the conversation begins to move to this kind of issue, the child/young person must be warned that confidentiality cannot be guaranteed.

- In all cases where practitioners feel that they have to break confidentiality with the child/young person, they must inform the child/young person and reassure them that their best interests will be maintained.
- In talking with children and young people, the practitioner needs to encourage them to talk to their parents/carers about the issue that may be troubling them and support them in doing this, where appropriate.
- Children and young people should be made aware of the specialist confidential services that may be available, such as school nurses, counsellors, youth support workers, doctors and young people's drop-in advice services.
- All practitioners should be aware that health services (including doctors, school nurses and health drop-in) can offer confidential support and services (including contraception) to pupils under the age of 16 providing they follow the Fraser Guidelines. However, health professionals, like everyone else, must inform the appropriate services if they become aware of a Child Protection issue in discussions with a child/young person.

# Recording information

Practitioners must explain to the child/young person and, if appropriate, any adult with parental responsibility:

- the purpose for which the information is being recorded
- where and for how long the record will be kept
- the circumstances in which it may be shared with other people
- any other people and agencies who may have or may be given access to the information.

## Consent to record

- Good practice is for all meetings with children/young people and their families to be recorded appropriately (as mentioned in the *Key points when sharing information* section earlier). However, there are times when the interaction with the child/young person or their family/carer is more informal and practitioners need to decide whether they require consent to record the information obtained. If in doubt, the issue should be discussed with a line manager or supervisor.
- If consent is felt to be required, practitioners will need to decide whether the child/young person is Fraser competent and can give their own consent to the information being recorded and potentially shared.
- If the child/young person is not Fraser competent, consent to record and share information is decided by those with parental responsibility. If parental consent is required, that of one parent is sufficient. If they are separated or divorced, the consent of the parent holding parental responsibility would usually be obtained. In cases of family conflict, practitioners will need to consider which parent to approach and in most cases management or departmental advice should be sought.
- Safeguarding guidance recommends that all reported cases of concern around under-16 sexual activity are documented, including detailed reasons for the decision when it is decided not to share information.

## Form of record

- It should be remembered that practitioners are not legally permitted to keep any unofficial file notes. Examples of these would include records such as unofficial diaries or additional folders/notes on computers. The only notes to be recorded must be on official systems designed for that purpose or structured files held within the appropriate team/service.
- All records need to be relevant, brief, accurate and to the point. Facts should be recorded, not opinions or guesses. The only opinions recorded should be formal professional judgements which practitioners would be willing to share with the child/young person or their family.
- Any person recording information should do so in agreement with the child/young person. They should try to agree with them a phrase with which they are both happy. For example, in a discussion with a 15-year-old boy who thinks he might be gay, but does not want anyone else to know at this stage, it might be recorded as *a discussion about sex and relationship issues*.
- It should be remembered that children/young people (and their parents/carers in some circumstances) have a legal right of access to see their files. If working actively with a child/young person, good practice would be to share information with them appropriately without the need for such formal procedures. As a rough guide, parents/carers have the right to view educational records but not school records concerning pastoral care/counselling (see *Right of access to records* on page 18).
- If a young person is sexually active, staff should refer to *Working together to safeguard children* (DfE). This states that practitioners should record information about young people under 13 who have been involved in sexual intercourse, or other sexually intimate behaviour, and should also discuss with their line manager whether there is a need to undertake a formal safeguarding investigation.
- Additionally, for 13 to 17-year-olds and for under 13s, *Working together to safeguard children* expects all practitioners to use the local protocol for reporting under-18 sexual activity as a backdrop to inform decisions about whether an incidence of sexual activity should be treated as a safeguarding issue. There is no need to

record all the details of a young person's sexual activity, only information relevant for their welfare. Practitioners should agree with the child/young person what is recorded, where possible.

- Recorded information should not be kept any longer than necessary for the purpose for which the information was originally obtained. Any destruction of records should be in accordance with each organisation's record retention schedules.

# Right of access to records

- Practitioners need to explain to children and young people that they have a right to see their files, subject to other people's rights to keep their information private. This right to see information is known as a Subject Access Request.

