

ANNEX A

THE LEGAL FRAMEWORK AND GUIDANCE WORKING DOCUMENT

Key Legislation and guidance applicable to Information Sharing

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Human Rights Act 1998 and the European Convention of Human Rights

1. The European Convention on Human Rights has been interpreted to confer positive obligations on public authorities to take reasonable action within their powers (which would include information sharing) to safeguard the Convention rights of children. These rights include the right to life (Article 2), the right not to be subjected to torture or inhuman or degrading treatment (Article 3) and the right to liberty and security (Article 5).
2. Article 8 of the European Convention on Human Rights was incorporated into UK law by the Human Rights Act 1998 and recognises a right to respect for private and family life:
 - Article 8.1: Everyone has the right to respect for his private and family life, his home and his correspondence.
 - Article 8.2: There shall be no interference by a public authority with 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, protection of health and morals or for the protection of rights and freedoms of others.
3. Sharing confidential information may be a breach of an individual's Article 8 right: the question is whether sharing information would be justified under Article 8.2 and proportionate.
4. The right to a private life can be legitimately interfered with where it is in accordance with the law and, for example, is necessary for the prevention of crime or disorder, for public safety or for the protection of health or morals, or for the protection of the rights and freedoms of others. You need to consider the pressing social need and whether sharing the information is a proportionate response to this need and whether these considerations can override the individual's right to privacy. If a child or young person is at risk of significant harm, or sharing is necessary to prevent crime or disorder, breach of the child or young person's right would probably be justified under Article 8.

The Data Protection Act 1998

5. This Act deals with the processing of personal (i.e. sensitive and non-sensitive) data. Personal data is data which relates to a living person, including the expression of any opinion or any indication about the intentions in respect of the child or young person is considered personal data. Sensitive personal data is personal data relating to racial or ethnic origin, religious or other similar beliefs, physical or mental health or condition, sexual life, political opinions, membership of a trade union, the commission or alleged commission of any offence, any proceedings for any offence committed or alleged to have been committed, the disposal of proceedings or the sentence of any court in proceedings.
6. Organisations which process personal data must comply with the data protection principles set out in schedule 1 of the Act. These require data to be:
 - fairly and lawfully processed;
 - able to meet a schedule 2 condition, and if sensitive personal data, a schedule 3 condition;
 - processed for limited specified purposes;
 - adequate, relevant and not excessive for those purposes;
 - accurate and up to date;
 - kept for no longer than necessary;
 - processed in accordance with individuals' rights;
 - kept secure;
 - not transferred to non-EEA (European Economic Areas) without adequate protection.
7. The Data Protection Act only stipulates that records should be kept no longer than is necessary for the purposes for which the records are being processed. There are no actual timescales imposed. It is a matter for individual judgement, taking account of the nature and purpose of the records. It is advisable for all organisations to retain information on children and young people to agreed timescales. Six years is a commonly used benchmark and is generally compatible with limitation periods for the commencement of legal proceedings.
8. If the information enables a person to be identified, then a Schedule 2 condition should be met. These are:
 - subject has given consent to share information;
 - sharing information is necessary to protect the person's vital interests; or
 - to comply with a Court Order; or
 - to fulfil a legal duty; or
 - to perform a statutory function; or

