



## **Information Sharing**

### **Practitioner Guide**

## Contents

1. Introduction
2. Drivers
3. Why should we share information?
4. Basic principles of information sharing
5. Consent to share information
  - Obtaining consent
  - Refusal of consent
  - Withdrawal or change of consent
6. Disclosure without consent
  - Where the person has capacity
  - Uncertain capacity
  - Duty of care
  - Incapacity
7. Confidentiality
  - Transferring information
  - Requests to see data

### Appendices:

Appendix 1	Guide to the Information Sharing Protocol
Appendix 2	Data Protection Principles from the DPA 1998 and Caldicott Principles
Appendix 3	Schedules 2 and 3 of the DPA 1998
Appendix 4	A simplified flow chart for determining disclosure
Appendix 5	Further reading

## **1. Introduction**

The aim of the guidance is to support health and social work practitioners in Dumfries and Galloway to share information across agencies confidently and appropriately.

This guidance:

- summarises the principles to which you must adhere when sharing information
- details the common standards for all agencies when sharing information
- covers the sharing of information both with, and without, consent
- outlines issues of capacity

Every case is different and this guidance cannot provide all the answers. Nevertheless, you are encouraged to have regard to it and to follow it whenever you share information in the course of your work unless there are good reasons to justify a departure from it. You will need to apply the principles to each situation on a case by case basis exercising your professional judgment. You should seek specific advice, procedural or legal, where necessary.

## **2. Drivers**

The main legislation upon which local information sharing standards are built, is:

- Data Protection Act 1998 (DP Act 1998).
- Adults With Incapacity (Scotland) Act 2000 (AWI(S) Act 2000).
- Human Rights Act 1998 (HR Act 1998).

The Scottish Government developed a 'Gold Standard' Information Sharing Protocol (ISP), which sets out reasons for sharing information, what should be shared and how best to do this. Locally, the parties to the Dumfries & Galloway ISP are:

- NHS Dumfries and Galloway.
- Dumfries and Galloway Council.
- Dumfries and Galloway Constabulary.

Though the partners have different functions and responsibilities, at times, they need to share information, either verbally, in writing or electronically.

## **3. Why should we share information?**

- To assist the coordination of care, thereby promoting effective assessment and service delivery.
- To reduce repetitive assessment.
- To reduce risk .
- To comply with legislation.

## 4. Basic principles of information sharing

- Justify the purpose(s) for using and transferring information.
- Don't use information unless it is absolutely necessary.
- Use the minimum personally-identifiable information necessary for a given function to be carried out.
- Access to information should be on a strict need to know basis.
- Everyone with access to information should be aware of their responsibilities.
- Understand and comply with the law.

Should you wish to share information you must be clear about your responsibilities under current legislation. You are required to protect the privacy of people and maintain the highest standards of security and good data management. Then, persons and their families must be confident that their personal data is being handled appropriately.

The approach to sharing information is the same, whether practitioners are part of the same organisation e.g. (two social workers in a team), or not (a social worker and a community psychiatric nurse). You should only share information with other parties for a specific purpose, so there is a need to ascertain what is to be shared, as it is unlikely that all data needs to be shared.

A lack of clarity in the legislation that governs information sharing can lead to a reluctance among professionals to pass on personal data even where there is a clear need to do so. Failure to pass on information that could have prevented an adverse outcome for a person, is as likely a cause for criticism, as is unjustified disclosure of personal information.

Statutes will support you in sharing or obtaining information where this is appropriate, such as when there is a concern about the welfare and safety of a person or others involved with the person. You have a duty to share information when it is in the best interests of the person, for example when they are deemed to be vulnerable or lacking capacity. Any failure on your part to share information, or a decision not to share information, needs to be justified.

In most cases there will be agreement between the person and yourself to share information which will enable good assessment, planning and treatment/service delivery. It should be clear whether passing on information will prevent an adverse outcome for a person, or whether disclosure will be unjustified.

If you are unsure at any point then you must seek advice. In the first instance this should be from your line manager.

There are others who are also able to advise:

- Data controller (service which initially acquired information).
- Data manager.
- Caldicott Guardian (A senior member of staff in the NHS appointed to protect patient information).
- Chief Social Work Officer.
- Legal services.

## 5. Consent to share information

In the majority of cases, consent will be the means by which you gain the authority to share information with others, though there may be times when this is not possible. This section is divided as follows:

- Obtaining consent.
- Refusal of consent.
- Withdrawal or change of consent.

### Obtaining consent

Securing consent can be an effective means of engaging with people and developing a trusting relationship. Consent does not, in itself, entitle you to obtain and share an unlimited range of information. The information must only be shared with others who need it to assist in the provision of care and support.

Consent must be:

- Freely given.
- Informed.
- Specific.
- Unambiguous.

You should seek consent when you have identified a need to share information, ideally at first contact. Occasionally it takes time to work through the implications of consent, or the person may not be able to consent at first contact; then you will need to obtain consent at a later date. Check for any current consent. If there is a current consent, confirm with the person that this is to continue.

Consent should be explicit. It must be clearly indicated by the person, or, where that person does not have capacity to give consent, by someone else with legal authority to do so (a proxy) on his/her behalf.

You will need to give a detailed explanation as to the use and sharing of the information, as the person must understand what they are agreeing to.