Each organisation must make their Subject Access Request process readily available to the child/young person they are working with. For most organisations, Subject Access Requests should be made to the organisation's data protection officer.

- Parents/carers have a right to see educational records until a young person reaches the school leaving age of 16 under the Educational Records Act 1989. This Act is specific to the curricular activity of the young person and does not cover wider records which might include pastoral care.

# Sharing of information

Information sharing must be done in a way that is compatible with the Data Protection Act, the Human Rights Act and the common law duty of confidentiality. However, a concern for confidentiality must never be used as a justification for withholding information when it would be in the child/young person's best interests to share information. The Caldicott principles, set out in the *Caldicott Report*, December 2007, provide general principles that health and social care organisations should use when reviewing their use of client information and exemplify good practice.

## Deciding to share information

- Practitioners must consider the welfare and safety of the child/young person.
- Practitioners should consider the following questions:
  - *Is the information confidential or particularly sensitive?*
  - *Has the child/young person or person with parental responsibility been told that their information may be shared in this way, why and with whom?*
  - *Have they agreed to sharing?*
  - *Should they be asked for consent? (It may not be appropriate to ask for consent if the information is to be shared anyway; in some cases it may even be dangerous to ask for consent.)*
  - *Is there concern that the child/young person may be suffering or at risk of significant harm?*
  - *Is there a risk that another person may suffer serious harm?*
  - *Would withholding the information undermine the prevention, detection or prosecution of a crime?*
- If consent is not forthcoming or cannot be obtained, practitioners should consider:
  - reasons to share, such as protection of the child/young person or another person, or for the prevention of crime and disorder
  - reasons not to share, including the public interest in maintaining public confidence in the confidentiality of information held by their organisation

- whether the proposed sharing is a proportionate response to the need.

## Sharing

- Practitioners should consider who should receive the shared information and how much information it is necessary to share.
- The information to be shared must be:
  - accurate – check first if necessary
  - up to date
  - necessary for the purpose for which it is being shared
  - shared only with those people who need to know
  - shared securely in line with advice from their organisation.

For example, this includes not mentioning the name of an individual in the e-mail header, phoning someone to say you are about to send them a confidential fax, double enveloping and marking the internal envelope *Confidential* and *For the attention of xxxxxxxx*.

Practitioners should not e-mail confidential information to people outside their secure networks. Many secure networks are about to be linked to the Government Connect portal, which will increase the number of secure links available.

- Practitioners should establish with the recipient of the information whether they intend to pass it on to other people and ensure they understand the limits of any consent which has been given.
- The subject of the information and, if different, the provider of the information should generally be told of the sharing if it is safe to do so.
- The reasons for sharing or not sharing information must be recorded. If information is shared, the record must include which information was shared, when and with whom.
- The decision to share or not to share information about a child/young person should always be based on professional judgement, supported by the cross-governmental guidance *Information sharing: Guidance for practitioners and managers* (HM Government, November 2008). The lack of an information sharing agreement between agencies should

never be a reason for not sharing information that could help a practitioner deliver services to a child/young person.

- Practitioners working with the Youth Offending Teams (YOTs) should also refer to the specific guidance for Wessex YOT. This is because certain data protection responsibilities fall upon the YOT manager and they are subject to separate guidance.
- Take advice from your organisation's legal department before disclosing information to the police, court officials, legal practitioners or claimants/defendants.

**NB:** See *Flowchart of key principles for information sharing* in Appendix 3 on page 26.



# Appendix 1

## Gillick or Fraser competent

In UK law, a person's 18<sup>th</sup> birthday draws the line between childhood and adulthood<sup>2</sup>. The right of younger children/young people to provide independent consent is proportionate to their competence, but a child/young person's age is an unreliable predictor of his or her competence to make decisions.

A judgement in the House of Lords in 1983 laid down the criteria for establishing whether a child/young person, irrespective of age, had the capacity to provide valid consent to treatment in specified circumstances<sup>3</sup>. In 1985 these were approved by the House of Lords and became known as the *Gillick Test*.

