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This guide focuses on the sharing of sensitive or personal information between the local authority and its safeguarding partners (including GPs and health, the police, service providers, housing, regulators and the Office of the Public Guardian) for safeguarding purposes. This may include information about individuals who are at risk of abuse or neglect, service providers or those who may pose a risk to others. It enables the sharing of information appropriately and lawfully in order to improve the speed and quality of safeguarding responses.

Data protection law (GDPR- General Data Protection Regulation 2018) is intended to keep personal information as safe as possible, especially in an increasingly digital world. Data protection is often misunderstood and used incorrectly as a reason not to share information.

There is an increasing need for professionals to maintain good legal literacy (knowledge and understanding) around consent, what can and can’t be shared, and in what circumstances. For safeguarding purposes this is essential.

Adults have a general right to independence, choice and self-determination including control over what information is shared about them. In the context of adult safeguarding these rights can be overridden in certain circumstances for legal purposes.

Sharing information between organisations as part of day-to-day safeguarding practice is not covered in the Care Act (2014) because it is already covered in the common law duty of confidentiality, the Data Protection Act 2018, the General Data Protection Regulation (GDPR 2018), the Human Rights Act (1998) and the Crime and Disorder Act (1998). The Mental Capacity Act (2005) is also relevant as all those coming into contact with adults with care and support needs should be able to assess whether someone has the mental capacity to make a decision concerning risk, safety or sharing information (please see the SSAB General Information Sharing document for more information).

1. **Why we need to share information relating to safeguarding adults**

The Care Act 2014 emphasises the need to empower people, to balance choice and control for individuals against preventing harm and reducing risk, and to respond proportionately to safeguarding concerns.

The Care Act statutory guidance does reinforce:

* the need to share information about safeguarding concerns at an early stage, and that information sharing agreements or protocols should be in place in all partner organisations.
* that those sharing information about individuals alleged to have caused harm are responsible for ensuring that they are compliant with human rights, data protection and confidentiality requirements.

Organisations need to share safeguarding information with the right people at the right time. This may be within the organisation itself or outside of it.

The main reasons personal confidential information may be shared in the context of safeguarding are to:

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

1. **How to share information**

* Identify how much information to share and share only that which is required to effectively safeguard the individual
* Distinguish fact from opinion
* Ensure that you are giving the right information to the right individual, for example check to ensure you are using the correct email address
* Ensure that you are sharing the information securely
* **Inform the individual that the information has been shared, if they were not already aware of this, as long as this would not create or increase risk of harm**

**In all cases**

* All information sharing decisions and reasons **must** be recorded in line with your organisation or local procedures.
* If at any stage you are unsure about how or when to share information, you should seek advice and ensure that the outcome of the discussion is recorded.
* If there are concerns that a child or adult at risk is suffering or likely to suffer harm, then follow the relevant procedures without delay.

1. **Consent to share**

Best practice is to be open and honest with the people we support from the outset. Many people believe that organisations, especially large ones like the police, councils and health care agencies, already share information much more than actually happens in practice. By being as clear as possible from the beginning about the information that we hold, and the circumstances in which we may have to share (e.g. safeguarding issues), individuals are more likely to consent to this, or at least to understand why the sharing takes place.

If you have shared information with consent, be sure the person knows what you have shared, with who and why.

1. **What if a person does not want you to share their information?**

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

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

* the person lacks the mental capacity to make that decision – this must be properly explored and recorded in line with the Mental Capacity Act
* other people are, or may be, at risk, including children
* sharing the information could prevent a crime
* the alleged abuser has care and support needs and may also be at risk
* a serious crime has been committed
* staff are implicated
* the person has the mental capacity to make that decision but they may be under duress or being coerced
* the risk is unreasonably high and meets the criteria for a multi-agency risk assessment conference referral
* a court order or other legal authority has requested the information.

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

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

If it is necessary to share information outside the organisation:

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

Consider if they need additional support e.g. an advocate. Work with them to establish a shared understanding of the risk being taken, record this along with their reasons for refusing consent to share to take action. If the risk continues, maintain regular contact, and review the decisions made – particularly where mental capacity may fluctuate or there are other factors. Continue to follow the principles of empowerment, prevention and Making Safeguarding Personal.

