

Care Act 2014 Statutory Guidance

Briefing Note: Information Sharing

The following briefing note describes the provisions in the Care Act Statutory Guidance relating to information sharing. Each paragraph is cross referenced with the relevant chapter and paragraph number in the Care Act Statutory Guidance.

Record-keeping

14.150. Good record keeping is a vital component of professional practice. Whenever a complaint or allegation of abuse is made, all agencies should keep clear and accurate records and each agency should identify procedures for incorporating, on receipt of a complaint or allegation, all relevant records into a file to record all action taken. When abuse or neglect is raised managers need to look for past incidents, concerns, risks and patterns. We know that in many situations, abuse and neglect arise from a range of incidents over a period of time.

In the case of providers registered with CQC, records of these should be available to service commissioners and the CQC so they can take the necessary action.

14.151. Staff should be given clear direction as to what information should be recorded and in what format. The following questions are a guide:

- What information do staff need to know in order to provide a high quality response to the adult concerned?
- What information do staff need to know in order to keep adults safe under the service's duty to protect people from harm?
- What information is not necessary?
- What is the basis for any decision to share (or not) information with a third party?

14.152. Records should be kept in such a way that the information can easily be collated for local use and national data collections.

14.153. All agencies should identify arrangements, consistent with principles and rules of fairness, confidentiality and data protection for making records available to those adults affected by, and subject to, an enquiry. If the alleged abuser is using care and support themselves, then information about their involvement in an adult safeguarding enquiry, including the outcome, should be included in their case record. If it is assessed that the individual continues to pose a threat to other people then this should be included in any information that is passed on to service providers or other people who need to know.

14.154. In order to carry out its functions, SABs will need access to information that a wide number of people or other organisations may hold. Some of these may be SAB members, such as the NHS and the police. Others will not be, such as private health and care providers or housing providers/housing support providers or education providers.

14.155. In the past, there have been instances where the withholding of information has prevented organisations being fully able to understand what “went wrong” and so has hindered them identifying, to the best of their ability, the lessons to be applied to prevent or reduce the risks of such cases reoccurring. If someone knows that abuse or neglect is happening they must act upon that knowledge, not wait to be asked for information.

14.156. An SAB may request a person to supply information to it or to another person. The person who receives the request must provide the information provided to the SAB if:

- The request is made in order to enable or assist the SAB to do its job;
- The request is made of a person who is likely to have relevant information and then either the information requested relates to the person to whom the request is made and their functions or activities or the information requested has already been supplied to another person subject to an SAB request for information.

Confidentiality

14.157. Agencies should draw up a common agreement relating to confidentiality and setting out the principles governing the sharing of information, based on the welfare of the adult or of other potentially affected adults. Any agreement should be consistent with the principles set out in the Caldicott Review published 2013¹⁹⁸ ensuring that:

- Information will only be shared on a ‘need to know’ basis when it is in the interests of the adult;
- Confidentiality must not be confused with secrecy;
- Informed consent should be obtained but, if this is not possible and other adults are at risk of abuse or neglect, it may be necessary to override the requirement; and
- It is inappropriate for agencies to give assurances of absolute confidentiality in cases where there are concerns about abuse, particularly in those situations when other adults may be at risk.

14.158. Where an adult has refused to consent to information being disclosed for these purposes, then practitioners must consider whether there is an overriding public interest that would justify information sharing (e.g. because there is a risk that others are at risk of serious harm) and wherever possible, the appropriate Caldicott Guardian should be involved.

14.159. Decisions about who needs to know and what needs to be known should be taken on a case by case basis, within agency policies and the constraints of the legal framework.

14.160. Principles of confidentiality designed to safeguard and promote the interests of an adult should not be confused with those designed to protect the management interests of an organisation. These have a legitimate role but must never be allowed to conflict with the welfare of an adult. If it appears to an employee or person in a similar role that such confidentiality rules may be operating against the interests of the adult then a duty arises to make full disclosure in the public interest.

14.161. In certain circumstances, it will be necessary to exchange or disclose personal information which will need to be in accordance with the law on confidentiality and the Data Protection Act 1998 where this applies. The Home Office and the Office of the Information Commissioner have issued general guidance on the preparation and use of information sharing protocols.

The Caldicott Principles

The Information Governance Review – To Share or Not to Share?

- Justify the purpose(s). Every proposed use or transfer of personal confidential data within or from an organisation should be clearly defined, scrutinised and documented, with continuing uses regularly reviewed, by an appropriate guardian.
- Don't use personal confidential data unless it is absolutely necessary. Personal confidential data items should not be included unless it is essential for the specified purpose(s) of that flow. The need for adults to be identified should be considered at each stage of satisfying the purpose(s).
- Use the minimum necessary personal confidential data. Where use of personal confidential data is considered to be essential, the inclusion of each individual item of data should be considered and justified so that the minimum amount of personal confidential data is transferred or accessible as is necessary for a given function to be carried out.
- Access to personal confidential data should be on a strict need-to-know basis. Only those individuals who need access to personal confidential data should have access to it, and they should only have access to the data items that they need to see. This may mean introducing access controls or splitting data flows where one data flow is used for several purposes.
- Everyone with access to personal confidential data should be aware of their responsibilities. Action should be taken to ensure that all those handling personal confidential data are made fully aware of their responsibilities and obligations to respect individuals' confidentiality.
- Comply with the law. Every use of personal confidential data must be lawful. Someone in each organisation handling personal confidential data should be responsible for ensuring that the organisation complies with legal requirements.

The duty to share information can be as important as the duty to protect confidentiality. Health and social care professionals and other staff should have the confidence to share information in the best interests of adults within the framework set out by these principles. They should be supported by the policies of their employers, regulators and professional bodies.