The criteria in the test for Gillick competence have provided professionals working with children/young people with an objective test of competence. This identifies children/young people under 16 who have the legal capacity to consent to medical examination and treatment, providing they can demonstrate sufficient maturity and intelligence to understand and appraise the nature and implications of the proposed treatment or action, including the risks and alternative courses of action.

Lord Fraser's guidance is narrower and relates only to confidential contraception and sexual health advice. Both Gillick competence and the Fraser Guidelines are now frequently used as a yardstick for any practitioner when making a decision whether a child/young person has the right to *own their own consent* and to have more control over who can be told what about their confidential information. In practice, this means they have to consider carefully whether any young person aged 12 or over, possibly younger in some cases, is Gillick or Fraser competent.

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<sup>2</sup> *The Children Act 1989 s105(1)*

<sup>3</sup> *Gillick v West Norfolk and Wisbech AHA and DHSS (1983)*

A child/young person with learning difficulties or disabilities is just as likely as any other to be Gillick/Fraser competent. To ascertain whether a particular child/young person on a particular occasion has sufficient understanding to consent, or refuse to consent, to the sharing of information about them, you need to consider:

- can the child/young person understand the question you are asking of them, having used appropriate age and ability-related language or preferred mode of communication?
- does the child/young person have a reasonable understanding of:
  - what information might be recorded/shared?
  - the reasons why this happens?
  - the implications of information being recorded or shared?
- can the child/young person:
  - appreciate and consider alternative courses of action open to them?
  - weigh up one aspect of the situation against another?
  - express a clear personal view on the matter, as distinct from repeating what someone else thinks they should do?
  - be reasonably consistent in their view on the matter, or are they constantly changing their mind?

For easy reference this document will refer to young people being Fraser competent.

## Appendix 2

### Caldicott Guardian

The Caldicott Guardian plays a key role in ensuring that the National Health Service (NHS), councils with social services responsibilities and partner organisations satisfy the highest practical standards for handling patient-identifiable information.

Acting as the *conscience* of an organisation, the Caldicott Guardian actively supports work to facilitate and enable information sharing, and advises on options for lawful and ethical processing of information as required.

The Caldicott Guardian also has a strategic role, which involves representing and championing Information Governance requirements and issues at board or management team level and, where appropriate, at a range of levels within the organisation's overall governance framework.

Formal guidance on the Caldicott Guardian role is available at:

[www.connectingforhealth.nhs.uk/systemsandservices/infogov/caldicott/caldresources/guidance/caldicott\\_2006.pdf](http://www.connectingforhealth.nhs.uk/systemsandservices/infogov/caldicott/caldresources/guidance/caldicott_2006.pdf)

and a social care guidance document has recently been published by the Department of Health:

