

Children Law

Guernsey and Alderney

**INFORMATION
SHARING**

**GUIDANCE FOR PRACTITIONERS
AND MANAGERS WORKING WITH
CHILDREN & FAMILIES**

Information Sharing | Guidance

INFORMATION SHARING

What is the guidance for?

The aim of this guidance is to improve practice by giving people working with children and families clearer guidance on when and how they can share information legally and professionally.

Sharing information is vital for early intervention to ensure that children and young people get the services they require. It is also essential to protect children and young people from suffering harm from abuse or neglect and to prevent them from offending.

This guidance is issued under section 27 of The Children (Guernsey and Alderney) Law 2008.

Who is the guidance for?

This guidance is for practitioners who have to make decisions about sharing personal information on a case-by-case basis, whether they are:

- working in the public, private or voluntary sectors;
- providing services to children, young people and/or families

This includes front-line staff working in health, education, schools, social care, youth work, early years, family support, offending and criminal justice, police, advisory and support services, and culture and leisure.

This guidance is also for managers and advisors who support these practitioners in their decision making and for others with responsibility for information governance.

What this guidance does not cover

This guidance is focused on information sharing in individual cases. It does not deal with subject access requests, bulk transfer of information nor detailed procedures such as the provision of information to the police without consent.

Anita Harrild

Assistant Director, Services for Children and Families

December 2009

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1. Introduction

- 1.1 Sharing information is essential to enable early intervention to help children, young people and families who need additional services to achieve positive outcomes.
- 1.2 Information sharing is also vital to safeguarding and promoting the welfare of children and young people. A key factor in many serious case reviews has been a failure to record information, to share it, to understand the significance of the information shared, and to take appropriate action in relation to known or suspected abuse or neglect.
 - a. Practitioners sometimes feel constrained from sharing information by their uncertainty about when they can do so lawfully. This guidance aims to provide clarity on that issue.

Sharing information between adult and children's services

- 1.4 Staffs in adults' services are aware that problems faced by clients who have parenting responsibilities are often likely to affect children and other family members. However this information is not always shared and opportunities to put preventative support in place for the children and family are missed. Where an adult receiving services is a parent or carer, sharing information where appropriate with colleagues in children's services could ensure that any additional support required for their children can be provided early.

Sharing information to support transitions

- 1.5 There are many transition points in the life of a child. Transitions include a child moving from nursery into primary school; from primary to secondary school; and moving into adulthood. Significant transitions can also occur when an individual leaves long-term care. In all of these cases, information sharing is important to ensure that the child and his family get the support that they require, through and after the transition.

Sharing information where there are concerns about serious harm to a child or young person

- 1.6 It is critical that where you have reasonable cause to believe that a child or young person may be suffering or may be at risk of suffering serious harm, you should always consider referring your concerns to Services for Children & Young People or the police, in line with the Islands Child Protection Committee (ICPC) procedures.

- 1.7 In some situations there may be a concern that a child or young person may be suffering, or at risk of suffering significant harm, or of causing significant harm to another child or serious harm to an adult. However, you may be unsure whether what has given rise to your concern constitutes 'a reasonable cause to believe'. In these situations, the concern must not be ignored. You should always talk to someone to help you decide what to do – a lead person on child protection, a Caldicott guardian, your manager, an experienced and trusted colleague or another practitioner who knows the person. You should protect the identity of the child or young person wherever possible until you have established a reasonable cause for your belief.
- 1.8 Serious harm to children and young people can arise from a number of circumstances – it is not restricted to cases of deliberate abuse or gross neglect. For example a baby who is severely failing to thrive for no known reason could be suffering serious harm but equally could have an undiagnosed medical condition. If the parents refuse consent for further medical investigation or an assessment, then you may still be justified in sharing information. In this case, the information sharing would be to help ensure that the causes of the failure to thrive are correctly identified.

Sharing information where there are concerns about serious harm to third parties

- 1.9 Where you have concerns that the actions of some may place children at risk of serious harm or it may be possible to justify sharing information with or without consent for the purposes of identifying people for whom preventative interventions are appropriate.

Sharing information where you have a statutory duty, court order or notice

- 1.10 In some situations you are required by law to share information.
- 1.11 Section 27 of The Children Law places a duty on those working with children in need or at risk, to share information and work together. The sharing of information will be lawful provided that the employee acts;
- i. in good faith,
 - ii. in accordance with this law and
 - iii. in accordance with any regulations or guidance

This guidance is issued under section 27 of the Law and should be complied with.

