

## **Information Sharing within IFD – MASH screening**

For the purposes of safeguarding and to enable practitioners in MASH to inform their decision, there may be cases where a MASH enquiry needs to take place. A MASH enquiry does not take place on all contacts but do take place where the team manager feels that it would be appropriate and proportionate to inform decision making.

In these circumstances consent will be sought (if appropriate) either verbally or written to share appropriate information with other agencies.

If consent has not been given at the point of the referral or MASH have been unable to ascertain their consent, then a decision will be made by the team manager as to whether or not this should be dispensed with and a clear rationale as to why. In all these circumstances, where it leads to an assessment, the information gathered in the MASH enquiry will be passed to the relevant social work team.

### **Sensitive/Soft Information (confidential)**

Any multi-agency information which exists that is additionally sensitive e.g. matters of national security, active surveillance operations etc. or soft intelligence that is not factual but is relevant, e.g. reports to the police of frequent visits to the home, possible drug dealing etc. can be recorded within the MASH screening to inform decision making. However, it is important that sensitive/soft information does not leave the firewall of the MASH.

Confirmation will be given by the agency sharing sensitive information as to what information (if any) can then be onwardly disclosed to the family or other professionals. This decision will be made giving all due regard to protecting people whilst also balancing operational sensitivities and risks that may likely arise due to revelation. It is important to note that police or agencies revealing intelligence to social workers and key partners is not an indication that the same information can be further shared.

The fact that additional sensitive information is available should be recorded clearly by the MASH screening social workers and an agreement/summary of what MASH information is being shared will be agreed so that there is clarity on what information is being provided for assessment.

All other multi-agency information shared within the MASH will be shared with the receiving social care/early help teams when an assessment is required.

### **Legislation that informs decision to share information**

- Borders, Citizenship and Immigration Act (2009);
- Children Act (1989);
- Children Act (2004);
- Crime and Disorder Act (1998);
- Criminal Justice and Courts Services Act (2009);
- Data Protection Act (2018);
- Education Act (2002);
- Local Government Act (1972);
- Local Government Act (2002);
- National Health Service Act (2006);
- Health and Social Care Act (2012);
- Working Together to Safeguard Children (2018).

Agencies will assist the IFD and MASH with discharging its functions, having regard to **the need to safeguard and promote the welfare of children**. Provided that disclosures made under this agreement are **fair, lawful, necessary, proportionate, relevant, accurate, timely and secure**, then any sharing should be compatible with this legislation.

Legislation	Section Description
<b>Borders, Citizenship and Immigration Act 2009</b>	<p><b>Section 55</b> – this section places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. This section applies to the UK Border Agency and is similar to the duties placed on local authorities under section 11 of the Children Act 2004.</p>
<b>Children Act 1989</b>	<p><b>Section 17</b> – general duty of local authorities to safeguard and promote the welfare of children within their area who are in need, and so far as is consistent with that duty, to promote the upbringing of such children by their families.</p> <p><b>Section 47</b> – where a local authority is informed that a child who lives, or is found, in their area is the subject of an emergency protection order or is in police protection or there is reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm, there is a duty to investigate.</p>
<b>Children Act 2004</b>	<p><b>Section 10</b> – promote co-operation to improve wellbeing.</p> <p><b>Section 11</b> – arrangements to safeguard and promote welfare.</p>
<b>Crime and Disorder Act 1998</b>	<p><b>Section 17</b> – duty of each authority to exercise its functions with due regards to the likely effect of the exercise of those functions, and the need to do all that it reasonably can, to prevent crime and disorder in its area.</p> <p><b>Section 115</b> – any person who apart from this section would not have power to disclose information to a relevant authority or to a person acting on behalf of such an authority, shall have the power to do so in any case where the disclosure is necessary or expedient for the purposes of this act.</p>