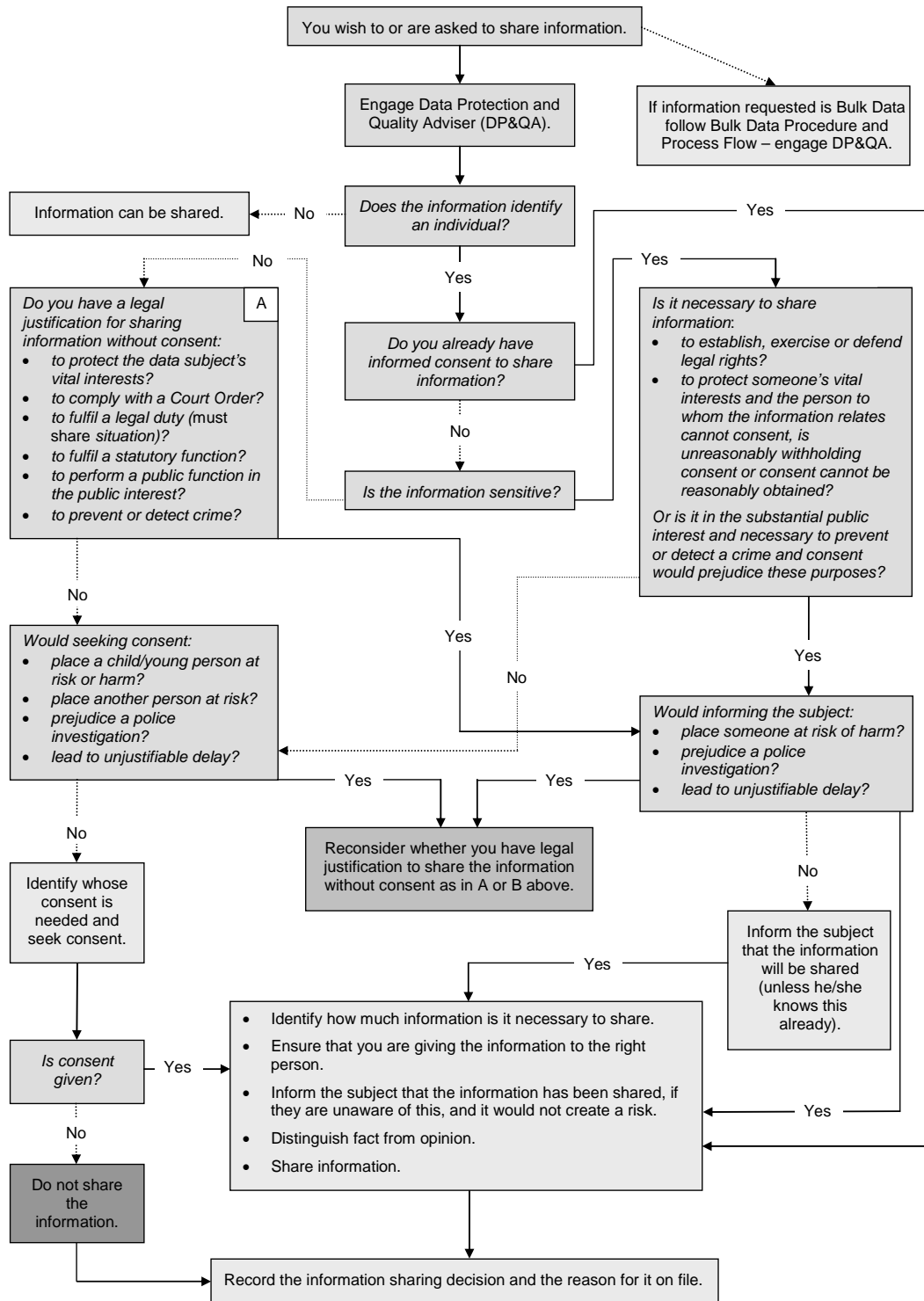
[www.nigb.nhs.uk/guarantee](http://www.nigb.nhs.uk/guarantee) .

The Caldicott Guardian has established six overarching principles. Under these principles every use or flow of personally identifiable information should be regularly justified and routinely tested against the principles developed in the Caldicott Report.

- **Principle 1** – Justify the purpose(s) for using confidential information.
- **Principle 2** – Only use it when absolutely necessary.
- **Principle 3** – Use the minimum that is required.
- **Principle 4** – Access should be on a strict need-to-know basis.
- **Principle 5** – Everyone must understand his or her responsibilities.
- **Principle 6** – Understand and comply with the law.

# Appendix 3

## Flowchart of key principles for information sharing



## Appendix 4

### Extracts from *HM Guidance: Training on information sharing*

#### 7 golden rules for information sharing

- 1 Remember that the Data Protection Act 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. The exceptions to this are where telling the person concerned would put that child, young person or others at increased risk of significant harm (or an adult at risk of serious harm) or if it would undermine the prevention or detection of a serious crime.
- 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 for 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. If you decide not to share, record the reason for not sharing.

The 7 *golden rules* and the following questions will help support your decision making so you can be more confident that information is being shared legally and professionally. If you answer *not sure* to any of the questions, seek advice from your supervisor, manager, nominated person within your organisation or area, or from a professional body.

