

Robert May's School



Information Sharing and Confidentiality Policy Procedure & Guidance

Introduced September 2010
Reviewed 2013
To Be Revisited 2015

SECTION 1: INFORMATION SHARING AND CONFIDENTIALITY POLICY

AIM

To ensure that all members of staff working on the school site:

- 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 students, their parents/carers and fellow professionals and are clear about the levels of confidentiality that they can offer to the school community and can expect for themselves.

OBJECTIVES

To ensure all members of staff working on the school site are clear about the information that can be shared and in what circumstances and that they understand the varying levels of confidentiality which might be offered in different circumstances particularly in relation to child protection and safeguarding concerns and the linked Child Protection Policy.

INTRODUCTION

This policy, the procedures which support it and the related Appendices have been developed in the light of recent developments and policies and are based upon the most recent Information Sharing and Confidentiality Policy published by the Hampshire Children's Trust for use by all practitioners working with young people within the Trust. This policy will continue to support the good practice that already exists at Robert May's School. It will ensure that there is a clear understanding that different professionals can offer varying levels of confidentiality in different circumstances which can often confuse staff and students. The school may make a minimum administrative charge regarding access to records.

This policy was discussed at a number of meetings with students, staff and various professionals who visit the school to work with students and staff. It should be read in conjunction with the supporting procedural detail and Local Authority advice.

This information sharing and confidentiality policy applies to:

- All teaching and non teaching staff employed at Robert May's School
- All visiting staff working with people on the school site during the school day
- Depending on their contractual arrangements, staff from external agencies delivery services on the school site.
- Students attending the school
- The Governing Body

INFORMATION SHARING AT ROBERT MAY'S SCHOOL

We recognise that the sharing of information about students is sometimes necessary to support them through their education and, in particular, through times when further support and intervention is required. This might include information to be shared with other members of school staff, with parents and carers and with representatives of other agencies who are involved in supporting and working with the student. Information sharing will be done in a way that is compatible with the Data Protection Act, the Human Rights Act and the common law duty of confidentiality.

Where the information to be shared is of a private or sensitive nature, members of staff will explain to the student and their families at the outset, openly and honestly, what and how information will or could be shared and why, and seek their agreement/consent. The exception to this is where to do so would put the student or others at increased risk of significant harm or if it would undermine the prevention, detection or prosecution of a serious crime.

Staff will 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 it
- and
- shared securely.

Whilst maintaining confidentiality with the child/young person being worked with, members of staff will encourage the student to share the information being discussed with their parents/carers if this is felt to be appropriate.

Staff will always consider the safety and welfare of a student when making decisions on whether to share information about them. Where there is concern that the student may be suffering, or is at risk of suffering, significant harm, the student's safety and welfare will be the overriding consideration.

Staff will, where possible, respect the wishes of students 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. Staff will seek advice from the school's Child Protection Liaison Officers 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 will 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 as recommended by the Hampshire Children's Trust's own Information Sharing Policy.

In line with current legislation, we also recognise that as students 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 about whether or not to give consent overrides their parents/carers.

CONFIDENTIALITY AT ROBERT MAY'S SCHOOL

All members of school staff who have access to information about children and young people have a duty to preserve confidence in line with current legislation. 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 student 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. If this is the case, then the school's Child Protection Policy and Procedures will determine subsequent courses of action. The child/young person will be made aware in advance that any information that they disclose may be shared with other people on a need to know basis if the information that they disclose is deemed to constitute a Child Protection or Safeguarding issue.

All students (and their families, where appropriate) will be made aware as appropriate of the level of confidentiality offered by the members of school staff and external agencies 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 will be well publicised through this policy which will be published on the school website and, in the case of external agencies (including those of the Local Authority) information on the service provided, websites, family services directories (the Hampshire Family Information Directory), leaflets, posters and handbooks in a wide range of settings.

Students' individual files, including information such as the dates and times of any meetings (including those with outside agencies), telephone conversations, letters sent and received (with actual copies kept) and notes from face-to-face meetings will be kept securely and confidentially by the child/young person's Head of Year. This includes records of confidential discussions, following Local Authority guidance on how this should be recorded so that confidentiality is not compromised.

