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This information is excerpted from documents to give practitioners an understanding of the context of the Haringey Judgment in relation to sharing information at the referral stage between MASH and other agencies.

Multi Agency Working and Information Sharing Project

Final report

July 2014

The following excerpt is taken from this document which can be accessed here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338875/MASH.pdf

There is more information about the judgment on the page after. It is from the Family Law Journal and can be accessed here:

http://www.familylaw.co.uk/news_and_comment/judicial-review-r-ab-and-cd-v-haringey-london-borough-council-2013-ewhc-416-admin#.WLgR6nHtnxp

Haringey Judgment; (R (AB and CD) v Haringey London Borough Council (2013) EWHC 416

In the course of this project we heard from a number of safeguarding experts that the above judgment was being interpreted by colleagues across agencies as prohibiting the sharing of information within a MASH set up without the consent of the parents.

The judgment identifies the importance of considering the requirements of the Data Protection Act when sharing information. Whilst the case focused primarily on Haringey's duty under section 47 of the Children Act 1989, it included a finding that Haringey's data gathering was unlawful because it obtained data from the child's GP and school without first obtaining consent. The judgment is not inconsistent with data sharing obligations under the DPA and ECHR. The information in question is likely to be sensitive personal data (e.g. if it relates to the child's physical or mental health and/ or the commission or alleged commission by a parent of an offence). As such, the Data Protection Act (DPA) makes the processing of this information subject to a number safeguards. One of these is that the person to whom the information relates (i.e. in this case, a parent) has given explicit consent to its processing, but alternatives include that the information sharing is necessary for the exercise of functions conferred on any person by statute (e.g. a body exercising statutory child protection functions).

The judgment does not alter the proposition that this personal data or sensitive personal data can be shared between bodies without first obtaining the specific consent of the data subject and that this sharing will be compatible with the DPA 1998 provided that its requirements are met. Similarly, any interference with the Article 8 rights of the data subject may be justified by reference to the legitimate aims (e.g. prevention of crime or protecting the rights of others) provided that the interference is necessary and proportionate.

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JUDICIAL REVIEW: R(AB and CD) v Haringey London Borough Council [2013] EWHC 416 (Admin)

As reported online in the Family Law Journal:
http://www.familylaw.co.uk/news_and_comment/judicial-review-r-ab-and-cd-v-haringey-london-borough-council-2013-ewhc-416-admin#.WLgR6nHtnxp

(Queen's Bench Division, HHJ Anthony Thornton, 13 March 2013)

The mother and father, both experienced, qualified social workers, brought judicial review proceedings in respect of the decision by the local authority to conduct a s 47 enquiry.

The local authority received an anonymous referral from a neighbour of the family saying they heard shouting at the property, that the little girl was dragged along by her arm, slapped and that the little girl looked very unhappy.

The local authority made a number of preliminary investigations including contacting the family GP and school before making contact with the mother and father. When they did so, the parents vehemently denied that it was necessary to investigate the referral and made a number of complaints regarding the local authority's conduct.

Following the telephone call, based on the reaction of the parents, the local authority proceeded with a s 47 enquiry. The parents were informed via letter that an enquiry in line with the allegations against staff procedures would be taking place.

Following a home visit with the parents and speaking with the child alone the decision was taken that no further action was necessary. The parents were notified and informed that it was most likely that the referral had been malicious.

The mother and father brought judicial review proceedings asserting that the decision to abandon the initial assessment and escalate the case to a s 47 enquiry was unlawful and that a decision to do so was never in fact taken but if it was then it was done so without adequate grounds. They claimed that the process was so fundamentally flawed and lacking in the essential minimum requirements that it was unlawful.

The court found that there was never a s 47 enquiry decision and the local authority insistence that one was taken was both erroneous and unlawful. If it had been taken it would have been wholly unreasonable and unsustainable since it would have failed to take into account the most crucial of matters required. The initial data-gathering exercise before and during the initial assessment insofar as the GP and school were contacted without the parents' consent was unlawful.

The mother and father were entitled to a quashing order quashing the purported s 47 enquiry decision and declarations that there never was a s 47 enquiry, that the initial assessment was terminated because the child was not at risk of harm and that the referral was malicious. A further declaration was granted to the effect that the local authority had acted unlawfully in its data gathering.

The further issues of what steps would be taken to insure that all references to the referral and investigation were removed from databases and what amount in damages the claimants were entitled to required further argument.