Key questions to support decision making:

- *Is there a clear and legitimate purpose to share the information?*
- *Does the information enable a living person to be identified?*
- *Is it confidential?*
- *If confidential, do you have consent to share?*
- *Is there sufficient public interest to share without consent?*
- *If you decide to share, is it shared appropriately and securely?*
- *Have you recorded the decision to share or not to share properly?*

For fuller guidance around these questions, please look at *Every child matters* training materials available at:

[www.dcsf.gov.uk/everychildmatters/strategy/delivering\\_services1/iwtraining/training/](http://www.dcsf.gov.uk/everychildmatters/strategy/delivering_services1/iwtraining/training/) .

## Appendix 5

### Useful guidance

- While in general, practitioners should seek to discuss any concerns with the family/carer and, where possible, seek their agreement to making referrals to social care, this should only be done where such discussion and agreement seeking will not place a child/young person at increased risk of significant harm or an adult at increased risk of serious harm. **The individual's safety and well-being must be the overriding consideration in making any such decisions.**
- **Significant harm to children/young people** can arise from a number of circumstances – it is not restricted to cases of deliberate abuse or gross neglect. For example, a baby who is severely failing to thrive for no known reason could be suffering significant harm but equally could have an undiagnosed medical condition. If the parents/carers refuse consent to further medical investigation or an assessment, then it may still be justified to share information for the purposes of helping ensure that the causes of the failure to thrive are correctly identified.
- **Where harm, or risk of serious harm to a vulnerable adult** is suspected, appropriate action should be taken in accordance with local codes of practice. Contact should be made with the appropriate person, for example, a safeguarding officer or a vulnerable adults worker.
- **Significant harm to children/young people and serious harm to adults** is not restricted to cases of extreme physical violence. For example, the cumulative effect of repeated abuse or threatening behaviour may constitute a risk of serious harm to an adult. The theft of a car for joyriding or driving with poor eyesight may well constitute a risk of harm to others in the community as well as those in the car.
- If practitioners are unsure of what to do (eg: whether what has given rise to the concern constitutes a *reasonable cause to believe*) the concern must not be ignored. They should always **talk to someone to help them decide what to do** – a lead person on Child Protection, the Caldicott Guardian, or an informal discussion with a trusted colleague or another practitioner who knows the person. The identity of the child/young person should be protected wherever possible until reasonable cause for the belief has been established.

- Practitioners who work in the youth justice system should also refer to *When to share information* (Department of Health, 2008). This document can be accessed at: [www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh\\_084703](http://www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_084703).
- **Not all information is confidential. Confidential information is:**
  - personal information of a private or sensitive nature (a definition of what constitutes *sensitive information* can be found in *Information sharing: Guidance for practitioners and managers*, HM Government, November 2008)
  - information that is not already lawfully in the public domain or readily available from another public source
  - information that has been shared in circumstances where the person giving the information could reasonably expect that it would not be shared with others. For example, a teacher may know that one of their pupils has a parent who misuses drugs. That is information of some sensitivity, but may not be confidential if it is widely known or if it has been shared with the teacher in circumstances where the person understood it would be shared with others. If, for example, it is shared with the teacher by the pupil in a counselling session, it would be confidential.
- **Confidence is only breached where the sharing of confidential information is not authorised by the person who provided it or, if about another person, by the person to whom it relates.** If the information was provided on the understanding that it would be shared with a limited range of people or for limited purposes, then sharing in accordance with that understanding will not be a breach of confidence. Similarly, there will not be a breach of confidence where there is explicit consent to the sharing.
- **Even where sharing of confidential information is not authorised, practitioners may lawfully share it if this can be justified in the public interest.** Seeking consent should be the first option, if appropriate. Where consent to the sharing of information cannot be obtained or is refused, the question of whether there is a sufficient public interest must be judged by the practitioner on the facts of each case. **Therefore, where a practitioner has a concern about a person they should not regard refusal of consent as necessarily precluding the sharing of confidential information.**