Whilst recognising that students have a right to confidentiality if there is no risk of serious harm to themselves or any other person, members of school staff and external agencies are encouraged to support the child/young person in talking with their parents/carers on all issues. In addition, School staff can only offer confidentiality to students on issues that do not involve significant illegal activities, eg drug trafficking, arson etc. If the conversation begins to move to this kind of issue the student will be warned that confidentiality cannot be guaranteed and the member of staff will seek advice from a member of LMT who might refer the matter to the police or other agencies if appropriate. The member of LMT may first seek advice from the Local Authority or specific legal advice from Hampshire County Council's legal services department if they are unsure of the appropriate course of action.

RIGHT TO ACCESS TO RECORDS

Children and young people have a right to see their files kept by the school, subject to other people's rights to keep their information private. This right to see information is known as a Subject Access Request. Robert May's School will make their Subject Access Request process readily available to students upon request to the school'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. Such requests should be made to the School's data protection officer. The School may make a minimum administrative charge regarding access to records.

PARENTS/CARERS AND FAMILIES

At Robert May's School we recognise that sometimes there may be family issues which might affect a student and which the family will only disclose to us if they can be sure the information will be treated confidentially. We will respect the wishes of the family and where it is felt necessary to share the information given to us, this will be discussed with the parents/carers first unless a student is considered to be at immediate risk and/or there is an overriding child protection/safeguarding concern when the school's Child Protection Policy and Procedures will determine subsequent courses of action.

STAFF – Confidentiality and information about staff

All staff can normally expect that their personal situations and health will remain confidential unless:

- It impinges on their terms of contract
- Endangers students or other members of staff
- There is a legal obligation to disclose such information
- It is necessary for legal proceedings
- Despite the duty of confidence the staff member's interest or the wider public interest justifies disclosure.

GOVERNORS – Confidentiality

Governors will operate in accordance with:

- The most recent legislation relating to Governance Procedures
- Freedom of Information Act
- Any new legislation relating to confidentiality

LINKED POLICIES

Policies that are linked and supported by the Confidentiality Policy include:

Behaviour
 Child Protection/Safeguarding
 Health and Safety
 PSHEE
 Drug Abuse

DISSEMINATION

This policy will be publicised to all in the school community in line with all other policies and will be reviewed annually.

ADDITIONAL GUIDANCE

The most recent "Guide To The Law For School Governors" DCSF.

The attached selected guidance and appendices taken from the Hampshire Children's Trust's 'Information Sharing and Confidentiality Policy' © Hampshire County Council ISBN: 978-1-85975-808-3 May 2010

Policy Updated and Reviewed by Governors: September 2010.

Updated and Reviewed by Governors: February 2013

SECTION 2: Procedures which support the Information Sharing and Confidentiality Policy of Robert May's School

STAFF SUPPORT AND TRAINING

- As part of the CPD plan for Robert May's School, staff are given in-school training on child protection, safeguarding staff and confidentiality. In addition they receive information in the Staff Handbook and policy documents.
- On-going training is also offered by Hampshire Children's Services and outside providers for specified staff.
- As part of their induction all new staff are given training on child protection, safeguarding staff and confidentiality.

ALL STAFF MEMBERS - Confidentiality and students

This applies to both teaching and non teaching members of staff, visiting staff and outside agencies.

The staff at Robert May's School recognise that there are occasions when students are worried about something and feel that they cannot talk about it to their parents/carers. This can result in enormous stress for the individual, which can impact on their education and health. Some students may feel that they can turn to teachers and other staff members for support. Whilst recognising that there may be some potential difficulties in being supportive staff will adhere to the following policy.

When talking with students professional boundaries will be maintained at all times.

Whilst being supportive distancing techniques will be used and when appropriate students encouraged or supported to access the confidential services offered on the school site or in the community, eg School Nurse, Connexions Personal Advisor, Talk It Out Counsellor, Education Welfare Officer. All members of staff will make it clear to students that they cannot offer unconditional confidentiality when a student first begins to talk about something where confidentiality may become an issue. Students must be warned that if they or others are likely to be at risk of significant harm staff will inform the school's Child Protection Liaison Officers who may have to involve other agencies. For further guidance staff can refer to the school's Child Protection/Safeguarding Procedures.

School staff can only offer confidentiality to students on issues that do not involve significant illegal activities, eg drug trafficking, arson etc. If the conversation begins to move to this kind of issue the student must be warned that confidentiality cannot be guaranteed.

