

NSPCC Response to Law Commission Consultation paper no.214: Data sharing between public bodies

December 2013

The National Society for the Prevention of Cruelty to Children

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children.

The NSPCC aims to end cruelty to children in the UK over future generations. In pursuit of our vision we will:

- Create and deliver services for children which are innovative, distinctive and demonstrate how to enhance child protection most effectively;
- Provide advice and support to ensure that every child is listened to and protected;
- Provide advice and support to adults and professionals concerned about a child and if necessary take action to protect the child;
- Work with organisations which work with children to ensure they effectively protect children and challenge those who do not;
- Campaign for changes to legislation, policy and practice to ensure they best protect children;
- Persuade everyone to take personal responsibility for preventing cruelty to children;
- Inform and educate the public to change attitudes and behaviours towards children;
- Use our statutory powers as necessary to protect children.

Introduction

Information sharing is crucial if children are to be effectively safeguarded and protected. The NSPCC reviewed 19 Serious Case Reviews (SCRs) and Child Practice Reviews (CPRs) from England and Wales in 2013 and found that 58% of these reviews included explicit recommendations relating to improved information sharing. A study of recommendations arising from SCRs between 2009 and 2010 found that 19 out of 20 reviews addressed information sharing in some respect¹. The findings from these reviews demonstrate the crucial role of information sharing in the safeguarding context and the devastating impact when we are not able to gain a holistic picture of the needs of a child. Every effort must be made to break down barriers to information sharing that impact on the ability to keep children safe and to protect them from harm.

The NSPCC is the leading child protection charity in the UK, with a presence in all four nations. Our response focuses on the impact of information sharing on child protection and child safeguarding². Many of the comments and issues that are raised in this response will relate to other groups, particularly vulnerable adults.

Effective information sharing should be factored into legal, professional and organisational arrangements, including legislation, guidance and structures. The law alone cannot drive information sharing. As such, while we are providing this response to the Law Commission – and many of our recommendations relate to areas of legal concern – the scope of our discussion and recommendations is necessarily wider than the law.

Professionals who work with children must have clear instructions, both in law and guidance, on when and how to share information so that children are protected and safeguarded. They should be trained regularly, preferably in multi-agency settings, so that cross-professional understanding develops and barriers to information sharing are reduced or removed and professionals must not fear the consequences of inappropriate but well-intentioned sharing of information.

Further, information sharing must take place within a framework that supports child protection and safeguarding. There is a strong argument for information sharing – both with and without consent – to be encouraged where there are low level concerns that, on their

¹ Brandon M et al (2011) A Study of Recommendations Arising from Serious Case Reviews 2009-2010, London, Department for Education

² While the NSPCC is a child protection charity, the role of safeguarding is crucial in effective early help and early intervention strategies. This will be discussed further, later in the paper.

own, may not be sufficient to conclude that a child needs help, however, when analysed with other information may be reveal a more serious issue.

The SCRs and CPRs referred to above often discuss instances where different organisations held many pieces of disparate information that raised low levels of concern that, if brought together, would have pointed to a more serious issue that required immediate action. Instead, in the absence of this holistic view, no action (or simply ineffective action) was taken.

A notable recent example was the tragic death of Daniel Pelka – information was shared on an inconsistent basis inhibiting any professional from seeing the full picture of abuse that he was suffering³.

We believe that there needs to be very serious consideration of how to enable and encourage sharing of information between professionals so that children are protected, while addressing the risk of creating an unwieldy bureaucracy and ensuring the balance of rights for all people involved. The evidence suggests an inconsistent picture with professionals failing to share information when doing so would enable the provision of early help that would keep a family together or the provision of early intervention that would protect a child from harm.

Effective information sharing requires:

- An effective and permissive legislative framework;
- Clear and simple guidance that interprets legislation so that professionals understand when and how to share information;
- Multi-agency training to address organisational and professional barriers;
- The development of learning from existing multi-agency practice to inform guidance;
- A clear statement in statutory guidance that well-intentioned information sharing will not result in adverse outcomes for a professional, even if the sharing is subsequently proved to be inappropriate.

Method for compiling this response

The NSPCC has undertaken a consultative exercise with practitioners from some of the statutory bodies involved in safeguarding and child protection in the UK. The aim of the consultation exercise was to assist the NSPCC to gauge the effectiveness of current

³ <http://www.coventrylscb.org.uk/dpelka.html>

information sharing practices, to gain clarity on what influences professional behaviour in relation to information sharing and to analyse what impact this has on safeguarding and protecting children and young people. The themes that emerged were broadly consistent and are set out in the document both generally and by each sector.

This document discusses information and data sharing within and between the police, medical professionals, social workers and education professionals in the safeguarding and child protection context, drawing upon themes arising out of the consultation exercise undertaken with these professionals. A summary of the themes broken down by sector, including a more detailed description of the method, is presented in appendix one.

The first section of this document will set out a summary of the main findings; the themes arising from the barriers identified in the information sharing process; and recommendations on areas for improvement.

The second section sets out responses to specific questions asked in the consultation, which will elaborate on the key themes identified as being relevant to information sharing between the public bodies involved in safeguarding and child protection.

Finally, the consultation seeks views on 'data sharing'. Data sharing can mean:

- sharing of large packets of information for commercial or policy reasons (e.g. to enable a public health approach to a particular health issue). This type of sharing can be made with anonymised data or with consent of the subject of the data;
- sharing of information to enable treatment of a patient, usually achieved with express or implied consent; or
- sharing of information to enable the protection of third parties whose safety may be affected by the behaviour or disorder of the person subject of the information, for example, children of a drug addict or alcoholic. This type of sharing can be made with or without consent.