# Appendix 6

## National and local references

### National

- *Information sharing: Guidance for practitioners and managers*, HM Government, DCSF, 2008:  
[www.dcsf.gov.uk/everychildmatters/resources-and-practice/ig00340/](http://www.dcsf.gov.uk/everychildmatters/resources-and-practice/ig00340/) .
- *Information sharing: Case examples*, HM Government, DCSF, 2008:  
[www.dcsf.gov.uk/everychildmatters/resources-and-practice/ig00340/](http://www.dcsf.gov.uk/everychildmatters/resources-and-practice/ig00340/) .
- *Information sharing: Further guidance on legal issues*, HM Government, DCSF, 2009:  
[www.dcsf.gov.uk/everychildmatters/resources-and-practice/ig00340/](http://www.dcsf.gov.uk/everychildmatters/resources-and-practice/ig00340/) .
- *Working together to safeguard children*, DfES, 2006:  
[www.everychildmatters.gov.uk/workingtogether/](http://www.everychildmatters.gov.uk/workingtogether/) .
- *Sex and relationship education guidance*, DfES, 2000:  
<http://publications.teachernet.gov.uk/default.aspx?page=function=productdetails&pagemode=publications&productid=dfes%200116%202000&> .
- *What to do if you're worried a child is being abused*, DfES, 2006 (replaces Department of Health – ref: 31553):  
[www.dcsf.gov.uk/everychildmatters/resources-and-practice/ig00182/](http://www.dcsf.gov.uk/everychildmatters/resources-and-practice/ig00182/) .

- National Healthy School Standard guidance:  
<http://home.healthyschools.gov.uk> .
- *Sex and relationships education in schools*, OfSTED, 2002:  
[www.ofsted.gov.uk/ofsted-home/publications-and-research/browse-all-by/education/curriculum/personal-social-and-health-education/primary/sex-and-relationships-education-in-schools/\(language\)/eng-gb](http://www.ofsted.gov.uk/ofsted-home/publications-and-research/browse-all-by/education/curriculum/personal-social-and-health-education/primary/sex-and-relationships-education-in-schools/(language)/eng-gb) .
- *Sex and relationships education: Support for school governors*, Sex Education Forum (National Children's Bureau), 2003:  
<http://www.governor-net.co.uk/linkattachments/srefactsheetpdf> .
- *Confidentiality: Promoting young people's sexual health and well-being in secondary schools*, Sex Education Forum (National Children's Bureau), 2007:  
[www.ncb.org.uk/dotpdf/open\\_access\\_2/seff\\_38.pdf](http://www.ncb.org.uk/dotpdf/open_access_2/seff_38.pdf) .
- *HIV in schools: Good practice guide to supporting children infected or affected by HIV*, National Children's Bureau, 2005:  
[www.ncb.org.uk/dotpdf/open%20access%20-%20phase%201%20only/hivforum\\_schoolsgpg.pdf](http://www.ncb.org.uk/dotpdf/open%20access%20-%20phase%201%20only/hivforum_schoolsgpg.pdf) .
- *Sex and relationships education in pupil referral units: A practical guide*, Sex Education Forum (National Children's Bureau), 2004:  
[www.ncb.org.uk/members\\_area/publication\\_view.aspx?pubid=30&searchtitle=pupil+referral+units&searchauthor=&searchisbn=&searchyear=&searchseries=-1&searchkeyword=&pageindex=1&searchsubject=0](http://www.ncb.org.uk/members_area/publication_view.aspx?pubid=30&searchtitle=pupil+referral+units&searchauthor=&searchisbn=&searchyear=&searchseries=-1&searchkeyword=&pageindex=1&searchsubject=0) .