<p><b>Criminal Justice and Courts Services Act 2009</b></p>	<p><b>Section 67</b> – the authority for each area must establish arrangements for the purpose of assessing and managing the risks posed in that area by relevant sexual or violent offenders and other persons who have committed offences who are considered by the authority to be persons who may cause serious harm to the public.</p> <p><b>Section 68</b> – interpretation of who is a relevant sexual offender.</p>
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<p><b>Data Protection Act 2018</b></p>	<p><b>Schedule 1, Part 2, Paragraph 18</b> – where processing is necessary for protecting an individual from neglect, physical, mental and emotional harm or protecting the physical, mental or emotional well-being in the substantial public interest; without consent in certain circumstances.</p> <p><b>Schedule 2, Part 1, Paragraph 2</b> – where disclosure is required for the prevention or detection of crime or the apprehension or prosecution of offenders.</p> <p><b>Schedule 2, Part 1, Paragraph 5</b> – where the disclosure is required by or under enactment, by any rule of law or by the order of a court.</p>
<p><b>Education Act 2002</b></p>	<p><b>Section 175</b> – a local education authority shall make arrangements for ensuring that the functions conferred on them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children.</p>
<p><b>Local Government Act 1972</b></p>	<p><b>Section 111(1)</b> – a local authority shall have the power to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any of their statutory functions.</p>
<p><b>Local Government Act 2000</b></p>	<p><b>Section 2(1)</b> – a local authority shall have the power to do anything which they consider is likely to achieve the promotion or improvement of the social well-being of their area.</p>
<p><b>National Health Service Act 2006</b></p>	<p><b>Section 82</b> – in exercising their respective functions NHS bodies and local authorities must co-operate with one another in order to secure and advance the health and welfare of the people in England and Wales.</p> <p><b>Section 201(3)(d)</b> – a disclosure of information may be made if it is for the purposes of any criminal investigation or proceedings.</p> <p><b>Section 201(6)</b> - Information to which this section applies may be disclosed in accordance with section 201(3) despite any obligation of confidence that would otherwise prohibit or restrict the disclosure.</p>

<p><b>Health and Social Care Act 2012</b></p>	<p><b>14Z23 Permitted disclosures of information</b></p> <p>(1) A clinical commissioning group may disclose information obtained by it in the exercise of its functions if:</p> <p>(a) the information has previously been lawfully disclosed to the public,</p> <p>(b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),</p> <p>(c) the disclosure is made in accordance with any enactment or court order,</p> <p>(d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,</p> <p>(e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,</p> <p>(f) the disclosure is made for the purpose of facilitating the exercise of any of the clinical commissioning group's functions,</p> <p>(g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or</p> <p>(h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom)</p> <p>(2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.</p>
<p><b>Statutory Guidance</b></p>	
<p><b>Working Together to Safeguard Children 2004/ 2013/ 2018</b></p>	<p>A guide to inter-agency working to safeguard and promote the welfare of children (2004/ 2018)</p>

# GDPR

The available lawful bases for sharing personal data set out in Article 6 of the GDPR are:

- (a) Consent: the individual has given clear consent for you to process their personal data for a specific purpose
- (b) Contract: the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract
- (c) Legal obligation: the processing is necessary for you to comply with the law (not including contractual obligations).
- (d) **Vital interests**: the processing is necessary to protect someone's life.
- (e) **Public task**: the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.
- (f) **Legitimate interests**: the processing is necessary for your legitimate interests or the legitimate interests of a third party unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)

The available lawful bases for sharing special category data set out in Article 9 of the GDPR are:

- (a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes,
- (b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law
- (c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent
- (d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim
- (e) processing relates to personal data which are manifestly made public by the data subject
- (f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity
- (g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued,
- (h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis
- (i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices
- (j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

## Data Protection Act 2018 – Part 2 of Schedule 1 to the DPA 2018

Schedule 1, Part 2 of the DPA 2018 sets out the 'substantial public interest conditions'.

Paragraph 18 provides conditions which must be met when **safeguarding of children and of individuals at risk**.

- (1) This condition is met if—

- (a) the processing is necessary for the purposes of—
  - (i) protecting an individual from neglect or physical, mental or emotional harm, or
  - (ii) protecting the physical, mental or emotional well-being of an individual,
- (b) the individual is—
  - (i) aged under 18, or
  - (ii) aged 18 or over and at risk,
- (c) the processing is carried out without the consent of the data subject for one of the reasons listed in sub-paragraph (2), and
- (d) the processing is necessary for reasons of substantial public interest.