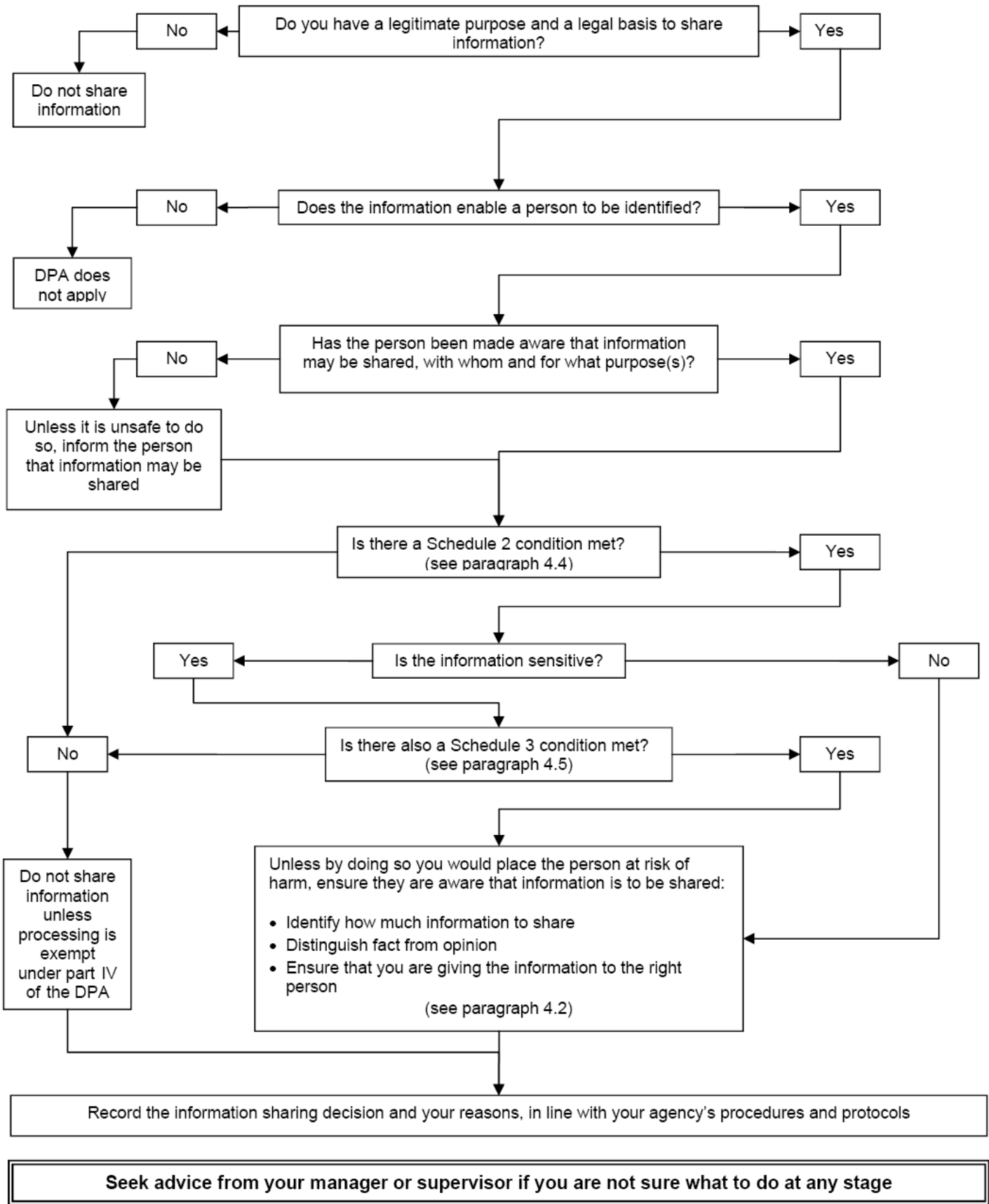
- to perform a public function in the public interest; or
- sharing is necessary for the legitimate interests of the data controller, or of the third party or parties to whom the data is disclosed, unless the rights or interests of the data subject preclude sharing

9. When information is sensitive then a schedule 3 condition must be met (see appendix 1). These are:

- individual has given explicit consent to share information
- sharing information is necessary to establish, exercise or defend legal rights; or
- is necessary for the purpose of, or in connection with any legal proceedings; or
- to protect someone's vital interests and the person to whom the information relates cannot consent, is unreasonably withholding consent, or consent cannot reasonably be obtained; or
- to perform a statutory function; or
- it is in the substantial public interest and necessary to prevent or detect a crime and consent would prejudice that purpose; or processing is necessary for medical purposes and is undertaken by a health professional.

10. See Figure 1 for a flowchart illustrating the decision-making process for testing compliance with the Act.

Figure 1 - Data Protection Act (DPA) 1998 Flowchart



Access To Health Records Act 1990

11. The DPA supersedes the Access To Health Records Act 1990 (AHRA) apart from the sections dealing with access to information about the deceased. The AHRA provides rights of access to health records of deceased individuals for their personal representatives and others having a claim on the deceased's estate. In other circumstances, disclosure of health records relating to the deceased should comply with the common law duty of confidentiality.

Crime and Disorder Act 1998

12. Section 17 applies to a local authority (as defined by the Local Government Act 1972); a joint authority; a police authority; a national park authority; and the Broads Authority. As amended by the Greater London Authority Act 1999 it applies to the London Fire and Emergency Planning Authority from July 2000 and to all fire and rescue authorities with effect from April 2003, by virtue of an amendment in the Police Reform Act 2002.
13. It recognises that these key authorities have responsibility for the provision of a wide and varied range of services to and within the community. In carrying out these functions, section 17 places a duty on them to do all they can to reasonably prevent crime and disorder in their area.
14. The purpose of this section is simple: the level of crime and its impact is influenced by the decisions and activities taken in the day to day business of local bodies and organisations. Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across a wide range of local services that influence and impact upon community safety and putting it at the heart of local decision making. Section 17 is a key consideration for these agencies in their work in crime and disorder reduction partnerships, drug action teams, YOTs, children's trusts and local safeguarding children boards.
15. Section 37 sets out that the principal aim of the youth justice system is to prevent offending by children and young people and requires everyone carrying out youth justice functions to have regard to that aim.
16. Section 39(5) sets out the statutory membership of YOTs reflecting their responsibilities both as a criminal justice agency and a children's service. The membership and consists of the following:
 - at least one probation officer;
 - at least one police officer;

