

Consent, Confidentiality and Sharing Information Policy

Updated July 2021

1. Consent and Information Sharing

1. When making a referral to Children and Education services it is expected that professionals seek consent from the family under GDPR and Data Protection 2018 except in exceptional circumstances. Those circumstances would be that by sharing the information with parents it would risk significant harm to the child/young person or jeopardise a potential police investigation.
2. Consent is the clear, voluntary and continuing permission of the person to any intervention or information sharing based on adequate knowledge and information of the purpose, nature, likely effects and risks of that intervention or information sharing, including the likelihood of its success and any other options and their consequences. Consent can be given orally or in writing.
3. To get a better understanding of consent under the GDPR, the definition laid out in Article 4 of GDPR is

*“consent’ of the data subject (user) means any **freely given, specific, informed and unambiguous indication** of the data subject’s wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her”*

- **Freely given:** Users must be presented with an actual choice and not coerced with negative consequences e.g., “we are referring you to children’s services”
- **Specific:** Consent should only be given to specific actions/explain why you need the consent
- **Informed:** Explain why you need to consent, it should be made clear that consent is being requested, and for what specific purposes.
- **Unambiguous:** It needs to be made obvious that the user is giving their consent.

4. It is important all information shared with Manchester Children and Education Services Social Work and Early Help Teams about any family, parent, child or young person is done so lawfully and securely and that consent is considered and obtained where needed before information is shared and the appropriate intervention is agreed.

5. When making a new referral/contact with Children and Education services it is expected that professionals seek consent from the family under GDPR and Data Protection 2018 except in exceptional circumstances.
6. The starting point in relation to sharing information where a child is not deemed to be at risk of harm by the information being shared is to be open and honest with families and raise concerns directly to them about their child(ren) (24. Working Together to Safeguard Children 2018)
7. If you are unsure you should have a conversation with your local named safeguarding lead if you are concerned about the possibility of abuse or neglect, but do not believe that the child(ren), young person(s) or any person(s) is at risk of significant harm. Ask yourself;
 - I) *Is the intended disclosure proportionate to the intended aim?*
 - II) *What is the vulnerability of those who are at risk?*
 - III) *What is the impact of disclosure likely to be on the individual?*
 - IV) *Is there another equally effective means of achieving the same aim?*
 - V) *Is the disclosure necessary to prevent or detect crime and uphold the rights and freedoms of the public;*
 - VI) *Is it necessary to disclose the information, to protect other vulnerable people?*
8. If a practitioner has concerns about a child's welfare and considers that they may be a child in need or that the child has suffered or is likely to suffer significant harm, then they should share this information and gain consent. Always consider do you need to share this information
9. As previously identified consent will have been considered before the individual's case is brought to Advice and Guidance. In cases where consent has been granted individuals will have a legitimate expectation of how their data is going to be used and with whom it may be shared and why.
10. The sharing of information is covered in Working Together 2018 Section 24
11. All referrals to Early Help require consent for their service.

In relation to children:

- The Children Act 1989 introduced Significant Harm as the threshold that justifies compulsory intervention in family life in the best interests of children. The threshold criteria is that the nature of the harm / likelihood of the harm alleged is: ill treatment / neglect / impairment to

the child's physical, intellectual, emotional, social and behavioural development / Impairment to the child's physical health

- Harm is defined as the ill treatment or impairment of health and development. This definition was clarified in Section 120 of the Adoption and Children Act 2002 (implemented on 31 January 2005) so that it may include, "for example, impairment suffered from seeing or hearing the ill treatment of another".
- Suspicions or allegations that a child is suffering or likely to suffer Significant Harm. Do not delay disclosing information to obtain consent if that might put children or young people at risk of significant harm.
- The Local Authority's Children's Social Care have a statutory duty to carry out a Section 47 Enquiry in any of the following circumstances:
- Where there is information to indicate that a child has suffered or is likely to suffer [Significant Harm](#);
- Where a child is subject to an [Emergency Protection Order](#);
- Where a child is subject to [Police Protection](#).
- The responsibility for undertaking Section 47 Enquiries lies with the local authority for the area in which the child lives or is found, even though the child is ordinarily resident in another local authority's area.
- Where a Section 47 Enquiry is to be conducted in relation to a child who is ordinarily resident in the area of another local authority, her/his home authority should be informed as soon as possible, and be involved as appropriate in the [Strategy Discussion](#). In certain cases, it may be agreed that the home authority should undertake the Section 47 Enquiry (for example where the child is [Looked After](#)) and in all cases, the home authority should take responsibility for any further support of the child or family identified as necessary.

