

Guide to Gaining Consent & Information Sharing

The following information is intended to clarify the situation for practitioners:

Data Protection legislation defines consent as any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.

Whenever a professional requires the consent of a client, whether adult or child, to a particular decision or course of action, the issue of their capacity / competence to respond appropriately to the request must be considered. Issues of capacity and consent may arise in various contexts. It may be necessary to consider the legal Capacity of parents and/or children/young people to make decisions and give valid, informed consent.

Legal capacity can fluctuate and, for consent to be valid, it must be made by a person who has the legal capacity to make that decision at that time, having a clear, fully informed understanding of what it is they are consenting to.

Issues of Capacity and Consent may arise, for example, in relation to:

- Assessments and Early Help Interventions.
- Information-sharing.
- Legal proceedings, e.g. where a Gillick competent child desires separate legal representation and/or their wishes differ from the views of their Guardian ad Litem.
- Dealing with parents with learning disabilities/mental health problems.
- Children becoming looked after, e.g. parental agreement to children being accommodated under section 20 Children Act 1989.
- Delegation of authority to carers in respect of day-to-day matters.
- Consent in relation to health assessments and medical treatment.
- Parental consent to adoption or a Special Guardianship Order.
- Deprivation of liberty of a child/young person.

Once it has been determined that a person has the capacity to make a particular decision at a particular time, a further requirement (under the common law) for that consent to be valid is that it must be given voluntarily and freely, without pressure or undue influence being exerted upon them, they must be fully informed understanding of what it is they are consenting to, including the likely outcomes which may flow from the consent being given.

Acquiescence where the person does not fully understand what they are being asked to agree to is not 'consent'.

Consent must always be a specific and unambiguous indication of the individual's wishes, so if you are someone to consent to more than one decision, then they should be kept separate and distinct.

The GDPR and Data Protection Act 2018 do not prevent, or limit, the sharing of information for the purposes of **keeping children and young people safe** (protecting their vital interests).

To effectively share information:

- All practitioners should be confident of the processing conditions, which allow them to store, and share, the information that they need to carry out their safeguarding role. Information which is relevant to safeguarding will often be data which is considered 'special category personal data' meaning it is sensitive and personal.
- Where practitioners need to share special category personal data, they should be aware that the Data Protection Act 2018 includes '**safeguarding of children and individuals at risk**' as a condition that allows practitioners to share information without consent.
- Information can be shared legally without consent, if a practitioner is unable to, cannot be reasonably expected to gain consent from the individual, **or if to gain consent could place a child or any other person at risk.**
- Relevant personal information can be shared lawfully **if it is to keep a child or individual at risk safe from neglect or physical, emotional or mental harm, or if it is protecting their physical, mental, or emotional well-being**

Referrals should not be made to Children's Social Care (CSC) without obtaining consent unless to do so would place the child, any other child or yourself at risk of significant harm.

Even in the safeguarding context – we should, in most cases, where safe to do so – gain consent from families when the intention is to make a referral to Children's Social Care.

If you are unsure about whether information should be 'shared' or a referral made then it is acceptable to discuss with the IFD Consultation Line 01472 323145 and discuss the case without giving client identifiable information before deciding whether it should be referred.

If any agency wishes to 'share information' or 'seek information' the purpose should be clear. For instance, it is important and necessary in safeguarding cases (or families where the agency has concerns about the implications or significance of information) to notify of significant changes such as address, incidents of concern, risky adults joining/leaving families, protective factors/risk factors etc. but the same information should not be shared where there is no concern or where the family has no knowledge of this information being shared.

We should not be notifying or sharing information without a 'clear purpose' of why we are sharing it and how it should be used, particularly if you have no evidence or are unable to validate its accuracy.

Information can be shared if you have a clear lawful, fair and transparent purpose for the sharing, you can validate its accuracy, it is necessary for the person / agency to receive it, the information is relevant and proportionate for the purpose, and:

- a) You have consent to do so and also believe it is necessary to inform a referral, assessment or investigation.
- b) You do not have consent but not sharing would place somebody at risk or fail to prevent or detect a crime.
- c) You are required to do so by guidance or have a legal duty to share information (e.g. as part of an inquiry or safeguarding assessment etc.)

Remember where information is 'requested' from yours or any other agency – good practice always indicates that you should let the individual / data subject know that it is being shared unless to do so would place someone at risk etc. even though you may have received explicit consent at the commencement of your service's involvement with the family.

Finally, always remember to record when you have shared personal data and the reason / basis for you sharing the information.