In talking with students staff must always encourage them to talk to their parents/carers about the issue that may be troubling them and support in doing this should be offered when appropriate.

INFORMATION SHARING WITH OTHER SPECIFIC AGENCIES

THE COMMON ASSESSMENT FRAMEWORK

The Common Assessment Framework (CAF) provides the main mechanism by which multi agency practitioners involved in supporting a young person or their family will work together to coordinate the provision of services to meet their needs. Sharing information about an individual is necessary for this process to take place. For a CAF to be completed, the consent of the child/young person and their parents/carers must be sought and given and this extends to the sharing of information that is needed to be known by the various agencies on a need to know basis.

TALK IT OUT and The School Counsellor – Confidentiality and students.

The Counsellors can be approached by any student for a confidential discussion. However students are normally referred by Head of Year or LMT.

The Counsellors cannot offer confidentiality over a child protection/safeguarding issue, but because sometimes it is necessary for a student to be able to talk about deep seated, troubling issues in order to help the student through their situation, the counsellor is not required to inform senior or pastoral staff about illegal activities unless there is a child protection/safeguarding issue or other significant risk but follows their own agency's policy and procedures in this area.

FAMILY SUPPORT WORKER AND PARENT SUPPORT ADVISOR – Confidentiality and students.

The Family Support Worker and Parent Support Advisor can be approached by any student or parent for a confidential discussion. On occasions the school will refer a student and their parents to the FSW for discussions. The FSW or PSA cannot offer confidentiality over a child protection/safeguarding issue. At Robert May's, members of LMT liaise closely with the FSW and PSA and the school's Child Protection Policy and Procedures will be used to determine subsequent courses of action.

SCHOOL NURSE – Confidentiality and students

The government has recognised that for some young people, unless they are able to speak to someone confidentially away from their family, their health and well being can be at great risk. Health services (including doctors, our school nurse and health drop in) can offer confidential health services to students under the age of 16 providing they follow the Fraser Guidelines which require:

- The young person understands the advice and has sufficient maturity to appreciate what is involved in terms of moral, legal, social and emotional implications for themselves.
- They cannot be persuaded to tell their parents/carers or allow them to be informed.
- (If appropriate) they are likely to begin or continue having sex.
- The young person's physical or mental health is likely to suffer unless they receive advice or treatment.
- It is in the young person's best interests to give advice or treatment.

The requirement to offer a confidential service is within the professional Code of Practice for school nurses and other health service staff. The government has also signed up to the international legislation and charters which entitle young people to access health services. However, health professionals, like everyone else, must inform appropriate services if they become aware of a child protection/safeguarding issue in discussion with a young person. At Robert May's, members of LMT liaise closely with the School Nurse and the school's Child Protection Policy and Procedures will be used to determine subsequent courses of action.

All on site services must be very clear in their publicity about the levels of confidentiality offered, eg school based health service will offer more confidentiality than will be offered by school staff.

PEER MENTORING AND SUPPORT – Students

Our peer mentoring system covers confidentiality issues in the training provided for peer mentors.

All mentors and mentees know the following confidentiality guidelines:

- They are not allowed to promise to keep secrets.
- All meetings are kept confidential between mentors (mentors work in pairs) and mentee except in the following circumstances:
 - They must tell either, the school's Child Protection Liaison Officers, the Peer Mentor Staff Leader, the Head of PSHEE or Head of Year immediately if a student discloses either any form of abuse or anything else that would make them worried about their safety.
 - If they think the mentee is about to disclose this information they must tell them that they will need to take them to a member of staff who will help them.
 - If they have a concern about the content of a mentoring meeting, they must discuss it with the Child Protection Liaison Officers, the Peer Mentor Staff Leader or the Head of PSHEE.

Regular peer mentoring meetings take place both during and after school to support trained peer mentors.

Section 3: Appendices

The following Appendices have been taken from the Hampshire Children's Trust 'Information Sharing and Confidentiality Policy' published in May 2010. They are included to clarify and give further guidance in relation to the Robert May's School Information Sharing and Confidentiality Policy.

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Appendix 1 Advice relating to Information Sharing and Confidentiality Procedures

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 it and
 - 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.

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 informationand
 - 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.

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.
- 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.
- 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.
- 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 2

Gillick or Fraser competent

In UK law, a person's 18th birthday draws the line between childhood and adulthood. 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 circumstances³. 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.