- at least one person nominated by a health authority;
 - at least one person with experience in education;
 - at least one person with experience of social work in relation to children.
17. YOTs have a statutory duty to coordinate the provision of youth justice services including advising courts, supervising community interventions and sentences, and working with secure establishments in respect of young people serving custodial sentences and also in the latter category of a children's service.
 18. As YOTs are multi-agency teams, members will also need to be aware of the need to safeguard and promote the welfare of children that relates to their constituent agency.
 19. Section 115 provides any person with a power but not an obligation to disclose information to responsible public bodies (e.g. police, local and health authorities) and with cooperating bodies (e.g. domestic violence support groups, victim support groups) participating in the formulation and implementation of the local crime and disorder strategy.
 20. The police have an important and general common law power to share information to prevent, detect and reduce crime. However, some other public organisations that collect information may not have had the power previously to share it with the police and others. Section 115 clearly sets out the power of any organisation to share information with the police authorities, local authority (including parish and community councils), Probation Service and health authority (or anyone acting on their behalf) for the purposes of the Act.
 21. This ensures that information may be shared for a range of purposes covered by the Act, for example for the functions of the crime and disorder reduction partnerships and YOTs, the compilation of reports on parenting orders, anti-social behaviour orders, sex offender orders and drug testing orders.

Criminal Procedures And Investigations Act 1996

22. The Criminal Procedures And Investigations Act 1996 (CIA) requires the police to record in a durable form any information that is relevant to an investigation. The information must be disclosed to the Crown Prosecution Service (CPS), who must in turn disclose it to the defence at the relevant time if it might undermine the prosecution case. In cases where the information is deemed to be of a sensitive nature, then the CPS can apply to a judge or magistrate for a ruling as to whether it should be disclosed.

Criminal Justice Act 2003

23. Section 325 of this Act details the arrangements for assessing risk posed by different offenders:
- The “responsible authority “ in relation to any area, means the chief officer of police, the local probation board and the Minister of the Crown exercising functions in relation to prisons, acting jointly.
 - The responsible authority must establish arrangements for the purpose of assessing and managing the risks posed in that area by:
 - a. relevant sexual and violent offenders; and
 - b. other persons who, by reason of offences committed by them are considered by the responsible authority to be persons who may cause serious harm to the public (this includes children)
 - In establishing those arrangements, the responsible authority must act in co-operation with the persons identified below
 - Co-operation may include the exchange of information
24. The following agencies have a duty to co-operate with these arrangements:
- a. every youth offending team established for an area
 - b. the Ministers of the Crown, exercising functions in relation to social security, child support, war pensions, employment and training
 - c. every local education authority
 - d. every local housing authority or social services authority
 - e. every registered social landlord which provides or manages residential accommodation
 - f. every health authority or strategic health authority
 - g. every primary care trust or local health board
 - h. every NHS trust
 - i. every person who is designated by the Secretary of State as a provider of electronic monitoring services

Common Law Duty of Confidence

25. The common law duty of confidentiality is explained in sections 3.6 to 3.12 of the cross-Government guidance ‘Sharing information: practitioners’ guide’. The common law provides that where there is a confidential relationship, the person receiving the confidential information is under a duty not to pass on the information to a third party. But the duty is not absolute and information can be shared without breaching the common law duty if:
- the information is not confidential in nature; or
 - the person to whom the duty is owed has given explicit consent; or

- there is an overriding public interest in disclosure; or
- sharing is required by a court order or other legal obligation.

Caldicott Principles

26. Both Social Services departments and NHS organisations are committed to the Caldicott Principles when considering whether confidential information should be shared. These are:
- Justify the purpose(s) for using confidential information
 - Only use when absolutely necessary
 - Use the minimum that is required
 - Access should be on a strict "need to know" basis
 - Everyone must understand his or her responsibilities
 - Understand and comply with the law

Freedom of Information Act 2000

27. For public bodies, the Freedom of Information Act 2000 extends subject access rights to allow access to all the types of information held, whether personal or non-personal. However, the public authority will not be required to release information to which any of the exemptions in the Act applies. Anyone will be able to make a request for information, although the request must be in a permanent form. The Act gives applicants two related rights:
- The right to be told whether the information exists
 - The right to receive the information (and where possible, in the manner requested, i.e. as a copy or summary, or the applicant may ask to inspect a record)
28. Individual access rights for all public authorities will be brought into force in January 2005.