- 1.12 Section 38 of The Children Law places a duty on those who receive a written notice to disclose to the Children’s Convenor, all information they hold in relation to the matter identified in the notice, for the purposes of an investigation being carried out. A time period in which to achieve this will be specified in the notice. Section 38 provides that the duty to disclose information on receipt of a notice overrides any duty of confidentiality to which the person receiving the notice may be subject.
- 1.13 In such situations you should usually share the information, even if it is confidential and consent has not been given. Wherever possible, you should inform the individual concerned that you are sharing the information, why, and with whom.
- 1.14 There may be some exceptional and limited circumstances when you receive a notice from the Convenor under Section 38 but are of the view that it is not necessarily appropriate to comply with that notice. In such cases you should consider;
- i. discussing the matter with a senior manager,
 - ii. taking advice from your professional body,
 - iii. taking legal advice,
 - iv. discussing your concerns with the Convenor
- 1.15 Ultimately you or your agency may come to the conclusion that it is exceptionally not appropriate to comply with the notice. In such circumstances it would be good practice to discuss the reasons for that decision with the Convenor. The Convenor may decide to withdraw the notice or re-issue the notice in different terms (e.g. narrowing the extent of the information requested). If the matter cannot be resolved with the Convenor, the Convenor may decide to apply to Court for a disclosure order to determine the issue. You and/or your agency will have the opportunity to set out the reasons you do not wish to disclose the information and if the court is satisfied that there are “special circumstances” overriding the duty in section 38 it may decide not to grant the order.

Sharing information in an emergency situation

- 1.16 The nature of emergency situations will vary but information sharing is always a vital part of providing services to the people affected by them. Whilst the principles underpinning the sharing of information are broadly the same in an emergency situation, it is more likely than not that it will be in the interests of the individuals for personal data to be shared. Timeliness is a key consideration in emergency situations. It may not be appropriate to seek consent for information sharing if delays could incur as a result.

You should always consider how much information needs to be shared to achieve the objective and the most appropriate way in which to do so given the urgency of the situation. Security of information sharing must still be considered but should be proportionate to the sensitivity of the information and the circumstances.

2. Seven golden rules for information sharing

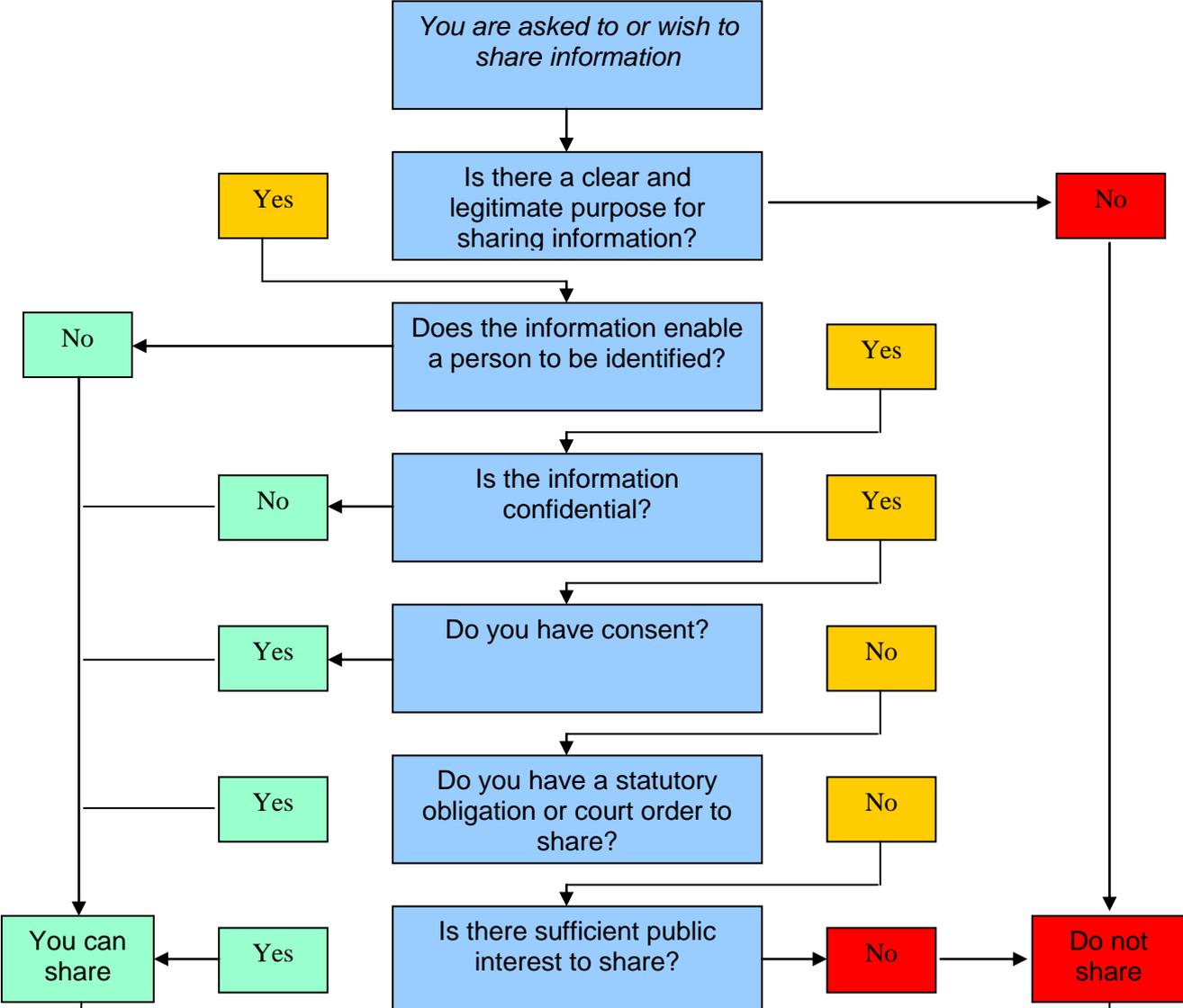
- 1 Remember that the Data Protection Laws are not a barrier to sharing information but provide a framework to ensure that personal information about living persons is shared appropriately.
- 2 Be open and honest with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so.
- 3 Seek advice if you are in any doubt, without disclosing the identity of the person where possible.
- 4 Share with consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgment, that lack of consent can be overridden in the public interest. You will need to base your judgment on the facts of the case.
- 5 Consider safety and well-being: Base your information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.
- 6 Necessary, proportionate, relevant, accurate, timely and secure: Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.
- 7 Keep a record of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

