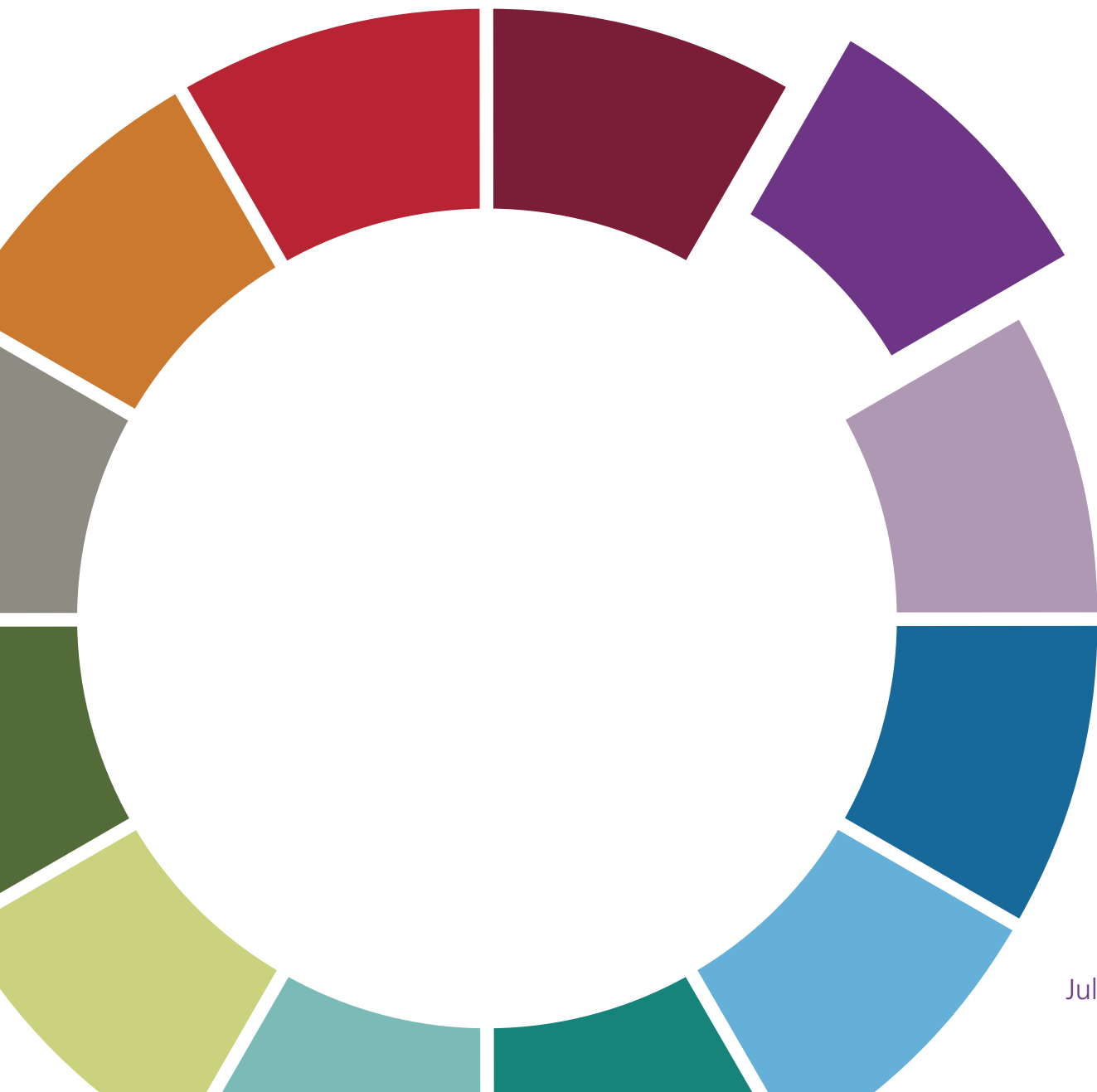




Llywodraeth Cymru
Welsh Government

Social Services and Well-being (Wales) Act 2014

Working Together to Safeguard People
Information sharing to safeguard children
Non-statutory guide for practitioners



July 2019

Information sharing to safeguard children
Non-statutory guide for practitioners

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.



