



# ***Southend, Essex and Thurrock Domestic Abuse Information Sharing Guidance***

***May 2017***

***A multi-agency domestic abuse information sharing guidance document should be provided which gives frontline practitioners straightforward, practical instructions about how and when they are able to share information.***

## **Domestic Abuse and Information Sharing Guidance**

Practitioners who encounter domestic abuse victims, perpetrators and their families, often need to assess whether and how to share personal information about clients with other professionals. Lawful and responsible information sharing can be vital to help keep victims and their children safe, to carry out risk assessment, to provide support and advocacy services and to help bring perpetrators to justice.

This document explains when you can share information in relation to domestic abuse cases.

### **Legal framework and guidance for information sharing**

If you have consent, you can share information.

For the purposes of this guidance, it is assumed that no consent has been obtained from any individual (the victim, the victim's children and/or the alleged/suspected perpetrator) as to the sharing of their information.

In practice, consent should always be sought if possible and it is safe to do so, although the individual practitioner needs to take an independent decision on whether sharing information is necessary and permitted by law to address the safety of the individual or individuals.

If consent is not obtained, disclosures can still be made under the Data Protection Act (DPA), the Human Rights Act (HRA) and the Caldicott Guidelines. Decisions to disclose must:

- be reached on a case-by-case basis
- be based on a necessity to disclose
- ensure that only proportionate information is disclosed in light of the level of risk of harm to a named individual or a known household in each case
- be properly documented at the time a disclosure decision is made, identifying the reasons why the disclosures are being made (i.e. what risk is believed to exist), what information will be disclosed and what restrictions on use of the disclosed information will be placed on its recipients

**What are the key pieces of law and guidance governing domestic abuse disclosures (including at MARAC meetings)?**

- Data Protection Act 1998 (the DPA)
- Common law duty of confidence
- Human Rights Act 1998 (the HRA)
- The Care Act 2014
- The Children Act 1989 / 2004
- The Crime and Disorder Act 1998
- Caldicott Guidelines: although as these are guidelines only, if there is any conflict between them and DPA and HRA, the legislation must take precedence)

**The Data Protection Act 1998** (and any subsequent replacement legislation i.e. General Data Protection Regulations (GDPR)):

The Data Protection Act (DPA) 1998 sets out the parameters for sharing information appropriately and safely. Any personal information should be shared on the basis that it is:

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

The DPA allows the sharing of personal data without consent, if it is to protect the vital interests of the data subject. This is defined by the Information Commissioner's Office as being necessary for matters of life and death or for the prevention of serious harm to the individual.

The prevention / detection of crime exemption under Section 29 of the DPA can be used if disclosure is necessary to prevent a crime against a named individual or specified household. The risk of crime must be a genuine or likely risk.

### **Common law Duty of Confidence**

An obligation of confidence will exist where the individual has provided the information to another in circumstances where it is reasonable to assume that the provider of the information expected it to be kept confidential. Where there is a clear duty of confidence the information can only be disclosed to "third parties" if there is informed consent, compulsion of law or public interest.

### **Human Rights Act 1998**

A disclosure will comply with the Human Right Act (HRA) if it:

- (a) is made for the purposes of preventing crime, protecting the health and/or safety of alleged victims and/or the rights and freedoms of those who are victims of domestic violence and/or their children; and

(b) is necessary for the purposes referred to in (a) above and is no more extensive in scope than is necessary for those purposes; and

(c) complies with all relevant provisions of law, including the DPA and the Caldicott Guidelines.

## **Local authority responsibilities for sharing information under the Care Act 2014**

Under the Care Act 2014 a local authority must:

- set up a safeguarding board; the board will share strategic information to improve local safeguarding practice
- co-operate with each of its relevant partners; each relevant partner must also co-operate with the local authority.

Clause 45 of the Care Act focuses on 'supply of information'. This relates to the responsibilities of others to comply with requests for information from the safeguarding adult board (SAB). The statutory guidance to the Care Act emphasises the need to share information about safeguarding concerns.