3. Further information to inform decision making

- 3.1 If you are asked, or wish, to share information, you must use your professional judgment to decide whether to share or not and what information it is appropriate to share, unless there is a legal duty, a court order or notice to share.
- 3.2 To inform your decision making this section sets out further information in the form of seven key questions about information sharing:
1. Is there a clear and legitimate purpose for you or your agency to share the information?
 2. Does the information enable a living person to be identified?
 3. Is the information confidential?
 4. If the information is confidential, do you have consent to share?
 5. If consent is refused, or there are good reasons not to seek consent to share confidential information, is there a sufficient public interest to share the information?
 6. If the decision is to share, are you sharing information appropriately and securely?
 7. Have you properly recorded your information sharing decision?

These questions are illustrated in the flowchart on the facing page. Further information on each of the questions can be found in the remainder of this section.

Flowchart of key principles for information sharing



- Share Information:**
- Identify how much information to share.
 - Distinguish fact from opinion.
 - Ensure that you are giving the information to the right person.
 - Ensure you are sharing the information securely
 - Inform the person that the information has been shared if they were not aware of this and if it would not create or increase risk of harm.

Record the information sharing decision and your reasons, in line with your agency's procedures or local protocols

Seek advice if you are not sure what to do at any stage and ensure that the outcome of the discussion is recorded

Question1: Is there a clear and legitimate purpose for sharing information?

- 3.3 If you are asked, or wish, to share information about a person you need to have a good reason or a clear and legitimate purpose to do so. This will be relevant to whether the sharing is lawful in a number of ways.
- 3.4 If you work for a States Department, for example Health & Social Services Department or Education the sharing of information must be within the functions that Department. It is likely that this will be the case if you are sharing the information as a normal part of the job you do for that Department. This will also be the case if you work in the private or voluntary sector and are contracted by the States to provide services on their behalf.
- 3.5 Any sharing of information must comply with the law relating to confidentiality, data protection and human rights. Establishing a legitimate purpose for sharing information is an important part of meeting those requirements.
- 3.6 Individual agencies may have developed specific guidelines and processes for sharing information. You will need to be guided by your agency's policies and procedures and – where applicable – by your professional code.

Sharing information where you have a statutory duty, court order or notice

- 3.7 In some situations you are required by law to share information. There will also be times when a court will make an order for certain information or case files to be brought before the court or the Children's Convenor may issue a notice requesting certain information.
- 3.8 These situations are relatively unusual and where they apply you should know or be told about them. In such situations, you must share the information, even if it is confidential and consent has not been given, unless in the case of a court order or notice, your organization is prepared to challenge it and is likely to seek legal advice.
- 3.9 Consent from the individual is not required in these situations and should not be sought because of the potential consequences of refusal. Wherever possible, subject to considerations set out in paragraph 3.11, you should inform the individual concerned that you are sharing the information, why you are doing so, and with whom.