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Summary

Information sharing is central to good safeguarding practice. Practitioners must share information in accordance with the General Data Protection Regulation (GDPR) and the Data Protection Act 2018, referred to as the UK's data protection legislation. The data protection legislation allows for the sharing of information and should not be automatically used as a reason for not doing so. One of the specific circumstances which provides for information sharing is in order to prevent abuse or serious harm to others. A key theme emerging from Child Practice Reviews is the need for better multi-agency communication and information sharing. When information is not shared in a timely and effective way decisions about how to respond may be ill informed and this can lead to poor safeguarding practice and leave children at risk of significant harm.

About this guide

The Welsh Government has produced this non-statutory guide to remind practitioners working across agencies of their responsibilities to share information to safeguard children and to support them in understanding the conditions under which information may be shared.

This guide does not deal in detail with inter-agency arrangements for sharing personal information between organisations or as part of shared IT systems. However safeguarding is everyone's responsibility and Information Sharing Protocols can assist agencies in this role and in promoting the well-being of people to prevent risk of harm.

Who is this guide for?

This advice is for all front line practitioners and managers working with children (up to the age of 18 years), parents, carers and families who have to make decisions about sharing personal information on a case-by-case basis, where there are safeguarding concerns.

Golden rules to sharing information

1. Remember that the General Data Protection Regulation (GDPR), Data Protection Act 2018 and human rights law are not barriers to justified information sharing, but provide a framework to ensure that personal information about living individuals is shared appropriately.
2. Be open and honest with the individual (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. The GDPR gives people the right to be informed, which means they need to be made aware of how their data is being used. However, under the GDPR and Data Protection Act 2018 you may share information without consent if, in your judgement, there is a lawful basis to do so. You will need to base your judgement on the facts of the case. When you are sharing or requesting personal information from someone, be clear of the basis upon which you are doing so. Where you do not have consent, be mindful that an individual might not expect information to be shared.
4. Seek advice from other practitioners, or your information governance lead, if you are in any doubt about sharing the information concerned, without disclosing the identity of the individual where possible.
5. Consider safety and well-being: base your information sharing decisions on considerations of the safety and well-being of the individual and others who may be affected by their actions.
6. Necessary, proportionate, relevant, adequate, 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 individuals who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely (see Principles).
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.

The General Data Protection Regulation (GDPR) and Data Protection Act 2018

The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 introduce new elements to the data protection regime, superseding the Data Protection Act 1998. Practitioners must have due regard to the relevant data protection principles which allow them to share personal information.

The GDPR and Data Protection Act 2018 place greater significance on organisations being transparent and accountable in relation to their use of data. All organisations handling personal data need to have comprehensive and proportionate arrangements for collecting, storing, and sharing information.

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.

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 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.

It is also important that:

- Fears about sharing information should not be a barrier to safeguarding and promoting the well-being of children at risk of abuse or neglect.
- Every practitioner must take responsibility for sharing the information they hold, and cannot assume that someone else will pass on information, which may be critical to keeping a child safe.

- Practitioners must understand how to work in collaboration with other agencies to share information in a proportionate and timely way to prevent harm.

Sharing information to support safeguarding

Effective safeguarding arrangements in every local authority area should be underpinned by two key principles¹:

Safeguarding is everyone's responsibility: for services to be effective each practitioner and agency must play their full part both individually and in collaboration;

A child-centred approach: for services to be effective they should be based on a clear understanding of the personal outcomes for the child and what matters to them. The rights of the child should be central to the approach and their best interests should always be paramount.

Sharing information is an intrinsic part of any frontline practitioners' job when working with children. The decisions about how much information to share, with whom and when, can have a profound impact on individuals' lives. Information sharing helps to ensure that an individual receives the right services at the right time and prevents a need from becoming more acute and difficult to meet. Poor or non-existent information sharing is a consistently reoccurring theme in learning from Child Practice Reviews in Wales.

Spotting the signs of abuse, neglect and taking action when a child is at risk

All practitioners who come into contact with children and families should receive safeguarding training appropriate to their role; understand how to recognise signs of abuse, neglect and harm to children and their responsibilities to take action when they think a child may be at risk. Safeguarding training should include material on information sharing.

The Wales Safeguarding Procedures support a consistent approach to safeguarding children and adults across Wales. All Wales Practice Guides on children in specific safeguarding circumstances are available for use in conjunction with the Wales Safeguarding Procedures. These practice guides provide further information on the indicators of abuse, neglect and harm to children.

Agencies will also have organisational safeguarding policies and procedures in place which will set out a process for taking a safeguarding concern forward. These usually provide for practitioners to discuss the safeguarding issue with a manager and/or an organisation Safeguarding Lead.