- *Achieving National Healthy Schools Status (NHSS)*, DCSF, 2009:  
<http://resources.healthyschools.gov.uk/v/739b9dba-bb39-49db-8624-9cbc00f30266?c=8d58bfca-39d1-4d7d-927a-9cb501033fb9> .
- Crime and Disorder Act 1998, Office of Public Sector Information (OPSI), 1998:  
[www.opsi.gov.uk/acts/acts1998/ukpga\\_19980037\\_en\\_1](http://www.opsi.gov.uk/acts/acts1998/ukpga_19980037_en_1) .
- The Children Act 1989, OPSI, 1989:  
[www.opsi.gov.uk/acts/acts1989/ukpga\\_19890041\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_1.htm) .
- The Children Act 2004, OPSI, 2004:  
[www.opsi.gov.uk/acts/acts2004/ukpga\\_20040031\\_en\\_1](http://www.opsi.gov.uk/acts/acts2004/ukpga_20040031_en_1) .
- *Gillick v West Norfolk and Wisbech Area Health Authority (AHA) and Department of Health and Social Security (DHSS) court case notes*, 1983:  
[www.hrcr.org/safrica/childrens\\_rights/gillick\\_westnorfolk.htm](http://www.hrcr.org/safrica/childrens_rights/gillick_westnorfolk.htm) .
- The Local Safeguarding Children Boards Regulations, 2006, OPSI:  
[www.opsi.gov.uk/si/si2006/20060090.htm](http://www.opsi.gov.uk/si/si2006/20060090.htm) .
- *Report on the review of patient-identifiable information*, (The Caldicott Report), Department of Health, December 2007:  
[www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh\\_4068403](http://www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_4068403) .
- *Determining what is personal data*, Information Commissioner's Office, 2009:  
[www.ico.gov.uk/news/current\\_topics/what\\_is\\_personal\\_data.aspx](http://www.ico.gov.uk/news/current_topics/what_is_personal_data.aspx) .

- United Nations Convention on the Rights of the Child, United Nations General Assembly, 20 November 1989:  
[www.unicef.org/crc/](http://www.unicef.org/crc/) .
- Data Protection Act 1998, OPSI, 1998:  
[www.opsi.gov.uk/acts/acts1998/ukpga\\_19980029\\_en\\_1](http://www.opsi.gov.uk/acts/acts1998/ukpga_19980029_en_1) .
- The Education (School Records) Regulations 1989:  
[www.opsi.gov.uk/si/si1989/Uksi\\_19891261\\_en\\_1.htm](http://www.opsi.gov.uk/si/si1989/Uksi_19891261_en_1.htm) .
- Common law duty of confidence:  
[www.crimereduction.homeoffice.gov.uk/infosharing22-1.htm](http://www.crimereduction.homeoffice.gov.uk/infosharing22-1.htm) .
- NHS Confidentiality Code of Practice, Department of Health, 2007:  
[www.dh.gov.uk/en/managingyourorganisation/informationpolicy/patientconfidentialityandcaldicottguardians/dh\\_4100550](http://www.dh.gov.uk/en/managingyourorganisation/informationpolicy/patientconfidentialityandcaldicottguardians/dh_4100550) .
- *Confidentiality: Guidance for occupational health nurses*, Royal College of Nursing, 2005:  
[www.rcn.org.uk/\\_data/assets/pdf\\_file/0003/78582/002043.pdf](http://www.rcn.org.uk/_data/assets/pdf_file/0003/78582/002043.pdf) .
- *Integrated working: Training* (use of CAF and ContactPoint to create *team around the child*) materials, DCSF, 2009:  
[www.dcsf.gov.uk/everychildmatters/strategy/delivering\\_services1/iwtraining/training/](http://www.dcsf.gov.uk/everychildmatters/strategy/delivering_services1/iwtraining/training/) .
- *Data sharing information between different local authority departments*, Information Commissioner's Office, 2008:  
[www.ico.gov.uk/upload/documents/library/data\\_protection/practical\\_application/local\\_authorities\\_-\\_data\\_sharing.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/local_authorities_-_data_sharing.pdf) .
- *NHS Care Record Guarantee*:  
[www.nigb.nhs.uk/guarantee](http://www.nigb.nhs.uk/guarantee) .