If certain conditions are met, a person or body must supply information to a SAB at its request, or to any other person mentioned in the request. The information must be requested for the purpose of enabling or assisting the SAB to perform its functions. But its functions relate to doing anything it believes necessary to co-ordinate and ensure the effectiveness of all those who exercise 'enquiries' functions.

## **The Children Act 1989 / 2004**

The Children Act 1989 provides a comprehensive framework for the care and protection of children, centering on the welfare of children up to their 18th birthday. It defines parental responsibility and allocates duties to local authorities, courts, parents and other agencies in the United Kingdom, to ensure children are safeguarded and their welfare is promoted. The Children Act 2004 makes provision about services provided to and for children and young people by local authorities and other bodies and requires that they work together in improving the well-being of children in the local area.

For further information on Southend, Essex and Thurrock's safeguarding information sharing procedures: please see the *safeguarding and child protection procedures section 3.3.10* of the below document:

<http://www.escb.co.uk/Portals/67/SET%20Procedures-April%202017-updated.pdf>

Other useful information can be found through the below link to the DfE document on *Advice for practitioners providing safeguarding services to children, young people, parents and carers*:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/419628/Information\\_sharing\\_advice\\_safeguarding\\_practitioners.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419628/Information_sharing_advice_safeguarding_practitioners.pdf)

## **The Crime and Disorder Act 1998**

Any person may disclose information to a relevant authority under Section 115 of the Crime and Disorder Act 1998, 'where disclosure is necessary or expedient for the purposes of the Act (reduction and prevention of crime and disorder)'. 'Relevant authorities', broadly, are the police, local authorities, health authorities (clinical commissioning groups) and National Probation Service and Essex Community Rehabilitation Company.

## **Caldicott Guidelines**

Where an individual has not consented to the use of their information, that individual's wishes should be respected unless there are exceptional circumstances. One such exceptional circumstance arises where there is a serious public health risk or risk of harm to the patient or other individuals, or for the prevention, detection or prosecution of serious crime.