2. New Referrals: Immediate Safeguarding Concerns and why you might override consent

1. A telephone call to our Social Work AGS Team for new referrals or allocated worker/team if case is open should be made when threshold has clearly been met and an immediate response is necessary. This should never be before contact to the Police if any Person, Child or Young Person is at immediate risk.

2. This would be where a child is likely to suffer significant harm Section 47 enquiries where a child is at immediate risk of harm or when a same day response is needed to accommodate a homeless young people or asylum-seeking young person(s).
 3. The principles of confidentiality and consent should still be followed as highlighted in 1. consent and information sharing
 4. In the event of a child having suffered or likely to have suffered Significant Harm our AGS Team Manager will be made aware immediately to ensure the Team Manager of the Duty and Assessment Team is aware to see if a Strategy Discussion is required. This decision will be made by the AGS Team Manager. r
 5. Section 47 does not necessarily mean consent should be overridden and consideration should be given by the referrer when safe to do so to discuss any referral with parent(s)
 6. All other referrals or contacts under Section 17 Child in Need or Early Help require consent.
3. Open Cases: Immediate Safeguarding Concerns and why you might override consent
1. The Partnership should agree with any parent(s) or young person(s) that consent to share information between the support network on open cases to children's services as part of Child in Need Meetings, Child Protection/Core Groups Meetings.
 2. Information on open cases should be shared via the contact center (0161 234 5001) or by contacting the social worker or the duty social worker from the team, it is the responsibility of the person holding the information to ensure this has been shared and you should not assume an email has been received or a voicemail heard.
 3. If the immediate safeguarding concern is a Section 47 a strategy discussion will be arranged where information can be shared

- A Strategy Discussion will occur under Section 47 of the Children Act 1989, if a child is taken into Police Protection, is the subject of an Emergency Protection Order or there are reasonable grounds to suspect that a child is suffering or is likely to suffer Significant Harm, a Section 47 Enquiry is initiated, this is a multi-agency decision at the strategy meeting as to whether a Section 47 is initiated .
- This is to enable the local authority to decide whether they need to take any further action to safeguard and promote the child's welfare.

- Section 47 does not necessarily mean consent should be overridden and consideration should be given by the referrer when safe to do so to discuss any referral with parent(s)

4. All other Safeguarding Concerns- where consent should be obtained

1. Consent should always be obtained, and consideration given for all other concerns before information is shared with AGS Team for new referrals. This will assist in decision making as to determine whether there is need to social work interventions or another outcome is more appropriate to provide the family the right intervention at the right time.
2. If consent has been refused under Working Together to Safeguard Children states *where practitioners need to share special category personal data, for example, where information obtained is sensitive and needs more protection, they should always consider and identify the lawful basis for doing so under Article 6 of the GDPR, and in addition be able to meet one of the specific conditions for processing under Article 9. In effect, the Data Protection Act 2018 contains 'safeguarding of children and individuals at risk' as a processing condition that allows practitioners to share information, including without consent (where in the circumstances consent cannot be given, it cannot be reasonably expected that a practitioner obtains consent or if to gain consent would place a child at risk). However, practitioners should be mindful that a data protection impact assessment for any type of processing which is likely to be high risk must be completed, and therefore aware of the risks of processing special category data^[1]*
3. *It is one way to comply with the data protection legislation but not the only way. The GDPR provides a number of basis for sharing personal information. It is not necessary to seek consent to share information for the purposes of safeguarding and promoting the welfare of a child provided that there is a lawful basis to process any personal information required. The legal bases that may be appropriate for sharing data in these circumstances could be 'legal obligation', or 'public task' which includes the performance of a task in the public interest or the exercise of official authority. Each of the lawful bases under GDPR has different requirements.¹⁵ It continues to be good practice to ensure transparency and to inform parent/ carers that you are sharing information for these purposes and seek to work cooperatively with them.^[2]*

4. *It continues to be good practice to ensure transparency and to inform parent/ carers that you are sharing information for these purposes and seek to work cooperatively with them.*^[3]
5. If professionals consider it justifiable to override the refusal in the interests of the welfare of the child then they can and must do so. This decision must be proportionate to the harm that may be caused by proceeding without consent and they will be asked by the Social Worker to explore this with the family before information is shared. It is always good practice to record you think it is appropriate to override consent
6. Individuals have a right to know their information has been shared. If a decision is made that information is going to be shared regardless of the individual's consent you must seriously question and record the purpose and rationale. They should know this before discussions with children's services takes place.