Question 2: Does the information enable a living person to be identified?

- 3.10 In most cases the information covered by this guidance will be about an identifiable living individual. It may also identify others, such as a child, partner, parent or carer. If the information is anonymised, it can be shared. However, if the information is about an identifiable individual or could enable a living person to be identified when considered with other information, it is personal information and is subject to data protection and other laws. The remainder of this section provides further information to inform your decision about sharing personal information.
- 3.11 Wherever possible, you should be open about what personal information you might need to share and why. In some situations, it may not be appropriate to inform a person that information is being shared or seek consent to this sharing, for example, if it is likely to hamper the prevention or investigation of a serious crime or put a child at risk of serious harm.

Question 3: Is the information confidential?

- 3.12 Confidential information is:
- personal information of a private or sensitive nature; and
 - information that is not already lawfully in the public domain or readily available from another public source; and
 - Information that has been shared in circumstances where the person giving the information could reasonably expect that it would not be shared with others.

This is a complex area and you should seek advice if you are unsure.

- 3.13 Sometimes people may not specifically ask you to keep information confidential when they discuss their own issues or pass on information about others, but may assume that personal information will be treated as confidential. In these situations you should check with the individual whether the information is or is not confidential, the limits around confidentiality and under what circumstances information may or may not be shared with others.

- 3.14 Confidence is only breached where the sharing of confidential information is not authorised by the person who provided it or, if about another person, by the person to whom it relates. If the information was provided on the understanding that it would be shared with a limited range of people or for limited purposes, then sharing in accordance with that understanding will not be a breach of confidence. Similarly, there will not be a breach of confidence where there is consent to the sharing.
- 3.15 Information about an individual or family is confidential to the agency as a whole, and not to individual practitioners. However individual practitioners do have a responsibility to maintain the confidentiality of the information. They should only share confidential information with other practitioners in the same agency or team for genuine purposes, for example, to seek advice on a particular case or ensure cover for work while on leave. This should be explained clearly to the individual or family at the start of the involvement.
- 3.16 Public bodies that hold information of a private or sensitive nature about individuals for the purposes of carrying out their functions (for example Services for Children & Young People) may also owe a duty of confidentiality, as people have provided information on the understanding that it will be used for those purposes.

Question 4: Do you have consent to share?

- 3.17 Consent issues can be complex and a lack of clarity about them can sometimes lead practitioners to assume incorrectly that no information can be shared. This section gives further information to help you understand and address the issues. It covers:
- what constitutes consent;
 - whose consent should be sought; and
 - when consent should not be sought.

What constitutes consent?

- 3.18 Consent must be 'informed'. This means that the person giving consent needs to understand why information needs to be shared, what will be shared, who will see their information, the purpose to which it will be put and the implications of sharing that information.
- 3.19 Consent can be 'explicit' or 'implicit'. Obtaining explicit consent for information sharing is best practice and ideally should be obtained at the start of the involvement, when working with the individual or family to agree what support is required.

It can be expressed either verbally or in writing, although written consent is preferable since that reduces the scope for subsequent dispute. Implicit consent can also be valid in many circumstances. Consent can legitimately be implied if the context is such that information sharing is intrinsic to the activity or service, and especially if that has been explained or agreed at the outset.

- 3.20 It is best practice to set out clearly your agency's policy on sharing information when the service is first accessed. The approach to securing consent should be transparent and respect the individual. Consent must not be secured through coercion or inferred from a lack of response to a request for consent.
- 3.21 If there is a significant change in the use to which the information will be put compared to that which had previously been explained, or a change in the relationship between the agency and the individual, consent should be sought again. Individuals have the right to withdraw consent at any time.

Whose consent should be sought – children and young people

- 3.22 You may also need to consider whose consent should be sought. Where there is a duty of confidence, it is owed to the person who has provided the information on the understanding it is to be kept confidential. It is also owed to the person to whom the information relates, if different from the information provider. A child or young person, who has the capacity to understand and make their own decisions, may give (or refuse) consent to sharing.
- 3.23 Children aged 12 or over may generally be expected to have sufficient understanding. Younger children may also have sufficient understanding. When assessing a child's understanding you should explain the issues to the child in a way that is suitable for their age, language and likely understanding. Where applicable, you should use their preferred mode of communication.
- 3.24 The following criteria should be considered in assessing whether a particular child or young person on a particular occasion has sufficient understanding to consent, or to refuse consent, to sharing of information about them: Can the child or young person understand the question being asked of them? Do they have a reasonable understanding of?
- what information might be shared;
 - the main reason or reasons for sharing the information; and
 - the implications of sharing that information, and of not sharing it?