In this response, we refer mainly to the last of these types of data sharing and use the term 'information sharing' throughout to make this clear.

General themes

The following themes cross a range of factors, institutions and behaviours that affect the way in which information may be shared. Some will have direct legal applications, while others will need to be addressed in different contexts.

The barriers to effective information sharing in the safeguarding and child protection context arise from the complexity of the current legal framework and guidance, combined with organisational and cultural barriers. The professionals we spoke to rarely referred to the law governing information sharing, making it clear that they rely on guidance documents from a variety of sources. Legislation that relates to information sharing, in all its forms, does not prohibit taking action in order to help or protect a child. In fact, some interpretations of the legislation may be read in a broadly permissive manner⁴.

Any attempt to consider whether or not there should be a reform of the law in the information sharing context must take into account the vital role of government, local, organisational and professional guidance in understanding and interpreting the law on information sharing. In particular, any consultation on the reform of the law must consider the pitfalls inherent in a system where the law on information sharing is interpreted and cascaded down a chain in order to decipher the laws. It was also apparent that there are professional cultural and organisational issues that create barriers – for example, doctors mentioned the lack of a shared language about thresholds, doctors also mentioned the very significant impact of patient confidentiality in their profession.

The difficulties that arise as a result of the complex legal and guidance framework result in dependent and defensive practice. Practitioners are not always confident about exercising their judgment when making information sharing decisions. We also find a difference in the tone set for information sharing in different sets of statutory guidance – *Working Together* places a duty on LSCBs to develop a ‘...culture of information sharing’ whereas the *Information Sharing* guidance provides an individual’s flow chart for decision-making in isolated circumstances. This can result in inconsistencies, failure to share and variable, sometimes tragic, outcomes for children.

Whilst professionals have some understanding of information sharing laws and practice in their specific areas, they do not necessarily understand the law and practice of other professionals. They do not always appreciate the agenda and scope of

⁴ For example, the Data Protection Act (1998) S.29 1(a) states that personal data processed for the prevention or detection of crime are exempt from the first data protection principle, within certain limitations.

other professionals, which creates a barrier to information sharing. Current laws and guidance do not adequately provide solutions to the tensions that arise between the different services.

A combination of these issues can create an attitude that is unfavourable to information sharing. The complexity of legislation and guidance, combined with the dependent and defensive approach to information sharing between public bodies can be exacerbated by organisational barriers to information sharing. Examples include resource constraints, time and work pressure, risk averse approaches to information sharing, incompatible IT systems, email security issues and high staff turnover which causes disruptions in information sharing.

Confidence levels in making information sharing decisions vary depending on levels of experience, organisational culture, geographical location and subject area of work. Whilst statutory guidance is clear that the need to safeguard and protect children should come before other considerations, such as patient confidentiality, it is apparent from our consultations that there is still doubt among professionals about how to get the balance right.

The need for training and regular supervision in order to facilitate good child protection and safeguarding practice in information sharing was a recurrent theme. In particular, training that aims to break down professional and cultural barriers (which hinder information sharing) will enable linked professionals to build trust and understand their respective agendas. Social workers, in particular, need to consider information sharing as a fundamental part of their jobs. Some of those we consulted wished to have more time for reflection and supportive supervision.

Information sharing guidance is contained in a number of bulky documents, creating a bureaucratic burden. This limits the ability of professionals to make confident decisions under time and resource pressure.

Current law and guidance does not reflect the increasing shift in practice towards multi-agency working (e.g. MASH⁵, MAPPA⁶ and MARAC⁷) and does not always provide explicit guidance on the information sharing complexities. The MASH concept requires sharing more information, undertaking early risk assessments, adopting a 'whole family' approach to safeguarding, enhanced data sharing and analysis in order to join up the

⁵ Multi Agency Safeguarding Hub

⁶ Multi Agency Public Protection Arrangements

⁷ Multi Agency Risk Assessment Conferences

information available about a family to support and/or intervene to protect the vulnerable. Consent is a critical issue in these settings, in particular for MASH.

MASH creates a confidential environment where proportionality, necessity and justification all have a bearing on decisions about information to be released to operational staff. When these decisions are made well, vulnerable people are better protected, all agencies are in a better position to safeguard the vulnerable and agency resources are properly utilised, avoiding duplication. Early identification leads to early help. The key factors that have contributed to the positive outcomes in multi-agency practice are directly relevant to improving information sharing across public bodies and the elements of good practice can be transferred outside the multi-agency context. Information sharing expertise and good practice resulting from multi-agency working should filter upwards into legislation and guidance.

Reflections on our Consultations

The consequences for failing to share information among professionals can be very profound, including the death of a child. Information sharing must be underpinned by a legislative framework that allows the sharing of information to protect and safeguard children whilst recognising the rights of all people involved to privacy and protection from state intrusion.

The NSPCC believes that the balance is currently not right and the number of SCRs indicating that information sharing contributed to a tragic outcome provides ample evidence of a problem. We believe that professionals want to do the right thing and that there must be structures and processes to enable them to do it.