(2) The reasons mentioned in sub-paragraph (1)(c) are—

- (a) in the circumstances, consent to the processing cannot be given by the data subject;
  - (b) in the circumstances, the controller cannot reasonably be expected to obtain the consent of the data subject to the processing;
- the processing must be carried out without the consent of the data subject because obtaining the consent of the data subject would prejudice the provision of the protection mentioned in sub-paragraph (1)(a).

(3) For the purposes of this paragraph, an individual aged 18 or over is “at risk” if the controller has reasonable cause to suspect that the individual—

- (a) has needs for care and support,
- (b) is experiencing, or at risk of, neglect or physical, mental or emotional harm, and
- (c) as a result of those needs is unable to protect himself or herself against the neglect or harm or the risk of it.

(4) In sub-paragraph (1)(a), the reference to the protection of an individual or of the well-being of an individual includes both protection relating to a particular individual and protection relating to a type of individual.

Where this condition is used, the data controller **MUST**:

- *have an appropriate policy document in place when the processing is carried out;*
- *retain the appropriate policy document;*
- *review if and update it when necessary;*
- *make it available to the Information Commissioner on request;*
- *retain it from the start of the processing in reliance on the condition and for 6 months from when the controller ceases to carry out such processing.*

Agencies agree to ensure they comply with the remaining DPA 2018 principles when sharing personal data.

## The Human Rights Act 1998

As well as satisfying the Data Protection principles, agencies recognise that any disclosures they make must also be compatible with a person’s ‘right to a private life’, as described in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The Human Rights Act 1998 gives effect in UK law the rights contained in the ECHR.

Article 8 of the ECHR gives a person the right to respect for his/her private life, family life, home and correspondence. A public authority cannot ‘interfere’ with this right unless it is in accordance

with the law, is necessary in a democratic society and is for a legitimate purpose.

**Although the sharing of the information through the MASH may appear to contravene a person's 'right to a private life' (particularly in cases where individuals do not want their information to be shared), public authorities are able to override this right in cases where it is in the public interest to do so; is in pursuit of a legitimate aim and the level of interference is proportionate to that intended aim.**

## Legitimate Purposes

Legitimate purposes are defined in Article 8(2) of the ECHR and include national security; public safety or the economic well-being of the country; the prevention of disorder or crime; for the protection of health or morals; or for the rights and freedoms of others.

**Section 11 of the Children Act 2004** places a legal obligation on the public authorities signed up to this agreement to safeguard and promote the welfare of children. Any sharing under this agreement which is for these purposes will be compatible with the aims listed above and therefore disclosures will not breach the ECHR, provided they are proportionate and necessary. The sharing of information under this agreement is also in line with Articles 2 and 3 of the ECHR, namely the 'right to life' and the 'right to prohibition of torture or inhuman or degrading treatment'.

## Proportionate

The amount and type of information that should be shared with the MASH must be proportionate and necessary, in order to achieve the purposes of this agreement. It should be remembered that the ECHR does not restrict information from being shared for safeguarding and welfare purposes, but does require that consideration is made regarding what is 'reasonable' in the circumstances.

## Duty of Confidentiality

The final strand to be considered when sharing personal data with the MASH is the common-law duty of confidentiality. A person cannot use information which was originally provided in confidence, without the individual's permission, unless there is an overriding reason in the public interest for this to happen or another law or power permits disclosure.

When judging whether disclosure is in the public interest, agencies should 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 in the interest of maintaining public safety?
- 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?

If a MASH Enquirer is given information which was provided to them in confidence, they can share this information with the MASH if one or more of the following applies:

- They have the person's consent;
- The sharing is necessary to protect a child, young person or adult from harm as a result of abuse or neglect;
- The sharing is necessary to prevent or detect a crime or apprehend an offender; or
- The sharing is necessary to comply with an explicit legal obligation or a court order.

When overriding a duty of confidence, the MASH Enquirer must take into account their organisation's views on overriding a duty of confidence and the organisation that holds the duty of confidence and seek legal advice where necessary.

Any disclosures made into the MASH must be relevant, not excessive and proportionate to the intended aim of the disclosure.