Regulation of Investigatory Powers Act 2000

29. This act ensures that investigatory powers are used in accordance with human rights.

Public Services Trust Charter

30. The Performance and Innovation Unit of the Cabinet Office produced for consultation, in April 2002, a draft Public Services Trust Charter. It

has since been amended, and is currently under consultation again. The amended version is included below:

To provide services for you, we need to handle personal information about you. This is how we will look after that information.

When we ask you for personal information, we will...

- ensure you know why we need it
- protect it and make sure nobody has access to it who shouldn't
- ensure you know if you have a choice about giving us information
- let you know if we need to share it with other organisations to give you better public services -and if you can say no
- make sure we don't keep it longer than necessary

This is how we will protect your information and only collect and keep what we need.

In return, we ask you to...

- give us accurate information
- tell us as soon as possible of any changes
- tell us as soon as possible if you notice mistakes in the information we hold about you

...as this helps us to keep our information reliable and up-to-date.

At any time, you can ask us for further details on...

- any agreements we have with other organisations for sharing information
- when we might be required to pass on information without telling you, for example, to prevent and detect crime
- our instructions to staff on proper collection, use and deletion of your personal information and how we check the accuracy of the information we hold on you

The Children Act 1989

31. Sections 17 and 47 of the Children Act 1989 place a duty on local authorities to provide services for children in need and make enquiries about any child in their area who they have reason to believe may be at risk of significant harm.
32. Sections 17 and 47 also enable the local authority to request help from other local authorities, education and housing authorities and NHS bodies and places an obligation on these authorities to cooperate. You may be approached by social services and asked to:
 - provide information about a child, young person or their family where there are concerns about a child's well-being, or to contribute to an assessment under section 17 or a child protection enquiry;
 - undertake specific types of assessments as part of a core assessment or to provide a service for a child in need;

- provide a report and attend a child protection case conference.
33. The Act does not require information to be shared in breach of confidence, but an authority should not refuse a request without considering the relative risks of sharing information, if necessary without consent, against the potential risk to a child if information is not shared.
34. Section 27 says that the local authority, for assistance in the exercise of its statutory functions (which include the provision of services for children in need and the sharing of information for these purposes) request the help of:
- any local authority;
 - any local education authority (LEA);
 - any health authority;
 - any person authorised by the Secretary of State.

Children Act 2004

35. Section 10 of the Act places a duty on each children's services authority to make arrangements to promote co-operation between itself and relevant partner agencies to:
- improve the well-being of children in their area in relation to:
 - Physical and mental health, and emotional well-being;
 - Protection from harm and neglect;
 - Education, training and recreation;
 - Making a positive contribution to society;
 - Social and economic well-being.
36. The relevant partners must cooperate with the local authority to make arrangement to improve children's wellbeing. The relevant partners are:
- district councils;
 - the police;
 - the Probation Service;
 - youth offending teams (YOTs);
 - strategic health authorities and primary care trusts;
 - Connexions;
 - the Learning and Skills Council.
37. This statutory guidance for section 10 states that good information sharing is key to successful collaborative working and that arrangements under section 10 of the Act should ensure that information is shared for strategic planning purposes and to support effective service delivery. It also states that these arrangements should

cover issues such as improving the understanding of the legal framework and developing better information sharing practice between and within organisations.

38. Section 11 of the Act places a duty on key people and bodies to make arrangements to ensure that their functions are discharged with regard to the need to safeguard and promote the welfare of children. The key people and bodies are:

- local authorities (including district councils);
- the police;
- the Probation Service;
- bodies within the National Health Service (NHS);
- Connexions;
- YOTs;
- governors/directors of prisons and young offender institutions;
- directors of secure training centres;
- the British Transport Police.

39. The section 11 duty does not give agencies any new functions, nor does it override their existing functions, it simply requires them to:

- carry out their existing functions in a way that takes into account the need to safeguard and promote the welfare of children;
- ensure that the services they contract out to others are provided having regard to that need.

40. In order to safeguard and promote the welfare of children, arrangements should ensure that::

- all staff in contact with children understand what to do and the most effective ways of sharing information if they believe a child and family may require targeted or specialist services in order to achieve their optimal outcomes;
- all staff in contact with children understand what to do and when to share information if they believe that a child may be in need, including those children suffering or at risk of significant harm.