Guidance must be unambiguous about the need to safeguard and protect children, including the need to share information at an early stage so that help and support can be given to families to keep them together. There must be effective multi-agency training to break down professional and organisational barriers and improve understanding of the respective roles and contexts of each professional group. There must be bottom up learning from existing multi-agency structures so that existing good practice drives the development of more effective multi-agency practice. Professionals must be clear that they will not be criticised or suffer adverse consequences if they share information with good intent, even if it is subsequently found that the sharing was inappropriate.

Recommendations for improving information sharing practice

The following is a set of recommendations, based on the themes we have identified through this review and our extensive experience in child protection and safeguarding. Some items will be appropriate for the Law Commission to adopt, while others will need to be progressed outside of this context.

- **Guidance**

- a. The statutory guidance on information sharing should be even clearer that safeguarding and protection of children supersedes other issues such as patient confidentiality. Any apparent contradictions in statutory guidance should be resolved. The complexity of legislation makes it unlikely that consolidation or codification of information sharing across all sectors would be possible and developing this guidance would help professionals to make sense of the law in whatever setting they are in.
- b. Key considerations of such guidance should include:
 - Clarity on the balance of safeguarding and protecting vulnerable people, especially children, with patient confidentiality. Whilst child protection should be uppermost in the mind of health professionals, there will be occasions where there is doubt about whether the child protection concern reaches the threshold to supersede patient confidentiality. This will address the consistent finding in our review that health professionals seem to struggle with this balance and guidance should be clearer to enable them to make decisions that protect children whilst respecting patient confidentiality, to the extent that this is possible.
 - Encouragement of sharing of information about low level concerns that do not, alone, give rise to child protection concerns but which could, taken with other information, form a more complete and worrying picture;
 - Giving very clear and unambiguous guidance to all professionals about when information should be shared, using examples to amplify guidance in difficult or contentious areas;

- A statement that, in most circumstances, professionals who, while properly exercising their professional judgement, make a mistake when carrying out well-intentioned information sharing will not suffer legal or professional adverse consequences.

 - c. Updated guidance that requires documents to be read in conjunction with each other should be avoided and instead should be consolidated into one document to ease access and effectiveness.
- **Training**
 - a. Multi-agency training takes place under the auspices of LSCBs. This training should be continued and enhanced to develop greater understanding between professionals of their different contexts and roles.

 - b. LSCBs should be encouraged, through the Ofsted inspection process, to evaluate the effectiveness of their training in helping to break down professional barriers and encourage the sharing of information for the benefit of children. Comprehensive training and support on information sharing would greatly enhance information sharing between safeguarding and child protection professionals.

 - c. Training that uses 'real life' scenarios as part of a wider narrative (that engages all the various pieces of legislation and exposes the tensions in information sharing) would be a good tool to assist professionals to gain confidence in exercising their judgment when making decisions about information sharing and continuous practice development and refresher training, e.g. in schools, should be encouraged.

 - **Learning from existing multi-agency practice**
 - a. Information sharing practice in multi-agency working arrangements should be harnessed and analysed with the aim of establishing whether good practice can be transferred to the wider information sharing context. The lessons that can be learnt from MASH are elucidated in the response to question 4 of this consultation.

b. Organisational structures should be developed that encourage information sharing. For example, co-location of linked professionals, linked databases, agreed formats of recording information, appointment of a key individual who hold responsibility and decision making capacity to facilitate information sharing should be encouraged⁸. We are seeing encouraging signs of this in MASH and similar arrangements. These supportive structures should be developed in all areas of the country.

- **Early Help**

a. We also consulted with legal practitioners who represent families in family law cases and a campaigner on human rights. Sharing information at lower levels of concern to allow families to receive early help or to enable early intervention to protect a child needs careful consideration. Guidance needs to reflect the rights of all involved, particularly the Article 8 right to private life. Article 8 rights are not absolute. Guidance should be clear about how the balance between the need to protect children and the rights of others should be struck. It appears from our consultation that this may be a difficult issue. However, we consider that it needs to be clearly set out for all professionals. We would be pleased to be part of discussions on developing guidance.

⁸ Gross J, (2013), *Information Sharing in the Foundation Years: A report from the task and finish group*, p23

Consultation Questions

Question 1: Is the current law on data sharing sufficiently clear and certain? Which parts of the law do you find unclear and uncertain and if possible give examples of problems arising from the lack of certainty/clarity

No, the amount of legislation that governs information sharing means that professionals struggle to understand the sources of law.

Public bodies can only share information in accordance with the law governing data sharing. The law governing data sharing is set out in broad terms in the Data Protection Act 1998, the Common Law of Confidentiality and the Human Rights Act 1998 (incorporating the European Convention on Human Rights). The legislation that is relevant to information sharing in the safeguarding and child protection context numbers at least nineteen separate acts, as set out in appendix two.

Our review of professionals indicated that very few refer to the law and rely, to a greater extent, on guidance from government, their professional body, local authority and/or their organisation. The different sources of law can lead to conflict, for example social workers using child protection legislation have found themselves in conflict with UKBA staff using immigration law.

As a result of these various and disparate legislative obligations, there is greater scope for misunderstanding and misinterpretation. Professionals we spoke to indicated that they are likely to take an overcautious approach when they are unclear as to the law in information sharing (due to fear of the repercussions arising). This may result in delays in intervention in circumstances where concerns require prompt intervention.

