Pan Bedfordshire Consent Summary Guidance

The aim of this summary guidance is to assist you in making the right decisions in regard to Consent and sharing information. It should be read alongside the full Consent guidance and Myth Busting documents.

1. Is there a clear and legitimate purpose to share the information?

The following questions can be helpful in establishing whether there is a clear and legitimate purpose for sharing information;

➢ Is there a legal basis or statutory duty for sharing the info? (e.g. s47 of the Children Act 1989 or a court has made an order for certain info or files to be brought before the court)
➢ Is the request proportionate to the purpose for which disclosure is sought?
➢ Why is the information being shared or requested?
➢ Can either party, requesting or sharing the information, show a sufficient 'need to know'?
➢ Was the info obtained under a specific statutory power or duty which limits what can be done with it and who the info can be shared with?
➢ Will the request involve secondary disclosure? (Disclosure by the person to whom data has been disclosed to another agency or person e.g. if a GP provides data to a school and the school passes it to Children's Social Care)

2. Does the information enable a person to be identified?

In most cases where information is shared at an operational level it will be about a named child. It may also identify others, such as a parent, carer or other family members. However, there will be other scenarios where anonymised information will be sufficient, e.g. anonymised data may suffice for the purpose of data analysis or report writing. If the information is anonymised, it can lawfully be shared as long as the purpose is legitimate. If the information allows a child and others to be identified, it is subject to data protection law and where appropriate take legal advice in deciding whether or not to share the information.

3. Is the information confidential?

Confidential information is information of some sensitivity, which is not already lawfully in the public domain or readily available from another public source, and which has been shared in a relationship where the person giving the information understood that it would not be shared with others. There is a common law duty of confidentiality when dealing with sensitive personal data. A breach of confidence will not occur if there is a recorded legitimate purpose to share, or if it is evidenced that freely given, explicit informed consent has been obtained.

4. If the information is confidential, has consent to share been obtained?

Consent must be freely given, informed and explicit. This means the person giving consent needs to understand why their information needs to be shared, who will see it, how and why it will be used and any implications. Practitioners need to consider whose consent should be sought. Where there is a duty of confidence, it is owed to the person who has provided the information on the understanding it is kept confidential and, in the case of medical or other records, the person to whom the information relates. The law does not set out a specific age a child should be asked for consent. A child aged 16 or 17 or under 16 with the capacity to understand and make their own decisions, may give (or refuse) consent to sharing. In most cases, where a child cannot consent, or where a practitioner judges that they are not competent to consent, a person with parental responsibility can give consent on their behalf. However, the capacity of the parent to consent also needs to be taken into consideration.

In relation to children and adults with parental responsibility, practitioners should refer to the Mental Capacity Act 2005 and appropriate specific guidance in determining capacity to consent. If there is any doubt, or in case where there is conflict between the wishes of the parent and the child or two adults with parental responsibility, then practitioners should seek guidance from their Safeguarding Lead. When a practitioner seeks consent for information to be shared, the following should be provided as a minimum:

• What information has been or will be collected
• The purposes for which it will be used
• Who the information might be shared with
• The purposes for which the agencies that receive the information might use it (including detection of crime).

The need to renew consent should be reviewed and practitioners should be aware that individuals have the right to withdraw consent after they have given it. All sharing of sensitive information, even where there is consent, should be recorded including the legal basis for sharing information and the decision making process for deciding that information should be shared.

5. If consent has been refused, or there are good reasons not to seek consent to share confidential information, is there a sufficient public interest to share information?

Even where sharing of confidential information is not authorised, practitioners may lawfully share it if this can be justified in the public interest. A public interest can arise in a range of circumstances e.g. to protect children or others from harm, to promote the welfare of children or to prevent crime and disorder. In making a decision about whether the is sufficient public interest to share information, practitioners must weigh up what might happen if the information is shared against what might happen if it is not, and make a decision based on a reasonable judgement. Where there is a clear risk of significant harm to a child, or serious harm to adults, the public interest test will almost certainly be satisfied. There will be other cases where practitioners will be justified in sharing some confidential information in order to make decisions on sharing further information or taking action - the information shared in such circumstances should be proportionate.

In deciding whether the public interest justifies disclosing confidential information without consent, practitioners should be able to seek advice from a line manager or designated safeguarding lead. If practitioners decide to share confidential information without consent, this should be explained to the child or their parent, unless to do so would put the child at risk of harm. Practitioners must record the context in which the information was shared, the legal basis for sharing information the perceived level of risk of harm at the time, the data requested, the data shared and with whom. Agencies may have a standard form for this or ensure that there is a signed and dated entry in the case notes.

6. If the decision is to share, is the right information being shared in the right way?

If the decision is to share, practitioners should share information in a proper way. This means:

• Share the information which is necessary for the purpose for which it is being shared
• Share the information with the person or people who need to know
• Check that the information is accurate and up-to-date
• Share it in a secure way
• Establish with the recipient whether they intend to pass it on to other people
• Ensure they understand the limits of any consent which has been given
• Inform the person to whom the information relates, and, if different, any other person who provided the information, if practitioners have not already and it is safe to do so.

7. Have the decision and the reasons for it, been recorded?

Practitioners should record all decisions whether or not to share information and why. If the decision is to share, the record should include what information was shared and with whom, and who gave consent (dated and timed)

For more information, advice and guidance please access the following links;

The Information Commissioners Office (ICO) provides further guidance on what is meant by 'consent'.

Information sharing - Advice for practitioners providing safeguarding services to children, young people, parents and carers

Working Together to Safeguard Children (2018)

Keeping Children Safe in Education (2021)

What to do if you're worried a child is being abused (2015)