Can they:

- appreciate and consider the alternative courses of action open to them;
- weigh up one aspect of the situation against another;
- express a clear personal view on the matter, as distinct from repeating what someone else thinks they should do; and
- be reasonably consistent in their view on the matter, or are they constantly changing their mind?

- 3.25 Considerations about whether a child has sufficient understanding are often referred to as Fraser guidelines, although these were formulated in the UK with reference to contraception and contain specific considerations not included above. *For more details see the Glossary.*
- 3.26 In most cases, where a child cannot consent or where you have judged that they are not competent to consent, a person with parental responsibility should be asked to consent on behalf of the child. If a child or young person is judged not to have the capacity to make decisions, their views should still be sought as far as possible.
- 3.27 Where parental consent is required, the consent of one such person is sufficient. In situations where family members are in conflict you will need to consider carefully whose consent should be sought. If the parents are separated, the consent would usually be sought from the parent with whom the child resides. If the child is subject to a care requirement or a community parenting order, the Health and Social Services Department will share parental responsibility with others and practitioners should liaise with the Department about questions of consent.
- 3.28 If you judge a child or young person to be competent to give consent, then their consent or refusal to consent is the one to consider, even if a parent or carer disagrees. Where parental consent is not required, you should encourage the young person to discuss the issue with their parents. However, you should not withhold the service on the condition that they do so.
- 3.29 These issues can raise difficult dilemmas. Wherever appropriate you should try to work with all involved to reach an agreement or understanding of the information to be shared. You must always act in accordance with your professional code of practice where there is one and consider the safety and well-being of the child, even where that means overriding refusal to consent. You should seek advice from your manager or nominated advisor if you are unsure.

When consent should not be sought

- 3.36 There will be some circumstances where you should not seek consent from the individual or their family, or inform them that the information will be shared. For example, if doing so would:
- place a person (the individual, family member, yourself or a third party) at increased risk of serious harm or
 - prejudice the prevention, detection or prosecution of a serious crime; or
 - lead to an unjustified delay in making enquiries about allegations of serious harm to a child.
- 3.37 You should not seek consent when you are required by law to share information. In these situations, you should inform the individual concerned that you are sharing the information, why you are doing so, and with whom.

Question 5: Is there sufficient public interest to share the information?

- 3.38 Even where you do not have consent to share confidential information, you may lawfully share it if this can be justified in the public interest. Seeking consent should be the first option. However, where consent cannot be obtained or is refused, or where seeking it is inappropriate or unsafe the question of whether there is a sufficient public interest must be judged by the practitioner on the facts of each case. Therefore, where you have a concern about a person, you should not regard refusal of consent as necessarily precluding the sharing of confidential information.
- 3.39 A public interest can arise in a wide range of circumstances, for example, to protect children from serious harm, promote the welfare of children or prevent crime and disorder. There are also public interests, which in some circumstances may weigh against sharing, including the public interest in maintaining public confidence in the confidentiality of certain services.
- 3.40 The key factors in deciding whether or not to share confidential information are necessity and proportionality, i.e. whether the proposed sharing is likely to make an effective contribution to preventing the risk and whether the public interest in sharing information overrides the interest in maintaining confidentiality. In making the decision you must weigh up what might happen if the information is shared against what might happen if it is not and make a decision based on professional judgment.

The nature of the information to be shared is a factor in this decision making, particularly if it is sensitive information where the implications of sharing may be especially significant for the individual or for their relationship with the practitioner and the service.