Without recourse to government guidance and legal advice, it is a challenging task for professionals to confidently pull together the various pieces of legislation and apply them to the specific information sharing scenario that he or she is faced with. For example, the feedback from social workers in practice reflects the outcome of the 'Data Sharing Review' where it is stated that: *'...the complexity of the law, amplified by the plethora of guidance, leaves those who may wish to share data in a fog of confusion...'*⁹. Further, the legislation does not adequately deal with scenarios where information sharing legislation results in

⁹ Thomas R, Walport M (2008) Data Sharing Review, p(i)

conflicts in practice¹⁰. The issue here is not the law itself, but the fact that the correct application of the law by the social work practitioner may run contrary to the principles and practice in his/her area, taking into account the best interests of the child in question.

As such, the NSPCC believes that the Law Commission should consider the government guidance that interprets the law, considering whether the various guidance documents properly reflect the law and whether guidance documents assist practitioners to understand the current state of it. Key government guidance documents are set out in appendix two. It is not realistic to expect frontline practitioners to be able to draw on law and guidance from different sources whilst simultaneously coping with pressures of the various professional challenges presented to them.

The difficulties faced by professionals in accessing guidance, understanding and pulling together the guidance in order to interpret the law is not helped by the resource constraints resulting in increased work load. Social workers report that the specific circumstances of a case do not always fit in neatly with the government guidance and/or local guidance. Furthermore, reduced legal support due to cuts in local authority legal departments limits social workers access to timely expert legal advice in this complex area.

Government guidance is not always updated in a timely manner which can result in a time-lag and institutional inaccuracy when there are policy changes. For example, the 'Information Sharing: Guidance for Practitioners and Managers, 2008' makes reference to other external policies that have been updated e.g. 'Working Together to Safeguard Children, HMG 2006'. Regular checks should be made to ensure any external policy documents mentioned within information sharing guidance documents are up to date.

This raises questions about alternatives for professionals who are confronted with such circumstances. Options might include a national body that provides advice on the latest research and guidance, or more creative methods of disseminating guidance, such as through specific web-based portals.

¹⁰ For example, a social worker's duties under the Children Act 1989 (and his/her concerns about a child's best interests) may make him/her reluctant to share information under the Immigration and Asylum Act 1999, if this results in a child being removed from the jurisdiction.

Question 2: Do those responsible for understanding data sharing in your organisation have a good understanding of the law? If not, to what do you attribute this?

Our consultation found the picture to be patchy. The response to this question varied depending on level of experience, organisational culture (e.g. multi-agency working) and geographical location. On the one hand, it was felt that having a complex web of legislation and guidance made it difficult to understand the law. On the other some felt that guidance was clear about when and how information should be shared. It should be noted that positive experiences tended to be found in contexts where information sharing was an inherent part of the role, such as in a MASH or working in a role between agencies. However, they acknowledged the evidence from SCRs that information sharing is not consistent and also expressed some concerns about adverse consequences for inappropriate information sharing.

All professionals working with children may have some understanding of the law and practice in their own areas but have weaker understanding of the scope and remit of other professionals linked to them. For example, feedback we received suggested that social workers in the adult criminal justice sector may have a good working knowledge and understanding of their own area but may not understand or appreciate the law and the information sharing needs that arise from children's social work. Education professionals reported a lack of knowledge from social workers as to how schools function; however, there appeared to be some understanding from schools about how social workers perform their roles.

There are differences in the understanding of law and guidance and/or organisational cultures across different local authorities. Professionals involved in information sharing with different local authorities highlighted a lack of consistency between them. They interact differently with the various agencies i.e. police, health and education. Where there was more than one local authority involved in a particular case, this introduced delay when decisions needed to be made about how to proceed.

Each sector also relies on different ways of interpreting information sharing requirements. For example, social workers reported being heavily reliant on their line managers, legal departments and peers to enable them to understand and interpret the law on information sharing¹¹, whereas police officers resolved any uncertainty by sharing information.

¹¹ Although there is a difficulty in some areas because legal departments are being cut due to resource constraints which '*...removes a layer of support when difficult decisions have to be made...*'

Meanwhile, health professionals said that while government guidance was clear, their primary guide is the GMC guidance¹².

Finally, policy changes are not always cascaded down the chain to education and social work professionals in a timely manner which may lead to time-lags and institutional inaccuracy on the current state of the law and its applicability to individual situations.

Question 3: Do you think that those responsible for data sharing are given enough leeway to exercise judgment or, in contrast, that there should not be as much flexibility when it comes to complying with the law?

Yes, those responsible for data sharing in the public bodies we spoke to indicated that they are given enough leeway to exercise their judgment. The issue for the professionals is *how* to exercise their judgment in making decisions about information sharing as outlined below. Guidance needs to be clearer, using practice based examples to resolve uncertainty so that all professionals are clear about when it is appropriate to share information.

Views ranged across each of the sectors. Education professionals suggested that clarity is needed on what should be shared as there appears to be too much subjectivity. Meanwhile police argue they are good at sharing information with one another in particular citing the national database as a useful tool. Social workers, on the other hand, reported a lack of confidence in making information sharing decisions as a result of variable approaches to information sharing ‘...*because not everyone is confident enough about what to do in specific circumstances...*’. This is less to do with the ‘leeway’ to exercise judgment and more to do with how to properly exercise their judgment.

In local authorities and organisations with a ‘blame’ culture, social workers are more likely to take a risk-averse approach whereas in local authorities where social workers feel supported they are more likely to exercise their judgment independently.