What information should be shared, why not obtain consent, who should be asked for consent, when do you not need consent

7. Clear oversight around consent and information sharing must be recorded on the Children's Liquid Logic.
 8. As highlighted earlier if a case is already open then agreement for how information is shared should be done with any parent(s) or young person before sharing unless any person, child or young person is at risk of significant harm.
5. Sharing information about a third party
1. The disclosure of personal information without consent is legally justifiable if it falls within one of the defined category of public interest:

The administration of justice;

Maintaining public safety;

The apprehension of offenders;

The prevention of crime and disorder;

The detection of crime;

the protection of vulnerable members of the community.

2. When judging the public interest, it is necessary to consider the following:

Is the intended disclosure proportionate to the intended aim?

What is the vulnerability of those who are at risk?

What is the impact of disclosure likely to be on the individual?

Is there another equally effective means of achieving the same aim?

Is the disclosure necessary to prevent or detect crime and uphold the rights and freedoms of the public;

Is it necessary to disclose the information, to protect other vulnerable people?

3. As previously stated a proportionality test must be applied to ensure that a fair balance is achieved between the public interest and the rights of the data subject.
4. Clarification should be sought when disclosures are being made about what information the person calling wishes to share. For example, if a phone call is made about a neighbour but they wish to remain anonymous to prevent further fall out.
5. Information is shared initially within AGS with or without consent where justified in order to assess risk and harm which in turn identifies the proportionate level of response required.
6. When overriding the duty of GDPR/Data Protection to the Advice and Guidance Service must seek the views of the organisation that holds the duty of confidentiality and take into account their views in relation to breaching confidentiality. The organisation may wish to seek legal advice through its own legal services route.
7. Advice and Guidance processes if followed correctly are relevant in relation to the determination of consent. Advice and Guidance comprises a closed and controlled environment, this being a factor a practitioner can weigh in the balance to some extent in an appropriate case as one factor that can add to the conclusion that it is proportionate

not to seek or to dispense with consent. It is not however a single overriding reason in the determination concerning consent.

8. All disclosures must be relevant and proportionate to the intended aim of the disclosure. Relevant and proportionate disclosure can however only proceed if the data controller is given enough information with respect to the issues/line of enquiry being considered by Advice and Guidance.
9. The sharing of the information by partners fulfil a duty upon the provided by statute law (Children Act 2004) i.e., co-operation to safeguard or promote the wellbeing of children. (Section 10 and Section 11)
10. For police it can reasonably be assumed that the persons from whom information is obtained will legitimately expect that police will share it appropriately with any person or agency that will assist in fulfilling the policing purposes.

6. Human Rights Act 1998- Article 8: The Right to Respect for Private and Family Life, Home and Correspondence.

1. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
2. Consent is relevant to the rights of those to whom confidential information relates, and thus to legal obligations such as the Human Rights Act 1998.
3. The sharing of information with children's services may engage Article 8 however there will be no contravention provided that an exception within Article 8(2) applies.
4. The benefits of effective sharing of information for the purposes set out in this agreement are to the direct benefit of the citizen and so in the public interest. This agreement is: -
5. In pursuit of a legitimate aim:

The promotion of the welfare and wellbeing of children and ensuring they achieve all five outcomes is, by virtue of s.11 of Children Act 2004, a legitimate aim and major responsibility of the signatories to this agreement. The sharing of information under this

agreement is also in line with Articles 2 and 3 of the Human Rights Act 1988, namely the right to life and the right to prohibition of torture or inhuman or degrading treatment.

Proportionate:

The amount and type of information shared will only be that necessary to achieve the aim of this agreement. Information is always to be considered in terms of its proportionality in each set of circumstances, but it must always be remembered that the right to life is paramount.

An activity appropriate and necessary in a democratic society:

The police are obliged to do all that is reasonable to ensure the welfare of the most vulnerable of citizens and this is something that is necessary and appropriate in a democratic society. Other signatories to this agreement such as Clinical Commissioning groups and Children's Services also have similar obligations, which are necessary and appropriate in a democratic society.

[\[1\]](#) Working Together to Safeguard Children 2018: A guide to inter-agency working to safeguard and promote the welfare of children: Myth-busting guide to information sharing, Page 20

[\[2\]](#) Working Together to Safeguard Children 2018: A guide to inter-agency working to safeguard and promote the welfare of children: Myth-busting guide to information sharing, Page 21

[\[3\]](#) Working Together to Safeguard Children 2018: A guide to inter-agency working to safeguard and promote the welfare of children: Myth-busting guide to information sharing, Page 21