- 3.41 It is not possible to give guidance to cover every circumstance in which sharing of confidential information without consent will be justified. You must make a judgment on the facts of the individual case. Where there is a clear risk of serious harm to a child the public interest test will almost certainly be satisfied. There will be other cases where you will be justified in sharing limited confidential information in order to make decisions on sharing further information or taking action – the information shared should be necessary for the purpose and be proportionate.
- 3.42 There are some circumstances in which sharing confidential information without consent will normally be justified in the public interest. These are:
- when there is evidence or reasonable cause to believe that a child is suffering, or is at risk of suffering, serious harm; or
 - to prevent serious harm to a child, including through the prevention, detection and prosecution of serious crime.
- 3.44 If you are unsure whether the public interest justifies disclosing confidential information without consent, you should be able to seek advice from your manager or a nominated individual in your organisation whose role is to support you in these circumstances. Where possible you should not disclose the identity of the person concerned. Other sources of advice include the Data Protection Commissioner's Office (DPCO) and the ICPC. If you are working for HSSD, the Caldicott Guardian may be helpful. Advice can also be sought from representative bodies, for example, the British Medical Association or the Royal College of Nursing.
- 3.45 Organisations working with children may have a nominated person who undertakes a lead role for safeguarding children locally or in the UK. If the concern is about possible abuse or neglect of a child or young person, you should discuss your concerns with your manager or the nominated person within your organisation. If you still have concerns, you should refer your concerns to Services for Children & Young People and/or the police in line with ICPC procedures.
- 3.46 You should discuss any concerns with the family and, where possible, seek their agreement to making referrals to children's social care only where such discussion and agreement-seeking will not place a child at increased risk of serious harm or lead to interference with any potential investigation. **The child's safety and well-being must be the overriding consideration in making any such decisions.**

- 3.47 If you decide to share confidential information without consent, you should explain to the person that you intend to share the information and why, unless it is inappropriate or unsafe to do so.

Question 6: Are you sharing information appropriately and securely?

- 3.48 If you decide to share information, you should share it in a proper and timely way, act in accordance with the principles of the Data Protection (Bailiwick of Guernsey) Law, 2001 and follow your organisation's policy and procedures. In relation to sharing information at the front-line, you will need to ensure that you:
- share only the information necessary for the purpose for which it is being shared;
 - understand the limits of any consent given, especially if the information has been provided by a third party;
 - distinguish clearly between fact and opinion;
 - share the information only with the person or people who need to know;
 - check that the information is accurate and up-to-date;
 - share it in a secure way, for example, confirm the identity of the person you are talking to; ensure that a conversation or phone call cannot be overheard; use secure email; ensure that the intended person will be on hand to receive a fax;
 - establish with the recipient whether they intend to pass it on to other people, and ensure they understand the limits of any consent that has been given; and
 - inform the person to whom the information relates and, if different, any other person who provided the information, if you have not done so already and it is safe to do so.
- 3.49 In deciding what information to share, you also need to consider the safety of other parties, such as yourself, other practitioners and members of the public. If the information you want to share allows another party to be identified, for example, from details in the information itself or as the only possible source of the information, you need to consider if sharing the information would be reasonable in all circumstances. Could your purpose be met by only sharing information that would not put that person's safety at risk?

Question 7: Have you properly recorded your information sharing decision?

- 3.50 You should record your decision and the reasons for it, whether or not you decide to share information. If the decision is to share, you should record what information was shared and with whom.

4. Supporting practitioners

Organisational support

4.1 It is important those practitioners:

- are supported by their employers in working through these issues,
- understand what information is and is not confidential, and the need in some circumstances to make a judgment about whether confidential information can be shared, in the public interest, without consent,
- understand and apply good practice in sharing information at an early stage as part of preventative work,
- are clear that information can normally be shared where you judge that a child or young person is at risk of serious harm or that an adult is at risk of serious harm,
- Understand the duty to provide relevant information to the Children's Convenor.

How practitioners should be supported by their employers

4.2 To give practitioners confidence to apply the guidance, it is important that they have:

- a systematic approach within their agency to explaining to children, young people and families when they first access the service how and why information may be shared, which will build the confidence of all involved,
- clear systems and standards for sharing information.
- access to training where they can discuss issues which concern them and explore case examples with other practitioners
- a source of advice and support on information sharing issues

Appendices

Appendix 1: Glossary

Appendix 2: Sources of further information

Appendix 3: A general leaflet on information sharing that could be adopted by individual agencies to provide to those with whom they work.

Appendix 1: Glossary

For the purpose of this document, the following definitions have been used.

Anonymised information is information from which a person cannot be identified by the recipient.

Caldicott Guardian (HSSD) is a senior person responsible for protecting the confidentiality of patient and service-user information and enabling appropriate information sharing. The Guardian plays a key role in ensuring that HSSD satisfies the highest practicable standards for handling patient identifiable information.

Child means a person under the age of eighteen (Children Law (Guernsey and Alderney) 2008)

Confidential information is information that is not normally in the public domain or readily available from another source, it should have a degree of sensitivity and value and be subject to a duty of confidence. A duty of confidence arises when one person provides information to another in circumstances where it is reasonable to expect that the information will be held in confidence.