Of particular interest was feedback from sexual health practitioners. Where dealing with children below the age of 16, they sought to create supportive and therapeutic relationships with them. However, when the circumstances suggested that the child was actually suffering, or was at risk of suffering significant harm then information would be shared with

¹² However, although practitioners are aware of the guidance some may struggle to apply it in particular circumstances. GP’s in practices where safeguarding and child protection are regular features recognise the signs more easily and consider sharing information more readily

other agencies. Sharing would happen, preferably with consent, but confidentiality could also be breached. In this setting, the need to protect children from the risk of harm was considered to override other restrictive legislation. It was also the view that recent cases of child sexual exploitation had changed views about sharing of information, with a far greater degree of sensitivity to risk being developed. This suggests that exogenous factors, external to guidance and organisational culture, also play a part in affecting the default judgement of practitioners. Practitioners in this area of health consider their information sharing as part of a therapeutic and risk management activity. In situations where information should be shared, they consider *how best* to do this, rather than *whether or not* they should share the information.

There were some good examples of information sharing in the sexual health arena where a clinic received information regarding all children on child protection plans in the local area. This allows the clinic to be aware of any such children with whom they may have contact. This is a new development and it is too early to say whether the approach has had a positive impact.

Question 4: If you think that there are inappropriate obstacles to data sharing between public bodies, please say what these are and where you have encountered them.

Inappropriate obstacles to information sharing across the public bodies include weakened professional relationships, a lack of trust and understanding between professionals in different areas of work and tensions between client orientated services and law enforcement services. Professionals sometimes expressed doubt that action would follow information sharing. The inappropriate obstacles to information sharing vary from sector to sector and are elucidated below.

Information sharing requires the involvement of other professionals. Professional relationships have been adversely affected by high social worker staff turnover and this affects how people communicate and share information. It is not unusual for professionals e.g. health and social workers or health and police to be distrustful of each other and health professionals in particular are especially fearful of breaching patient confidentiality^{13,14}.

There are particular tensions around the sharing of client information between client orientated, therapeutic services, on the one hand, and law enforcement services on the

¹³ Richardson S, Asthana S (2006) Inter-agency Information Sharing in Health and Social Care Services: The Role of Professional Culture, *British Journal of Social Work* (2006) 36, 664

¹⁴ HSCIC, (2013), *A Guide to Confidentiality in Health and Social Care*

other¹⁵. Social workers do not often understand the remit and training in other sectors of the profession with whom they need to share information e.g. social workers in adult criminal justice and children's services social workers may approach the same piece of information very differently. There needs to be a better understanding of the goals and agendas of the different professionals that social workers are likely to share or receive information from, including social workers from different areas of expertise.

The lack of a shared language in child protection between health and the other public bodies creates an obstacle to information sharing. Police and safeguarding child protection professionals use terminology such as 'child in need' and 'significant risk of harm' whereas GP's tend to use terminology like 'chronic' and 'acute.' There were also obstacles to information sharing reported based on doubts harboured by some that any action would follow.

The development of designated and named role for local authority and clinical commissioning group ('CCG') areas was reported to be effective at keeping child protection at the top of the health care agenda and provides a ready source of expertise for doctors who need advice.

The report 'Information Sharing in the Foundation Years' includes illuminating examples of the barriers to information sharing across public bodies:

'...currently, local authorities struggle to get basic information from the health service about live births so that children's centres can let new parents know about the services they offer; the health service struggles to get information about what schools children attend so that school nurses can pass on vital information about healthcare needs to teachers. Education and children's services staff are not always sufficiently aware of parents' rights to be asked for consent to share information. They may, for example discuss information with health staff about a family's difficulties without seeking an agreement first. Conversely, information governance models in health services can place a stress on confidentiality that goes way beyond sensible sharing of information about a child's developmental status and needs...'¹⁶

¹⁵ Bellamy C, Perri T, Raab C, Warren A, Heeney C, (2008), Information Sharing and Confidentiality in Social Policy: Regulating Multi-agency Working, Public Administration, Vol.86, No 3 p737-759

¹⁶ Gross J, (2013), Information Sharing in the Foundation Years: A report from the task and finish group, p4

Multi-agency models

Multi-agency working is a useful model in considering information sharing across public bodies. Early findings from the 'Multi-Agency Working and Information Sharing Project' suggest that positive outcomes have been achieved from adopting a multi-agency model of working¹⁷. MASH appears to have helped decisions about borderline cases where social services need more information to inform the use of resources or agencies to find a solution.

Despite the huge number of multi-agency information sharing models in place across the country, these are all based on three common principles: information sharing, joint decision making and coordinated intervention. The key factors which contributed to the positive outcomes of the MASH include co-location/joint working, joint information sharing protocols, involvement of health professionals, good leadership within MASH, training across diverse agencies and joint training for adult and children's services. These factors, which are directly relevant to making MASH successful, are also directly relevant to making information sharing across public bodies more successful and should be transferred externally to other safeguarding and child protection arenas.

The review of the MASH project also identified a number of barriers to their information sharing initiatives. Largely, these appear to be organisational barriers rather than barriers created by the legal framework. The key legislative barrier was the misunderstanding (especially amongst health professionals) about what client information can be shared. The organisational barriers to information sharing in MASH included multiple and incompatible IT systems, difficulties with secure email access, high staff over/corporate memory loss which affected the operation functioning of some units and the geographical spread of some MASH areas made joint work challenging. Whilst improvements were noted with data sharing, consent for sharing health related information remained an issue¹⁸.