Local Government Act 2000

41. Part 1 of the Local Government Act 2000 gives local authorities powers to take any steps which they consider are likely to promote the wellbeing of their area or the inhabitants of it. Section 2 gives local authorities 'a power to do anything which they consider is likely to achieve any one or more of the following objectives':

- the promotion or improvement of the economic wellbeing of their area;
- the promotion or improvement of the social wellbeing of their area;

- the promotion or improvement of the environmental wellbeing of their area.
42. Section 2 (5) makes it clear that a local authority may do anything for the benefit of a person or an area outside their area, if the local authority considers that it is likely to achieve one of the objectives of Section 2(1).
 43. Section 3 is clear that local authorities are unable to do anything (including sharing information) for the purposes of the wellbeing of people - including children and young people - where they are restricted or prevented from doing so on the face of any relevant legislation, for example, the Human Rights Act and the Data Protection Act or by the common law duty of confidentiality.

Section 111 of the Local Government Act 1972

44. **Section 111** provides “without prejudice to any power exercisable apart from this sectiona local authority shall have power to do anything ... which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.”
45. The power must be exercised in a manner that is compatible with the DPA, the Human Rights Act and common law duties of confidentiality. To some extent it has been supplanted by section 2 of the Local Government Act 2000. The previous Information Commissioner adopted a restrictive interpretation of section 111 in relation to information sharing and it should not be relied upon where the subject matter is covered in a more restrictive way in specific legislation such that it is clear that Parliament did not intend to confer wider powers.

Education Act 1996

46. Section 13 of the Education Act 1996 provides that an LEA shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community, by securing that efficient primary and secondary education is available to meet the needs of the population of the area. Details of the number of children in the local authority’s area and an analysis of their needs is required in order to fulfil this duty so there may be an implied power to collect and use information for this purpose.
47. Section 434 (4) of the Act requires LEAs to request schools to provide details of children registered at a school.

Education Act 2002

48. The section 11 duty of the Children Act 2004 mirrors the duty placed by section 175 of the Education Act 2002 on LEAs and the governing bodies of both maintained schools and further education institutions to make arrangements to carry out their functions with a view to safeguarding and promoting the welfare of children and follow the guidance in *Safeguarding Children in Education* (DfES 2004).
49. The guidance applies to proprietors of independent schools by virtue of section 157 of the Education Act 2002 and the Education (Independent Schools Standards) Regulations 2003.

The Learning and Skills Act 2000

50. Section 117 provides for help to a young person to enable them to take part in further education and training.
51. Section 119 enables Connexions services to share information with the Benefits Agency and Jobcentre Plus to support young people to obtain appropriate benefits under the Social Security Contributions and Benefits Act 1992 and Social Security Administration Act 1992.

Education (SEN) Regulations 2001

52. Regulation 6 provides that when the LEA are considering making an assessment of a child's special educational needs, they are obliged to send copies of the notice to social services, health authorities and the head teacher of the school (if any) asking for relevant information.
53. Regulation 18 provides that all schools must provide Connexions Services with information regarding all Year 10 children who have a statement of special educational needs.

Adoption Agencies Regulations 1983

54. Regulation 15 (1) imposes an obligation on an adoption agency to provide access to its records and disclose information:
 - (a) to those holding an inquiry under [section 81 of the Children Act] (inquiries), for the purposes of such an inquiry,
 - (b) to the Secretary of State,
 - (c) to a Local Commissioner (for specific purposes),
 - (cc) to any person appointed by the adoption agency for the purposes of the consideration by the agency of any representations (including complaints),
 - (d) to a children's guardian or "reporting officer",
 - (e) to a court having power to make an order under the Act ...

55. In respect of any disclosure made under 15(1) or (2), a written record should be kept by the agency of such disclosure.
56. Regulation 6 refers to arrangements adoption agencies must make for maintaining the confidentiality and safekeeping of adoption information, for authorising access under regulation 15 and for ensuring that those for whom access is provided by virtue of regulation 15(2)(a) (for the purposes of carrying out its functions as an adoption agency) agree in writing before such authorisation is given, that such information will remain confidential.
57. Regulation 6(5) obliges the adoption agency to consult its medical adviser in relation to arrangements for access to and disclosure of health information which is required or permitted by virtue of regulation 15.

National Health Service Act 1977

58. The Act provides for a comprehensive health service to England and Wales to improve the physical and mental health of the population and to prevent, diagnose and treat illness.
59. Section 2 provides for sharing information with other NHS professionals and practitioners from other agencies carrying out health service functions that would otherwise be carried out by the NHS.

National Health Service and Community Care Act 1990 (Section 47)

60. This section concerns the assessment of needs for community care. It provides that when a local authority is assessing need and it appears that there may be a need for health or housing provision, the local authority shall notify that PCT, Health Authority or local housing authority and invite them to assist, to such extent as is reasonable in the circumstances, in the making of the assessment.

Health Act 1999

61. Section 27 of the Health Act replaces section 22 of the NHS Act 1977. Section 27 states that NHS bodies and local authorities shall cooperate with one another (this allows for practitioners to share information) in order to secure the health and welfare of people.