When you seek consent for information to be shared you should explain to the person:

- What information will be collected.
- The purposes for which it will be used.
- Who you will, or might, share the information with.
- The purposes for which the organisation might use it .
- What the different levels of consent are.

You must also provide any relevant information leaflets on consent and information sharing.

If there are any communication issues you should take steps to assist the person's understanding.

A consent form must be signed when you seek consent and a copy given to the person and/or proxy. The form must include a record of any limitations around information sharing that the person has detailed.

What you need to record:

- Any reason for not seeking consent at first contact and how consent will be sought at the first available opportunity.
- What has been consented to and when; and the period of validity of consent.
- Any leaflets given to the person.

### **Refusal of consent**

If consent to share is refused then an explanation must be given as to possible consequences of that refusal e.g. it may mean slower provision of services.

If the person continues to refuse consent then such refusal has to be respected.

However, refusal of consent may not be clear cut, as there are other factors to consider:

- Uncertainty about the person's capacity to understand consent.
- Any risk factors that might exist.

Either of these mean you need to re-evaluate the situation and your assessment. You may wish to consider disclosure without consent (see section 6.)

What you need to record:

- Any refusal to consent and any reason that may be given for this.

### **Withdrawal or change to consent**

If the person changes consent and wishes to limit the extent of information sharing, it may affect the service that can be delivered.

The person needs to know that when consent is changed information that has been shared up to that point cannot be withdrawn and will remain shared.

What you need to record:

- Change of consent with date.

## **6. Disclosure without consent**

### **Where the person has capacity**

There are times when information may be shared without consent by relying upon statutory powers and duties. If the decision to disclose is not under a statutory duty then the conditions of schedules 2 and 3 of the DP Act 1998 need to be satisfied.

Unless there are good reasons not to do so, such as when information relates to the investigation of crime or to the detection and prosecution of offenders, you should inform the person, or their proxy, that information is to be disclosed without consent.

Information you disclose without consent, and the number of recipients, should be kept to a minimum on a need to know basis.

What you need to record:

- How the decision to disclose was made.
- Who made the decision.
- What information was disclosed and to whom.

## **Uncertain capacity**

A person should not be treated as unable to make a decision unless all practicable steps to help him/her to do so have been taken without success.

In cases where a person seems unable to make their own decision about consent to information sharing, you will need to consider assessment in line with the Adults With Incapacity (Scotland) Act 2000 (AWI(S) Act 2000). For further guidance see Adults with Incapacity (Scotland) Act 2000 : A Guide to Communication and Assessing Capacity 2008.

## **Duty of care**

Under the current law no one can provide consent on behalf of an adult in the absence of a court order or legal authority. You can share information without consent by relying upon statutory powers and duties, until such time as capacity is assessed, when an informed decision can be made by the appropriate person.

What you need to record:

- Any assessment of capacity.
- Any decision to share information without consent and with whom the information is shared.

## **Incapacity**

Where a person does not have capacity, information may be shared without consent by relying upon statutory powers and duties. You should consider all the relevant factors relating to this person's situation, and discuss consent requirements with the nearest relative, the primary carer, and relevant professionals (including the data controller).

The person may already have an appointed proxy. If this is so, you must be satisfied that they have the legal authority to give consent e.g. an Order under the AWI(S) Act 2000 or other legal authority. You must explain consent to the proxy who can then sign consent forms on behalf of the person.

If such a proxy does not exist you may recommend applying for one either to your manager, or to the primary carer or nearest relative. This process will take time and it may be that the person requires assessment and an appropriate service/treatment before such a process can be completed.

What you need to record:

- Information about the proxy and a consent form signed by proxy
- Any decision to proceed where there is no proxy
- How the decision was made and who was consulted

# **7. Confidentiality**

## **Transferring information**

When you are sharing information outwith your team or service make sure you supply, or have, sufficient information to identify the person whose information is to be shared. In the absence of a common identifier, such as the Community Health Index (CHI) number, the name, address and date of birth of the person should accompany requests for information wherever possible.

Internal codes of conduct for transferring and sharing information electronically, verbally, by phone or face to face should be adhered to.

What you need to record:

- The reason for transferring information.
- What information has been sent, to whom and when.

### **Requests to see data**

Everyone has the right (DP Act 1998) to see information about them that is held on record. This may be on paper or electronically. The request, by a person, for such information is known as a subject access request. There may, however, be sound reasons for refusing access. Requests by a person to see such information should not cause difficulties in most cases. Often this can be a useful way of checking and correcting information; though it is worth remembering that opinion is opinion, it may be disputed but cannot be altered.

The person does not have a right to see the data in the form in which it is recorded although this will often be the most convenient way to comply with a request. For example if information about someone is held in a number of different places in an organisation, you may decide to produce a composite response, rather than providing a number of copy records.

If you have received personal data from another professional you will need to check with them before you respond to a subject access request, in order to satisfy yourself that none of the exemptions apply (see appendix 3). The professional who supplied the data to you may know of circumstances, such as disclosure harming the health of the data subject or that disclosing may involve personal information about someone else, that make it inappropriate for the data to be provided to the data subject.

What you need to record:

- Who made the subject access request.
- Who was consulted over allowing access.
- What information was released.
- Any disagreement as to opinion or disputed facts.