Consent is agreement freely given to an action based on knowledge and understanding of what is involved and its likely consequences. See also separate entries for explicit consent, implied consent and informed consent.

Explicit consent is consent given orally or in writing detailing exactly what the consent is for and in what circumstances it will apply.

Failing to thrive denotes poor weight gain and physical growth failure over an extended period of time in infancy.

Fraser guidelines. The term arises from the Victoria Gillick case in the early 1980s. Gillick mounted a legal challenge attempting to set a legal precedent which would have meant that medical practitioners could not give young people under the age of 16 treatment or contraceptive services without parental permission. The challenge was successful in the Court of Appeal but then the House of Lords ruled that young people who are under 16 are competent to give valid consent to a particular intervention if they have sufficient understanding and intelligence to enable them to understand fully what is proposed and is capable of expressing their own wishes. Lord Fraser of Tullybelton gave the leading judgment in the House of Lords, hence the reference to the Fraser guidelines.

The Fraser guidelines stress that:

- the young person must understand the advice being given and must indicate that they cannot be persuaded to involve their parents;
- the young person would be likely to continue to have sexual intercourse with or without advice or treatment;
- the professional must be satisfied that if the young person does not receive contraceptive advice or treatment their physical or mental health, or both, will suffer; and
- the young person's best interests require the professional to give the contraceptive advice or treatment, or both, without parental consent.

Implicit consent is where the person has been informed about the information to be shared, the purpose for sharing and that they have the right to object, and their agreement to sharing has been signalled by their behaviour rather than orally or in writing. Implicit consent can also be inferred from earlier explicit consent providing there is no change in the relationship with the organisation and the use of the information.

Informed consent is where the person giving the consent understands why particular information needs to be shared, what information might be shared, who will use it and how, and what might happen as a result of sharing or not sharing the information.

Personal data (or personal information) means data which relate to a living individual who can be identified:

- (a) from those data; or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (DPL 2001)

Practitioner is the generic term used in this guidance to cover anyone who works with children, young people and/or adults.

Proportionality is one of the key factors in deciding whether or not to share confidential information without consent. The principle of proportionality implies that the means should not exceed the ends. In other words, is the information you wish, or have been asked, to share, a balanced response to the need to safeguard a person, or to prevent or detect a serious crime?

Public bodies are any public service, for example, a States Department.

Public interest is the interests of the community as a whole, or a group within the community or individuals. The "public interest" is an amorphous concept which is typically not defined in legislation. The examples given in the definition of the public interest test below are currently accepted common law categories of the public interest.

Public interest test in this context is the process a practitioner uses to

decide whether to share confidential information without consent. It requires them to consider the competing public interests – for example, the public interest in protecting individuals, promoting their welfare or preventing crime and disorder, and the public interest in maintaining public confidence in the confidentiality of public services, and to balance the risks of not sharing against the risk of sharing.

Safeguarding and promoting welfare is the process of protecting children, young people from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care which will enable them to have optimum life chances and enter adulthood successfully.

Sensitive information means personal data consisting of information about:

- (a) the racial or ethnic origin of the data subject;
- (b) his political opinions;
- (c) his religious beliefs or other beliefs of a similar nature;
- (d) whether he is a member of a labour organization, such as a trade union;
- (e) his physical or mental health or condition;
- (f) his sexual life;
- (g) the commission or alleged commission by him of any offence; or
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings. (Section 2 DPL, 2001).

Serious crime for the purposes of this guidance means any crime which causes or is likely to cause significant harm to a child or serious harm to an adult.

Serious harm The Children (Guernsey and Alderney) Law 2008 :

There are no absolute criteria on which to rely when judging what constitutes serious harm. Consideration of the severity of ill-treatment may include the degree and the extent of physical harm, the duration and frequency of abuse and neglect, the extent of premeditation, and the presence or degree of threat, coercion, sadism and bizarre or unusual elements. Each of these elements has been associated with more severe effects on the child, and/or relatively greater difficulty in helping the child overcome the adverse impact of the maltreatment.

Sometimes, a single traumatic event may constitute serious harm, for example, a violent assault, suffocation or poisoning. More often, serious harm is a compilation of significant events, both acute and long-standing, which interrupt, change or damage the child's physical and psychological development. Some children live in family and social circumstances where their health and development are neglected. For them, it is the corrosiveness of long-term emotional, physical or sexual abuse that causes impairment to the extent of constituting serious harm.