Protection of Children Act 1999

62. The Act creates a system for identifying persons considered to be unsuitable to work with children. It introduces a 'one stop shop' to compel employers designated under the Act (and allows other

employers) to access a single point for checking people they propose to employ in a child care position.

63. This will be achieved by checks being made of criminal records with the National Criminal Records Bureau and two lists maintained by the Department for Education and Skills.

Police Act 1997 (Section 2)

64. S2 describes the functions of the National Criminal Intelligence Service (NCIS) as being:
- “(a) to gather store and analyse information in order to provide criminal intelligence,
 - (b) to provide criminal intelligence to police forces in Great Britain, the Police Service of Northern Ireland, the National Crime Squad and other law enforcement organisations, and
 - (c) to act in support of such police forces, the Police Service of Northern Ireland, the National Crime Squad and other law enforcement organisations carrying out their criminal intelligence activities.

Children and Young Persons Act 1969 (Section 9)

65. This provides a duty on local authorities or local education authorities where they have been notified of proceedings for an offence by a young person, to make investigations and provide the courts with information relating to home surroundings, school news, health and character of the person unless they are of the opinion it is not necessary to do so.

Immigration and Asylum Act 1999

66. Section 20 provides for a range of information sharing for the purposes of the Secretary of State:
- to undertake the administration of immigration controls to detect or prevent criminal offences under the Immigration Act;
 - to undertake the provision of support for asylum seekers and their dependents.

Computer Misuse Act 1990

67. The Computer Misuse Act, 1990 was passed to deal with the problem of hacking of computer systems

68. The Act created three new offences:

- Unauthorised access to computer material
- Unauthorised access with intent to commit or facilitate commission of further offences
- Unauthorised modification of computer material.
- Unauthorised access to computer material

This is the lowest level of offence. It includes, for example, finding or guessing someone's password, then using that to get into a computer system and have a look at the data it contains. This is an offence even if no damage is done, and no files deleted or changed. The very act of accessing materials without authorisation is illegal. This offence carries a penalty of imprisonment up to six months and/or a fine.

- Unauthorised access with intent to commit or facilitate commission of further offences
This builds on the previous offence. The key here is the addition of 'intent to commit...further offences'. It therefore includes guessing or stealing a password, and using that to access, say another person's on-line bank account and transferring their money to another account. For this offence the penalty is up to five years' imprisonment and/or a fine.
- Unauthorised modification of computer material
This could include deleting files, changing the desktop set-up or introducing viruses with the intent to impair the operation of a computer, or access to programs and data. The word 'intent' means it has to be done deliberately, rather than someone deleting files by mistake. This also includes using a centre's computer to damage other computers outside the centre, even though the computer used to do this is itself not modified in any way. This offence carries a penalty of up to five years and/or a fine.

69. The Act clearly takes a very serious view of hacking - even where there is no intent to defraud or do damage. It is therefore important that centre users are made aware of the potential penalties, and equally importantly, why these offences are so serious. Most people would understand that using a computer to commit fraud is clearly wrong. However, some people would not see 'victimless' hacking, or playing around with computer settings, as serious. But the reality is that such activities can seriously affect the operation and work of the centre, resulting in unhappy and dissatisfied users, and probably creating a lot of additional work for the centre staff in repairing damage done to

programs and data.

Mental Health Act 1983

Social reports

70. Where a patient is admitted to a hospital in pursuance of an application (other than an emergency application) made under this Part of this Act by his nearest relative, the managers of the hospital shall as soon as practicable give notice of that fact to the local social services authority for the area in which the patient resided immediately before his admission; and that authority shall as soon as practicable arrange for a social worker of their social services department to interview the patient and provide the managers with a report on his social circumstances.

117 After-care

71. This section applies to persons who are detained under section 3 above, or admitted to a hospital in pursuance of a hospital order made under section 37 above, or transferred to a hospital in pursuance of [a hospital direction made under section 45A above or] a transfer direction made under section 47 or 48 above, and then cease to be detained and [(whether or not immediately after so ceasing)] leave hospital.
72. It shall be the duty of the [Primary Care Trust or] [Health Authority] and of the local social services authority to provide, in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the [Primary Care Trust or] [Health Authority] and the local social services authority are satisfied that the person concerned is no longer in need of such services[; but they shall not be so satisfied in the case of a patient who is subject to after-care under supervision at any time while he remains so subject.]
73. It shall be the duty of the [Primary Care Trust or] Health Authority to secure that at all times while a patient is subject to after-care under supervision that a person professionally concerned with any of the after-care services so provided is supervising him with a view to securing that he receives the after-care services so provided.
74. Section 32 above shall apply for the purposes of this section as it applies or the purposes of Part II of this Act.] In this [section “the [Primary Care Trust or] Health Authority” means the [Primary Care Trust or] Health Authority, and “the local social services authority” means the local social services authority, for the area] in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.