If the person cannot be persuaded to give their consent, unless it is considered dangerous to do so, it should be explained to them that the information will be shared without consent. The reasons should be given and recorded. The safeguarding principle of proportionality should underpin decisions about sharing information without consent, and decisions should be on a case-by-case basis.

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

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

1. **Adults who lack capacity to give consent**

If an individual lacks capacity and is unable to consent to a specific disclosure /sharing of information, any decision to share personal information about them without consent can only be made if it is in their best interests. The person reaching a decision as to the best interest of the individual will consider the following:

* The individual’s previously expressed or recorded wishes
* Views of any legal guardian or a person holding valid Lasting Power of Attorney
* Views of a carer or other person close to the individual, including paid carers

1. **Sharing information with carers, family or friends**

It is good practice, unless there are clear reasons for not doing so (e.g. safeguarding concern that would put the individual at increased risk), to work with the carers, family and friends of an individual to help them to get the care and support they need. Sharing information with these people should always be with the consent of the individual. If the person lacks the mental capacity to make a decision about sharing information with key people, then the Mental Capacity Act should be followed to ensure each decision to share information is in the person’s best interests. Decisions and reasoning should always be recorded.

1. **What if a safeguarding partner is reluctant to share information?**

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

* nobody else is at risk
* no serious crime has been or may be committed
* the alleged abuser has no care and support needs
* no staff are implicated
* no coercion or duress is suspected
* the public interest served by disclosure does not outweigh the public interest served by protecting confidentiality
* the risk is not high enough to warrant a referral to multi-agency risk assessment conference (MARAC) or arrange a MARM
* no other legal authority has requested the information.

1. **Sharing information on those who may pose a risk to others**

The police can keep records on any person known to be a target or perpetrator of abuse and share such information with safeguarding partners for the purposes of protection under Section 115 of the Crime and Disorder Act 1998, ‘provided that criteria outlined in the legislation are met’. All police forces now have information technology systems in place to help identify repeat and vulnerable victims of antisocial behaviour.

The Care Act Statutory Guidance tells us that “*safeguarding adults boards need to establish and agree a framework and process for how allegations against people working with adults with care and support needs (for example, those in positions of trust) should be notified and responded to*.” (14.121) The control of information in respect of individual cases must be in line with accepted data protection and confidentiality requirements.

In Somerset, the SW Safeguarding Adults PIPOT (PiPoT) guidance, is similar to the statutory Local Authority Designated Officer (LADO) role for Children’s Services. The guidance considers situations where a safeguarding adult concern has been identified regarding someone who works with adults at risk, to decide if information about the allegation should be shared with their employer. As there is no standalone statutory basis for this (unlike the LADO), the decision is made in conjunction with other partners to determine the legal basis on which the information should or could be shared.

1. **Sharing information with other statutory bodies**

Referring to the Disclosure and Barring Service

The Safeguarding Vulnerable Groups Act (2006) places specific duties on those providing regulated activities. An employer must refer to the Disclosure and Barring Service (DBS) anyone who has been dismissed or removed from their role because they are thought to have harmed, or pose a risk of harm to, a child or adult with care and support needs. This applies even if they have left their job and regardless of whether they have been convicted of a related crime.

The Charity Commission requires charities to report serious incidents. If a serious incident takes place within the charity, it is important that there is prompt, full and frank disclosure to the Commission. The charity needs to report what happened and, importantly, let the Commission know how they are dealing with it, even if they have also reported it to the police, donors or another regulator.

A serious incident is an adverse event, whether actual or alleged, which results in or risks significant:

• harm to the charity’s beneficiaries, staff, volunteers or others who come into contact with the charity through its work.

• loss of the charity’s money or assets

• damage to the charity’s property

• harm to the charity’s work or reputation

Taken from How to report a serious incident in your charity - GOV.UK (www.gov.uk)

**Primarily - If you have a clear concern that an adult with care and support needs is being abused or neglected, share the information.**

Acknowledgement: this guidance has used adapted material from the Social Care Institute for Excellence (SCIE) Safeguarding adults: sharing information | SCIE