2 *The Children Act 1989 s105(1)*

3 *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 3 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

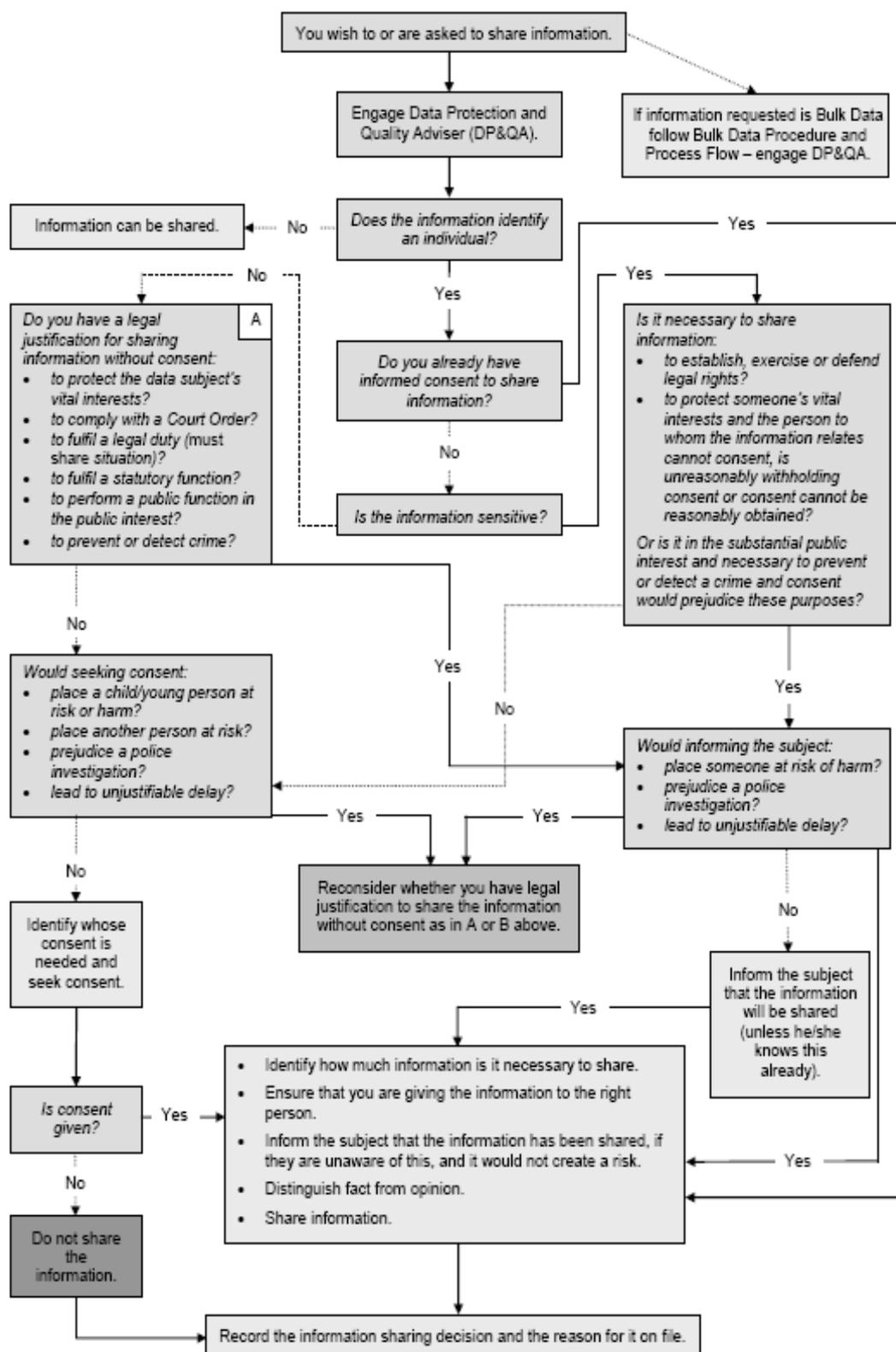
and a social care guidance document has recently been published by the Department of Health:

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 4 Flowchart of key principles for information sharing



Appendix 5

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/deliveringservices1/iwtraining/training/

Appendix 6

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.

- **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 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).