Race Relations Amendment Act 2000

75. For section 71 of the 1976 Act (local authorities: general statutory duty) there is substituted “71 Specified authorities: general statutory duty”
- (1) Every body or other person specified in Schedule 1A or of a description falling within that Schedule shall, in carrying out its functions, have due regard to the need—
to eliminate unlawful racial discrimination; and
- to promote equality of opportunity and good relations between persons of different racial groups.
76. The Secretary of State may by order impose, on such persons falling within Schedule 1A as he considers appropriate, such duties as he considers appropriate for the purpose of ensuring the better performance by those persons of their duties under subsection (1).

Domestic Violence, Crime and Victims Act 2004

77. Disclosure of information
- (1) A person may disclose information to a relevant authority for a purpose specified in subsection (2).
- (2) The purposes are purposes connected with any of these—
- (a) compliance with the code issued under section 32;
 - (b) compliance with sections 35 to 44;
 - (c) the carrying out of the functions of the Commissioner.
- (3) These are relevant authorities—
- (a) a person required to do anything under the code issued under section 32;
 - (b) a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c 43);
 - (c) the Commissioner;
 - (d) an authority within the Commissioner’s remit.
- (4) The Secretary of State may by order—
- (a) amend subsection (2) by adding any purpose appearing to him to be connected with the assistance of victims of offences or anti-social behaviour, witnesses of offences or anti-social behaviour or other persons affected by offences or anti-social behaviour;
 - (b) amend subsection (3) by adding any authority appearing to him to exercise functions of a public nature.
- 5) The reference in subsection (4) (a) to persons affected by offences does not include persons accused or convicted of offences.

- (6) The Secretary of State may exercise the power in subsection (4) only after consulting the Attorney General and the Lord Chancellor.
- (7) Nothing in this section authorises the making of a disclosure which contravenes the Data Protection Act 1998 (c 29).
- (8) This section does not affect a power to disclose which exists apart from this section.

Children (Leaving Care) Act 2000

78. The main purpose of the Act is to help young people who have been looked after by a local authority move from care into living independently in as stable a fashion as possible. To do this it amends the Children Act 1989 (c.41) to place a duty on local authorities to assess and meet need. The responsible local authority is to be under a duty to assess and meet the care and support needs of eligible and relevant children and young people and to assist former relevant children, in particular in respect of their employment, education and training.
79. Sharing information with other agencies will enable the local authority to fulfil the statutory duty to provide after care services to young people leaving public care.

Guidance on the Management of Police Information 2006

80. The Purpose of Managing Police Information
81. For the purposes of this guidance police information is information that is required for a policing purpose. The Code of Practice defines policing purposes as:
- (a) protecting life and property;
 - (b) preserving order;
 - (c) preventing the commission of offences;
 - (d) bringing offenders to justice;
 - (e) any duty or responsibility arising from common or statute law.
82. These five policing purposes provide the legal basis for collecting, recording, evaluating, sharing and retaining police information. The policing purposes set out in the Code of Practice do not replace or supersede any existing duty or power defined by statute or common law. The policing purposes set out in the Code do not, therefore, define every policing activity, and the fact that these are not set out does not mean that there is no legal basis for performing the activities. For example, information relating to such key policing functions such as roads policing, public order, counter-terrorism or protection of children and other vulnerable groups, while not referred to explicitly are, nonetheless, legitimate policing functions requiring information. The five policing purposes are not mutually exclusive. Information can be

collected for one policing purpose and used for another that may not have been known about at the point of collection. It is essential that a policing purpose is established in order for information to be legally held.

Section 6 Information Sharing

Statutory Obligations

83. The term statutory obligation applies where there is a specific legal obligation to disclose police information to another party. Examples of statutory disclosures include court orders, the Notifiable Occupations Scheme and disclosures to the Child Support Agency and the Criminal Records Bureau (CRB).
84. There is a frequent and continuing need for the Police to disclose information, a Memorandum of Understanding, a Service Level Agreement, or an Information Sharing Agreement (ISA) that clearly sets out the statutory obligations of the organisations involved, together with the procedures for managing them, should be used to ensure effective, timely and consistent disclosure. Key schemes where the Police Service is obliged to disclose information are described below.

