

## **Information Sharing in Cases of Domestic Violence and Abuse**

### *Guidance for health and care professionals and other agencies*

The legal and ethical considerations around data/information sharing are complex. In addition to the Data Protection Act 2018 (which is the UK's implementation of the General Data Protection Regulation - GDPR) they will also be covered by the common law duty of confidentiality, the common law duty of care, and other relevant legislation and guidance.

There is no absolute right to confidentiality but to satisfy the common law duty of confidentiality, *usually* data should be shared with the *consent* of the individual, who must have both mental capacity and be able to give consent freely and voluntarily. In some circumstances, other relevant law *requires* disclosure and “trumps” (has primacy) over confidentiality (e.g. the Children Act or a court order).

In other cases, there may be a legal justification that permits disclosure/sharing, for example in relation to the common law duty of confidentiality when disclosure is in the public interest or to protect the vital interest of the individual by applying the “doctrine of necessity”.

Any such disclosure/sharing should be justified, relevant, proportional, timely, well considered and appropriately documented.<sup>1</sup>

The individual should be informed of any sharing without consent (transparency of process) unless it is considered that such action, would of itself, jeopardise safety.

Police, health and care, and other professionals need to consider very carefully the damage that may be done to the engagement of, and trust between, the individual and the agencies involved if information is shared against the specific wishes of the individual, or without their knowledge.

Ethical guidance and a supportive framework for data/information sharing is provided by the Caldicott Principles, and in particular, Principle seven:

*The duty to share information can be as important as the duty to protect patient confidentiality.*

Many Caldicott Guardians also support the ethical proposition:

*An individual's information **may** be shared if it is believed that it is necessary to prevent or reduce the risk of serious harm to themselves or others.*

For further advice contact your organisation's Caldicott Guardian, or the UK Caldicott Guardian Council: <ukgcsecretariat@nhs.net>.

Prepared for the UK Caldicott Guardian Council by Christopher Fincken 2020.

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<sup>1</sup> An exemplar template is attached.

## **Information/Data Sharing Decision template**

*For recording Caldicott Guardian queries / advice / information sharing decisions*

**What is the issue in question?**

**What pieces of law have been considered? (e.g. Data Protection Act, Common Law etc)**

**What professional guidance has been considered? (e.g. General Medical Council )**

**How have the Caldicott Principles been considered and satisfied?**

1. Justify the purpose (s)
2. Don't use personal confidential data unless it is absolutely necessary
3. Use the minimum necessary personal confidential data
4. Access to personal confidential data should be on a strict need-to-know basis
5. Everyone with access to personal confidential data should be aware of their responsibilities
6. Comply with the law
7. The duty to share information can be as important as the duty to protect patient confidentiality.
8. Inform patients and service users about how their confidential information is used.

**Who have I talked to? (Including professionals, sources of advice, the individual or their relatives)**

**Is the information presented sufficient to make a decision or is more needed? Is urgency a factor?**

**What is the rationale for the decision? (How are the different factors involved being considered )**

**What is the decision?**

(Including: how it is to be implemented & whether it has been shared with the individual(s))