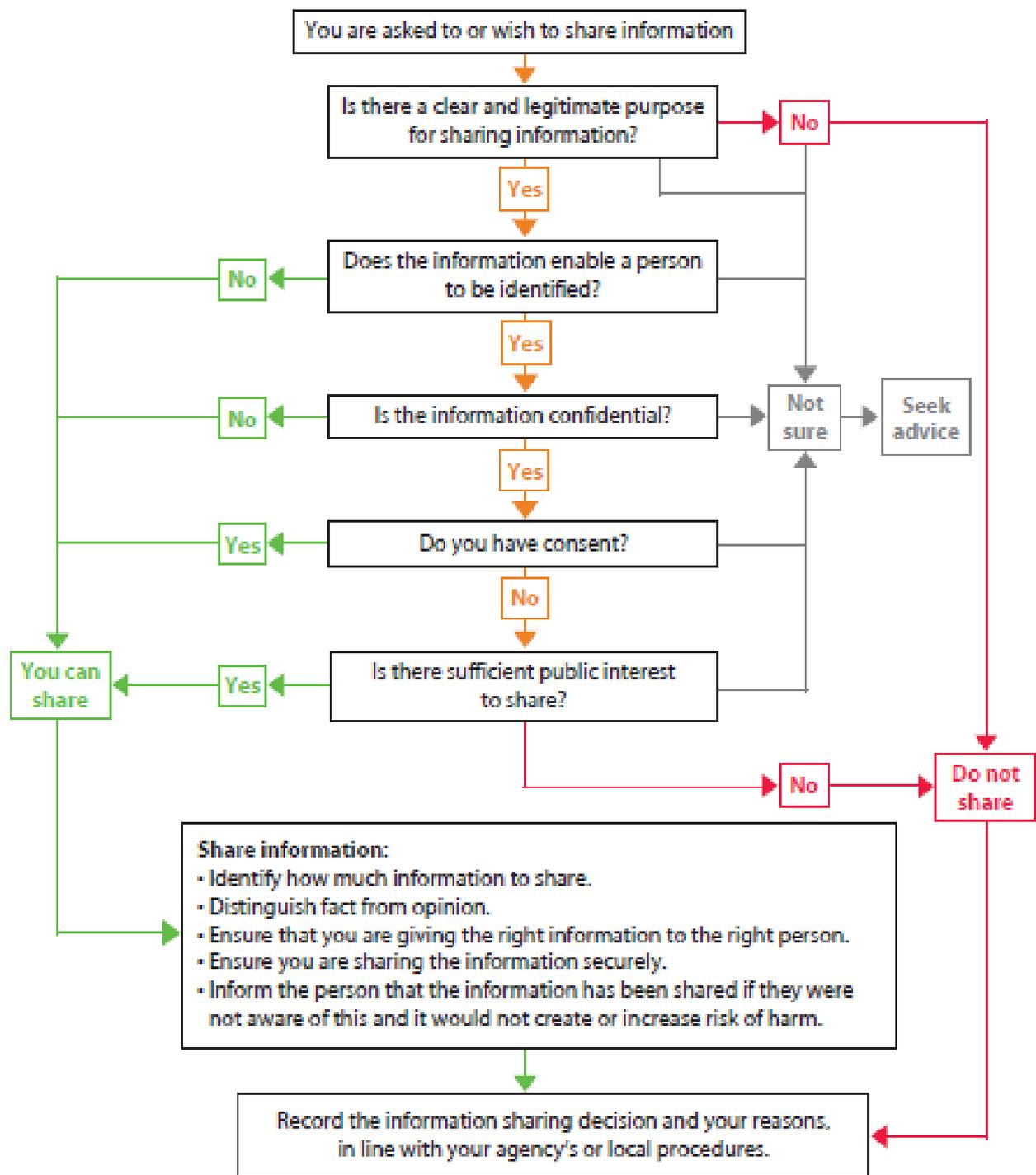
## **The Seven Caldicott Principles are:**

- Justify the purpose(s) of using confidential information
- Only use it when absolutely necessary
- Use the minimum that is required
- Access should be on a strict need-to-know basis
- Everyone must understand his or her responsibilities
- Understand and comply with the law
- The duty to share information can be as important as the duty to protect patient confidentiality

Cases considered at MARAC meetings are likely to constitute exceptional circumstances as defined in the Caldicott Guidelines, because MARACs are a forum to discuss the most serious cases of alleged or suspected domestic abuse. However, each case must be considered individually, taking into account its specific circumstances. Practitioners should be aware that Caldicott Guidelines are not law and that the DPA, HRA and common law will always take precedence. If there is an apparent conflict between legislation and the common law, legislation takes precedence.

## **Flowchart of key questions**

The flowchart on the following page may help you in your decision to share information about a client. It is taken from the government publication 'Information Sharing: Guidance for practitioners and managers' and should be used in conjunction with that guidance.



If there are concerns that a child may be at risk of significant harm or an adult may be at risk of serious harm, then follow the relevant procedures without delay.  
 Seek advice if you are not sure what to do at any stage and ensure that the outcome of the discussion is recorded.

## Seven 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, unless it is unsafe or inappropriate to do so.
3. **Seek advice** if you are in any doubt without disclosing the identity of the person where possible.
4. **Share with consent where appropriate** and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, that lack of consent can be overridden in the public interest. You will need to base your judgement on the facts of the case.
5. **Consider safety and well-being:** Base your information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.
6. **Necessary, proportionate, relevant, accurate, timely and secure:** Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.
7. **Keep a record of your decision and the reasons for it** – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

Taken from HM Government's publication, 'Information Sharing: Guidance for practitioners and managers'.

## Useful information sharing tools

- *SafeLives*: [Information sharing without consent form](#)
- *SafeLives*: [Disclosure of Information During and After MARAC meetings: Frequently Asked Questions](#)
- *Gov.UK*: [Information Sharing Guidance for practitioners and managers](#)