The professional and cultural barriers that prevent professionals sharing information across public bodies can be addressed by building trust and engagement through understanding individual work approaches and understanding separate work agendas¹⁹. Multi agency working and co-location promotes this process; good practice from the various multi-agency arrangements should be harnessed and disseminated outside the multi-agency arena, and should be reflected in information sharing guidance.

¹⁷ Home Office, (2013) Multi Agency Working and Information Sharing Project: Early Findings, p4

¹⁸ London Safeguarding Children Board, 2013, Making MASH Fit for Purpose (Conference on 13.11.13) notes available here: <http://www.londonscb.gov.uk/mash/>

¹⁹ Home Office, (2013) Multi Agency Working and Information Sharing Project: Early Findings, p9

Question 6: Do you think that the current law strikes the right balance between the ability of public bodies to share data and the need to protect privacy or other rights of data subjects? If not please say why

The answer to this question is unclear. Information sharing practice is evolving across the professions that we spoke to. There is also evidence that new and existing structures such as MAPPA, MARAC and MASH are sharing information effectively. It is difficult to conclude whether the law is helping or hindering this process because of the evident reliance on guidance.

The recent case of *R (on the application of AB and CD) v Haringey London Borough Council [2013] EWHC 416(Admin)* suggests a conflict between the need to be able to share information to address child protection and safeguarding concerns at an early stage and the current understanding of the legal threshold at which information sharing can take place without consent. In this case, the judge was highly critical of the local authority's processes for dealing with a child protection concern. However, the judgement also seems to conclude that information sharing can only take place without consent when there are concerns that a child may be at risk of suffering significant harm. It will be difficult to share information at lower levels of concern if consent will be required in such cases. For example, carers who abuse their children are unlikely to consent to information sharing. In such cases, it could be necessary to wait for more serious concerns to arise before effective action can be taken. This does not seem to be an effective way to give early help to families or intervene early to protect children from harm.

The NSPCC would echo the observations made by Thomas and Walport in the 'Data Sharing Review' where they state that '*...the law should not overrule the proper exercise of professional judgment. Rather it should support this by providing a legal framework that respects reasonable judgments based on the circumstances of the case...*'²⁰

Question 11: Do you think that the adverse consequences of unauthorised disclosure, including reputational damage or formal sanctioning, have an adverse effect on data sharing? If so, what sorts of consequences are most significant? If possible please provide examples of each

²⁰ Thomas R, Walport M (2008) Data Sharing Review, p40

Yes. This was a particular issue for health professionals who are trained to consider confidentiality of patient information throughout their training and careers. They fear sanctions from their professional body and also fear having court proceedings brought against them by patients should they make ill-considered disclosures.

We also heard concerns expressed by other professionals, including social workers who feared legal action if they shared information in an incorrect setting.

The adverse consequences of unauthorised disclosure or poor information sharing practice are likely to result in a 'risk averse' approach to information sharing. In the case of *R (on the application of AB and CD) v Haringey London Borough Council [2013] EWHC 416(Admin)* not only were the professionals named and required to justify their decision making process in the public court, the outcome of the case resulted in an award for financial damages to be paid to the claimants, which is discouraging for the social workers involved. This differs from the usual procedure that social workers are accustomed to in the family courts, where proceedings are often heard in private and reported anonymously.

Question 15: Do you think that data sharing is prevented because public bodies lack the practical capacity or resources (lack of staff, money, time) to process and share data? If possible, please provide examples

Yes, resource constraints and practical capacity issues have had a significant impact on information sharing across all the agencies. Moreover, child protection professionals have different agendas and different thresholds for information sharing, which creates barriers to information sharing as outlined below.

A theme arising from discussions with social work practitioners is the increased workload and cuts to legal departments due to resource constraints. Having reduced access to legal advice hampers information sharing practice and can result in delays in the decision making process. Social workers are heavily reliant on legal advice in exercising their judgment in unclear situations. On the same issue, educational professionals experience this differently e.g. when contact is made with social services, the level of expertise of the person at the other end is lower than previously e.g. duty staff instead of an allocated worker which can be unhelpful.

From the social work perspective, a significant obstacle to information sharing is time. The pressures on social work practice results in insufficient time for reflective practice.

Additionally, in the social work context, information sought can be detailed and extensive which can be a time consuming process.

As social workers sometimes communicate information that is of a highly sensitive nature, they are aware of the importance of disclosed information remaining secure and ensuring that it does not fall into the wrong hands. Additionally, information received from other sources may need to be handled more sensitively e.g. Police/Home Office evidence is often highly sensitive and confidential and social workers recognise the need to ensure that there are no breaches of confidentiality.

Education professionals highlighted the need for enhanced training and supervision to facilitate good child protection and safeguarding practice, particularly before new teachers join a school. Safeguarding and child protection is described as being '*...hit and miss, nothing like the prominence it used to have...*' Education professionals indicated that they do not routinely receive safeguarding supervision in schools, yet supervision entitlement should be made available as teachers are most likely to receive disclosures.

Furthermore, professionals in education raised the need for clarity as to the next steps following information sharing; in particular feedback and information received following disclosures. From a teacher's perspective, he or she needs to trust that something is being done and that they are part of the safeguarding communication chain.

Question 16: What role does a lack of 'incentives' or 'motivation' play in failure to share appropriately? If possible please provide examples

The overall theme that emerged from discussions with the various public bodies was that organisational and cultural barriers hindered information sharing rather than a 'lack of incentives' or 'motivation'. Different agencies gave different feedback about the factors that motivated them, and hindered them, from sharing information as outlined below.