## Local

- *Managing the support and reintegration of pregnant pupils and school age parents. Guidance for schools.* Children's Services Department, May 2010:  
E-mail: [teenagepregnancy@hants.gov.uk](mailto:teenagepregnancy@hants.gov.uk) .
- Hampshire County Council Social Services Department Procedure no: 19/05: *Sexual health and education of service users*, HCC, July 2005:  
[www.hants.gov.uk/childrens-services/about-cs/childrens-services-procedures.htm](http://www.hants.gov.uk/childrens-services/about-cs/childrens-services-procedures.htm) .
- Hampshire County Council Social Services Department Procedure no: 06/07: *Records management and Data Protection Act 1998 policy and procedure*, HCC, revised June 2007:  
[www.hants.gov.uk/childrens-services/about-cs/childrens-services-procedures.htm](http://www.hants.gov.uk/childrens-services/about-cs/childrens-services-procedures.htm) .
- *Protocol on working with sexually active young people under the age of 18*, now included under safeguarding procedures, Hampshire Safeguarding Children Board, revised June 2006:  
[www.safeguardingwarringtonchildren.org.uk/images/protocol%20on%20working%20with%20sexually%20active%200yp%20%20from%20mtg%20on%2011%2010%2007\\_tc\\_m29-29160.doc](http://www.safeguardingwarringtonchildren.org.uk/images/protocol%20on%20working%20with%20sexually%20active%200yp%20%20from%20mtg%20on%2011%2010%2007_tc_m29-29160.doc) .
- *Safeguarding children whose parents/carers use drugs/ alcohol or have mental health needs*, Hampshire Local Safeguarding Children Boards (LSCB), 2008:  
[www.4lscb.org.uk/documents/hcc\\_cs\\_jointworkingprotocol\\_mar09%20\(2\).pdf](http://www.4lscb.org.uk/documents/hcc_cs_jointworkingprotocol_mar09%20(2).pdf) .

## Appendix 7

### Purposes of sharing

Information sharing is key to the Government's goal of delivering better, more efficient public services that are co-ordinated around the needs of children, young people and families. It is essential to enable early intervention and preventative work, for safeguarding and promoting welfare and for wider public protection. Information sharing is a vital element in improving outcomes for all.

The overarching need to share information about children is to ensure they are kept safe and to maximise their well-being. These aims are consistent with the *Every child matters* agenda and the Children Act 2004. Child Protection is recognised by HM Government and the Information Commissioner as being more important than the Data Protection Act 1998, although concerns are raised by the Information Commissioner as to the boundary between Child Protection and the duty of well-being. In the Children's Trust we work to the HM Government's guidance *Information sharing: Guidance for managers and practitioners* and the *NHS Care Record Guarantee*.

There are also other legislative requirements to share information. The most important one is the Crime and Disorder Act 1998. Organisations working in partnership to tackle crime and disorder have a power under Section 115 of the Crime and Disorder Act 1998 to disclose information to one another for the purposes of the Act.

These purposes include:

- acceptable behaviour contracts
- Anti-social Behaviour Orders
- Child Safety Orders
- Detention and Training Orders
- drug treatment and testing
- local child curfew schemes
- Parenting Orders
- seizure of noise-making equipment
- car crime
- racially aggravated offences

- Reparation Orders
- removal of truants
- Supervision Orders
- youth courts
- youth justice plans
- youth offending teams
- Sex Offender Orders
- the reduction of crime and disorder in the area
- reprimands and warnings (and cautions/supported cautions in the interim period).

*“Information sharing is key to the Government’s goal of delivering better, more efficient public services that are co-ordinated around the needs of the individual. It is essential to enable early intervention and preventative work, for safeguarding and promoting welfare and for wider public protection. Information sharing is a vital element in improving outcomes for all.”*

*“The Government understands that it is most important that people remain confident that their personal information is kept safe and secure and that practitioners maintain the privacy of the individual, whilst sharing information to deliver better services. It is therefore important that practitioners can share information appropriately as part of their day-to-day practice and do so confidently.”*

**Information sharing: Guidance for practitioners and managers,  
HM Government, November 2008**

*“The utility of the policy and legislation has been pressed on me by contributors throughout this report. In such circumstances it is hard to resist the urge to respond by saying to each of the key services, if that is so: ‘Now just do it!’*

*With greater ambition and determination I am sure it can be done.”*

**The protection of children in England: A progress report,  
Lord Laming, March 2009**

*“Confidential information is information that is not normally in the public domain or readily available from another source, it should have a degree of sensitivity and value and be subject to a duty of confidence. A duty of confidence arises when one person provides information to another in circumstances where it is reasonable to expect that the information will be held in confidence.”*

**Information sharing: Guidance for practitioners and managers,  
HM Government, November 2008**

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