Disclosure under Part V of the Police Act 1997

85. The Police Act 1997 creates a statutory scheme for the disclosure of criminal records and police information on potential employees to prospective employers. The CRB is responsible for the scheme and for ensuring that employers have sufficient information to make a judgement on the suitability of a potential employee when working with children or vulnerable adults.
86. The CRB and ACPO have recently introduced a Disclosure Quality Assurance Framework (QAF) to help to ensure consistency between forces on the disclosure of information by the police to the CRB. It does this by:
 - Documenting which police business areas are to be searched and under what circumstances;
 - Standardising the criteria used to decide if information in a police business area is potentially relevant;
 - Standardising the criteria used to decide if disclosure is appropriate;
 - Ensuring the rationale for decision-making is recorded.
87. Notifiable Occupations Scheme
88. The Notifiable Occupations Scheme relates to professions or occupations that carry special trust or responsibility in which the public interest in the disclosure of convictions and other information by the police generally outweighs the normal duty of confidentiality owed to

the individual. A revised Home Office Circular on the Notifiable Occupations Scheme will be made available shortly.

89. Schemes to protect children and vulnerable adults
90. The Department for Education and Skills (DfES) currently operates the Protection of Children Act (POCA) list which contains details of people who are known to be unsuitable to work with children in childcare positions; List 99 refers to persons who may not be employed by educational institutions as a teacher or in work involving regular contact with children; and the Protection of Vulnerable Adults (POVA) list issued by the Department of Health (DoH) is a list of people who are known to be unsuitable to work in regulated adult social care positions.
91. The DfES and DoH are developing a new vetting and barring scheme designed to reduce the incidence of harm to children and vulnerable adults by all those who work with them. It will do this by ensuring that:
 - Those who are known to be unsuitable do not gain access to children or vulnerable adults through their work; and
 - Those who become unsuitable are detected at the earliest possible stage and prevented from continuing work with children or vulnerable adults.

Disclosures Under The Freedom Of Information Act 2000

92. Section 1 of the Freedom of Information Act 2000 (FOIA) provides individuals with a statutory right to access information held by public authorities (including police forces). Members of the public have a right (subject to certain exemptions) to be told whether or not the police force holds the information sought and, if so, to have the information communicated to them.

Disclosures Under The Data Protection Act 1998

93. Sections 7 to 9A of the Data Protection Act 1998 (DPA) provide individuals with a statutory right of access, commonly known as Subject Access to their personal data held by forces. The most important element of this right, subject to exemptions, is the entitlement to be provided with a copy of their personal data within a 40 day statutory time limit.
94. The term statutory power applies where there is a specific legal power, but not an obligation, to share police information with another party. The Police Service shares a common purpose for managing information which means that forces can share information with one another without the use of Information Sharing Agreements, Memorandums of Understanding or Service Level Agreements. When

sharing information within the Police Service it is, however, important that there is an audit trail of the identity of the person requesting the information and the information being shared.

Other Types of Sharing Where A Statutory Power Exists

95. Before sharing information outside the Police Service, it must first be determined whether a statutory purpose exists for that information sharing. Where the police are requested to share information with a partner that will be used, for example, to protect children, the agency receiving the information must identify a legal power that allows them to lawfully request and process such information.

Dissemination

96. The term dissemination in this context is usually applied to the passing of intelligence records from one agency to another, or from one department to another. It occurs when the holder of the material recognises its potential significance to another party. Dissemination may involve sanitisation of the original information and/or the imposition of certain conditions restricting its further dissemination or use without reference to the originator.

APPENDIX 1

SCHEDULE 3

CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF SENSITIVE PERSONAL DATA

1. The data subject has given his explicit consent to the processing of the personal data.
2. - (1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.
(2) The Secretary of State may by order-
 - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
 - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.
3. The processing is necessary-
 - (a) in order to protect the vital interests of the data subject or another person, in a case where-
 - (i) consent cannot be given by or on behalf of the data subject, or
 - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
 - (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.
4. The processing-
 - (a) is carried out in the course of its legitimate activities by any body or association which-
 - (i) is not established or conducted for profit, and
 - (ii) exists for political, philosophical, religious or trade-union purposes,
 - (b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,
 - (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and
 - (d) does not involve disclosure of the personal data to a third party without the consent of the data subject.
5. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.
6. The processing-

- (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
- (b) is necessary for the purpose of obtaining legal advice, or
- (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

7. - (1) The processing is necessary-
- (a) for the administration of justice,
 - (b) for the exercise of any functions conferred on any person by or under an enactment, or
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.
- (2) The Secretary of State may by order-
- (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
 - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

8. - (1) The processing is necessary for medical purposes and is undertaken by-

- (a) a health professional, or
- (b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph "medical purposes" includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

9. - (1) The processing-
- (a) is of sensitive personal data consisting of information as to racial or ethnic origin,
 - (b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and
 - (c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.
- (2) The Secretary of State may by order specify circumstances in which processing falling within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

10. The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.