Although social workers perceive information sharing as being important, they also indicated that they are 'frightened to share' unless they were absolutely certain of the need to share information. There is a danger that social workers are moving towards a 'risk averse' model of information sharing which can result in negative outcomes for children.

'Working Together to Safeguard Children,' states that '*...fears about sharing information should not stand in the way of the need to safeguard and protect the welfare of children...*'²¹

Furthermore the guidance states '*...to ensure effective safeguarding arrangements no professional should assume that someone else will pass on information that they think may be critical to keeping a child safe...*'²². The guidance, however, gives no indication that social workers or other professionals would be protected for inappropriate but well-intentioned information sharing.

The police indicated that their motivation for information sharing is safeguarding, public protection and welfare of victims.

Meanwhile for health professionals, it did not seem to be a matter of motivation. It appeared to be a fear of sharing information in case there were professional and/or legal consequences. As a result, in general practice, there seemed to be a rather passive approach where doctors would respond to requests but would not initiate sharing when they had concerns themselves.

Question 19: Do you or your organisation find it difficult to secure the data you want because the holder of the information is unwilling to divulge it for other reasons? If so, what are the reasons? If possible, please provide examples

AND

Question 20: Are you, or your organisation, unwilling to divulge information for other reasons? If so, what are the reasons? If possible, please provide examples.

A consistent theme that emerged is the difficulty in working practice between health professionals and other public agencies. Specific comments include '*...health is a perennial issue...perhaps current new structures will help? It is difficult to engage with doctors, nurses etc. as they think they would be breaching confidentiality...*' A similar view was obtained from the police who said they were '*...relatively happy with information sharing with social work-bigger problems with health and education...*' The other key theme is the importance of personal working relationships across agencies in facilitating the process of information sharing.

²² HM Government, 2013, Working Together To Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children, p15

From a police perspective, there was a feeling that social services do not always have the capacity to deal with the cases adequately. They noted that social work practice varies from area to area unlike police practice which is they felt was fairly standard. The police also indicated that information sharing with health is variable. Sexual health clinics were highlighted as a problem where sexual health clinics are reluctant to refer due to high levels of confidentiality, even though there was cause for concern. For example, young girls with 'older boyfriends' repeatedly presenting with STI's and unwanted pregnancies. From a police perspective, these cases indicate an abusive relationship that would warrant intervention to safeguard the child. Overall, police noted that good interpersonal relationships and supportive organisational structures assist information sharing.

Doctors do not feel that they get much information from other agencies, particularly education. This appears to be a result of consideration not being given as to whether the child's doctor ought to know about a particular situation. Lack of information can make it harder for a doctor to treat a patient.

Concern about breaching confidentiality is the main reason expressed by social workers that can lead to an unwillingness to disclose or divulge information. Social workers in the multi-agency context indicated that they do get enough information; the difficulty is in ascertaining what information is enough.

Question 22: Please describe the magnitude of any problem encountered in data sharing and the effects of such problems on data sharing.

The impact of inadequate information sharing is very great, leading to families who need support not getting it and vulnerable children suffering abuse and/or neglect that can result in serious injury or death.

The NSPCC reviewed 19 SCRs and CPRs from England and Wales in 2013 and found that 58% of the reviews included explicit recommendations relating to improved information sharing. A study of recommendations arising from SCRs and CPRs between 2009 and 2010 found that 19 out of 20 reviews addressed information sharing in some respect.

Specific aspects of information sharing we were told about that need to be addressed include improved shared records between children who are receiving services from a variety of agencies, a need for better inter and intra agency information sharing, improved information sharing when clients move from one area to another and the need for protocols

in circumstances in complex confidentiality situations²³. Uncertainty about whether information can be shared and disclosed in the child protection context can slow down decision making and result in poor outcomes for children.

Conclusion

We have sought to do two things in this consultation response. Firstly, in answering the consultation questions we have drawn on the experience of frontline professionals to set out as accurate a picture as we can of information sharing as it impacts on children.

Secondly, we have used the information we have gained from our consultations with professionals and combined this with knowledge of the policy environment to develop recommendations to improve information sharing for the benefit of children.

The overall message is that the law is fragmented but seems to be permissive. Guidance is more important for professionals in making decisions about information sharing. There are a number of significant gaps-

- Clarity that information sharing without consent should take place to enable early help and early intervention. The rights of people involved must be considered and the process must not be overly bureaucratic;
- Multi-agency training is necessary to break down barriers between professions;
- Learning should be derived from existing multi-agency practice and used to inform information sharing;
- Professionals should be clear that well-intentioned information sharing will not result in adverse outcomes, even if the sharing proves to have been inappropriate.

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²³ Brandon M et al (2011) A Study of Recommendations Arising from Serious Case Reviews 2009-2010, London, Department for Education

Appendix One

The following sections are based on interviews with a number of leading professional organisations and individuals which represent each sector. The summaries presented here necessarily aggregate the views and present a set of themes that were prevalent in the interviews. Not all interviewees will have expressed every view. A list of the organisations that we spoke with is listed under each sector.