Appendix 2: Key sources of further guidance

General information sharing guidance

Some of the sources below refer to guidance from the UK Government or from professional bodies based outside Guernsey & Alderney. Although many of the general legal principles and good practice apply in Guernsey and Alderney, you may need to take advice in relation to an individual query.

Heath & Social Services Department Policies, G308, G122

ICPC Procedures: Available at

www.reconstruct.co.uk/procedures/Guernsey/WebHelp/Guernsey.htm#First_topic.htm

Confidentiality: NHS Code of Practice (DH, 2003) Available at

www.dh.gov.uk/assetRoot/04/06/92/54/04069254.pdf

Confidentiality: protecting and providing information (GMC, 2004). Available at www.gmc-uk.org/guidance/current/library/confidentiality.asp

Confidentiality and Disclosure of Health Information Toolkit (BMA, 2008) Available at

www.bma.org.uk/ap.nsf/Content/ConfToolKit08

The NMC Code of Professional Conduct: Standards for Conduct, Performance and Ethics (NMC, 2004). Available at www.nmc-uk.org

MAPPA (Multi Agency Public Protection Arrangements) guidance (2007) Available at

www.probation.homeoffice.gov.uk/output/page30.asp

MARAC (Multi-Agency Risk Assessment Conference) toolkits

Available at www.caada.org.uk/index.html

Information specific to Children

Working Together to Safeguard Children and What to do if you are worried a child is being abused (HMG, 2006)

Available at www.ecm.gov.uk/safeguarding

Guidance on the Children Act 2004 (HMG, 2004)

Available at www.ecm.gov.uk/strategy/guidance

Child Health Promotion Programme (DH, 2006)

www.dh.gov.uk/en/Publicationsandstatistics/Publications/DH_083645

0-18 years: guidance for all doctors (GMC, 2007)

www.gmc-uk.org/guidance/ethical_guidance/children_guidance/index.asp

When to share information: Best practice guidance for everyone working in the youth justice system (2008)

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084703

Sharing Personal and Sensitive Personal Information on Children and Young People at Risk of Offending: A Practical Guide (Youth Justice Board, 2005)

www.yjb.gov.uk/publications

Appendix 3: A general leaflet on information sharing.

[AGENCY] **Sharing Children's Information:** **Your information and your rights**

The aim of this leaflet is to tell you what we will do with the information you give us and to help answer any questions you may have about information held on a child or young person by [AGENCY] and your rights.

[AGENCY] gathers and processes information to help ensure that children and families are provided with an effective and high quality service. The provision of such services often involves the sharing of information between professionals within the organisation and between different organisations.

Agencies within the Guernsey and Alderney have information sharing protocol and guidance to help sharing of information when appropriate and to protect the confidentiality and rights of the child/young person and family. You can see a copy of this in [insert agency website] and request a copy from the Data Controller [insert address for agency's Data Controller].

Q. What information does [AGENCY] hold about a child or young person?

A. We hold information to provide a better service for you and your child. We also use data to plan and improve our services, using as far as possible anonymised information that is information that does not identify individuals.

Q. How do we store information?

A. We store information in paper files and electronically.

Q. Who can see this information?

A. Information that identifies you or your child will only be available to authorised staff. All staff are committed to keeping your information secure and confidential, and to sharing your information only as described in this leaflet.

The information will be available to those with a need to know in order to provide a service to you. Your information will also be used to improve and plan services, and as far as possible it will be anonymised, so that the individual cannot be identified from the data.

Q. When will [AGENCY] share information about a child or young person?

A. We will tell you who is in the team providing a service to you and will share your information with them as necessary to provide you/your child with a service.

We will share information with other professional or voluntary agencies that may be able to help you or your child, with your consent.

From time to time we are required to pass on some of this information to [SPECIFIC FOR EACH AGENCY] and to the Office of the Children's Convenor.

Q. What happens if I do not agree to you sharing my information?

A. We will inform you of the consequences of not sharing the information and work with you to provide the best service we can while respecting your wishes.

Q. Can agencies share information without the consent of a parent or young person?

Yes, in exceptional circumstances we will do this only if there is a legal requirement or duty for us to do so e.g.

- When professionals are concerned that a child or young person might be at risk of significant harm
- When there is a reason to believe the release of information may prevent or help detect a serious crime
- When requested to provide information to the Children's Convenor or directed to do so by the Court.

Q. How can I complain?

A. If you wish to complain about how information has been shared, contact the Data Controller at the address above. You will get a response in 10 working days.

Q. What if I am dissatisfied with the response to my complaint?

A. You can contact the Data Protection Commissioner at PO Box 642, Frances House, St Peter Port, GY1 3JE; telephone 742074.