Education

National Association of Head Teachers

- Overall, the attitude to information sharing in the education context largely depends on the organisational culture within the school. Education professionals identified a number of cultural and training issues that affect how information sharing is implemented in practice.
- Education professionals highlighted the need for training and supervision in order to facilitate good child protection and safeguarding practice in information sharing. In particular, regular supervision was felt to be crucial to support teaching staff as they are most likely to receive disclosures.
- Education professionals raised the need for clarity and a clear path of communication and feedback when information is shared with other agencies.
- Education professionals took the view that safeguarding and child protection need to feature in all induction processes and that there should be more regular refresher courses on information sharing e.g. yearly. Education professionals highlighted the need for information sharing guidance to be updated more regularly (yearly instead of every three years) and they called for more regular updating of schools' individual information sharing policies. Larger schools may require a more specific information sharing structure, with more than one person in charge of information sharing.

Health

**Two representatives of the Royal College of GPs; Royal College of Physicians;
Consultant in charge of a sexual health clinic.**

- Health practitioners are advised to seek consent for information sharing and when consent is obtained few problems arise. The difficulties arise where consent was not sought, where consent was refused or where the person involved is not considered competent to give informed consent.
- All doctors have the requirements of patient confidentiality drummed into them from their initial training and throughout their careers. It is sometimes difficult for doctors to spot the occasions when they should share information for safeguarding and protection purposes because the need for confidentiality is so ingrained.
- None of the health professionals who spoke to the NSPCC stated that they would directly refer to the law when considering matters pertaining to information sharing. Their first point of reference would be guidance.
- Health practitioners relied heavily on guidance from the General Medical Council (“GMC”) and any changes in law or guidance were considered by the GMC. Health professionals indicated that the GMC’s process of disseminating guidance and training was robust.
- Whilst GP’s respond to information sharing requests from other safeguarding and child protection professionals, they are less good at proactively sharing information when they have concerns.
- The implications of information sharing were more developed in the area of sexual health than in the area of general practice. Overall the picture that emerged on the issue of information sharing was not consistent across all areas of health practice.
- Medical professionals reported good information sharing from children’s social care but less cooperation between themselves and police and education. Although it is still early, it was felt that MASH arrangements were showing positive signs.
- The other public bodies that we spoke to (i.e. social workers, police and education) identified health as being the sector that there were the greatest challenges in information sharing practice: ‘...it is difficult to engage with doctors, nurses etc. as they think they would be breaching confidentiality...’²⁴

²⁴ Extract from interview summary

Police

College of Policing; Individual with Extensive Professional Expertise in Child Sexual Exploitation

- Police appear to be confident about their information sharing between themselves and noted some hurdles in sharing information with other agencies. They indicated that their national database was a useful tool in facilitating information sharing.
- The Police indicated that information sharing with health was variable (sexual health clinics in particular were noted as presenting challenges in information sharing). Police indicated that information sharing with schools was not regular. Information sharing with social services was thought to be 'good' and benefited from shared processes e.g. joint assessments, although difficulties were encountered where there are multiple local authorities under one police force.
- The police expressed a reluctance to share information where this may affect the integrity of a case e.g. tipping off individuals that they are being investigated, giving information about a case before it comes to court, overlapping family and care proceedings.

Social Services

British Association of Social Workers, England; British Association of Social Workers, Scotland; Lambeth Local Authority; City of Edinburgh

- A key obstacle to information sharing for social workers is time for reflective practice and to consider the relevance of disclosure and information sharing. Resource constraints have led to increased workload and cuts to social services and legal departments which in turn makes professionals more reticent to share information due a default fear of 'getting it wrong'.
- Social workers perceive information sharing as being important, particularly in the context of child protection. Social workers are reliant on information being received from other professionals who may be more reticent about sharing information and this presents challenges in information sharing.
- Professionals have different thresholds for sharing information which creates barriers where one public body is of the view that information should be shared (e.g. social worker) and the other public body is of the view that information should not be shared

(e.g. health). Social workers reported that medical professionals are especially concerned about breaching confidentiality.

- Social workers report that when dealing with other bodies, it is often challenging to identify the key person who holds responsibility and the decision making capacity to facilitate information sharing. Developing good professional relationships across bodies is said to contribute heavily to good information sharing practice.

Appendix Two

Examples of legislation that is relevant to information sharing in the safeguarding and child protection:

- The Children Act 1989
- The Children Act 2004 (Section 10 and Section 11)
- Education Act 2002
- Education Act 1996
- Learning and Skills Act 2000
- Education (SEN) Regulations 2001
- Children (Leaving Care) Act 2000
- Adoption and Children Act 2002
- Mental Capacity Act 2005
- Immigration and Asylum Act 1999
- Local Government Act 2000
- Criminal Justice Act 2003
- Crime and Disorder Act 1998
- National Health Service Act 1977
- National Health Service Act 2006
- The Localism Act 2011
- The Welfare Reform Act 2012
- Mental Capacity Act Code of Practice 2005

Examples of key Government guidance documents

- Information Sharing: Guidance for practitioners and managers (2008)
- Information Sharing: Pocket Guide containing summary of key decision making considerations (2008)
- Information Sharing: Case Examples (December 2008)
- Information Sharing: Training materials (December 2008)
- Information Sharing: Further guidance on legal issues (This is archived but it contains useful legal guidelines that apply to the main guidance which reflects current policy and practice)
- Data Sharing Code of Practice (2011)²⁵

²⁵ Information Commissioner's Office, (2011), Data Sharing Code of Practice

- Statutory guidance to support Multi Agency Public Protection Arrangements (MAPPA, 2007) and Multi Agency Risk Assessment Conferences (MARAC) both of which address information sharing in the multi-agency information sharing context²⁶.

²⁶ London Safeguarding Children Board, (2013), London MASH Information Sharing Guidance