If a practitioner believes a child may be at immediate risk of harm they must contact the Police on 999.

Relevant partners have a Duty to Report Children at Risk (Section 130) under [Part 7](#) of the Social Services and Well-being (Wales) Act. Section 130(4) defines a “child at risk” as a child who:

- a) is experiencing or is at risk of abuse, neglect or other kinds of harm; and
- b) has needs for care and support (whether or not the Local authority is meeting any of those needs).

When a child has been reported under section 130, the local authority must consider whether there are grounds for carrying out enquiries under section 47 of the Children Act 1989.

Legislative framework for sharing information to safeguard children

Key agencies who have a duty under **section 28(1) of the Children Act 2004** to safeguard and promote the welfare of children in Wales are:

- a) the local authority;
- b) the Local Health Board;
- c) an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales;
- d) the local policing body and chief officer of police for a police area in Wales;
- e) the National Crime Agency;
- f) the British Transport Police Authority, so far as exercising functions in relation to Wales;
- g) a local probation board for an area in Wales
- h) The Secretary of State in relation to his functions under sections 2 and 3 of the Offender Management Act 2007, so far as they are exercisable in relation to Wales;
- i) a youth offending team for an area in Wales;
- j) the governor of a prison or secure training centre in Wales (or, in the case of a contracted out prison or secure training centre, its director);
- k) the principal of a secure college in Wales;
- l) any person to the extent that he is providing services pursuant to arrangements made by a local authority in Wales under section 123(1)(b) of the Learning and Skills Act 2000 (c. 21) (youth support services).

There is a duty to co-operate and provide information in the exercise of social services functions under **section 164 of the Social Services and Well-being (Wales) Act 2014**.

If a local authority requests the co-operation of:

- a) A relevant partner² of the local authority making the request;
- b) A local authority, a Local Health Board or an NHS Trust which is not a relevant partner of the local authority making the request;
- c) A youth offending team for an area any part of which falls within the area of the local authority making the request;

in the exercise of any of its social services functions, the person must comply with the request unless the person considers that doing so would—

- be incompatible with the person's own duties, or
- otherwise have an adverse effect on the exercise of the person's functions.

A person who decides not to comply with such a request must give the local authority which made the request written reasons for the decision.

Section 137 of the Social Services and Well-being (Wales) Act 2014 provides a Safeguarding Board with the power to request specified information from a qualifying person or body provided that the purpose of the request is to enable or assist the Board to perform its functions under the Act.

A “qualifying person or body” is defined as “a person or body whose functions or activities are considered by the Board to be such that the person or body is likely to have information relevant to the exercise of the Board’s functions”.

The information may relate to:

- (a) the qualifying person or body to whom the request is made;
- (b) a function or activity of that qualifying person or body, or
- (c) a person who is exercising or engaged in a function or activity by that qualifying person or body.

Section 137 of the Act is intended to enable a Safeguarding Board to lawfully request and handle information, including personal and sensitive data from those persons or bodies who are “likely” to have information relevant to the exercise of the Board’s functions.

One of the functions of a Safeguarding Board is to engage in “any other activity that facilitates or is conducive to the achievement of its objectives”.³ The objectives of a Safeguarding Children Board are:⁴

- a) to protect children within its area who are experiencing, or are at risk of abuse, neglect or other kinds of harm, and
- b) to prevent children within its area from becoming at risk of abuse, neglect or other kinds of harm.

Information Sharing Protocols (ISPs) - The Wales Accord on the Sharing of Personal Information ([WASPI](#)) is a tool to help agencies share personal information effectively and lawfully. The consistent approach promoted by WASPI, and the good practice shared via the website, helps organisations to meet their data protection responsibilities as they move to collaborative service models within a changing legislative landscape. Each agency has its own organisational standards, professional codes of ethics and culture around information. The [WASPI Framework](#) provides a practical approach to sharing personal information, providing common standards and templates for developing Information Sharing Protocols (ISPs) and Data Disclosure Agreements (DDAs). Its overall aim is to help public

service providers deliver effective services while complying with their legal obligations – namely the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.

Practice which proactively seeks parental consent to share information at the first contact can assist practitioners in having the confidence to share information to support preventative support before circumstances escalate to a position where a child is put at risk. This approach will also support practitioners in acting in a timely way to share information where there is any evidence to suggest a child may be at risk of harm.

The principles

Practitioners should use their judgement when making decisions about what information to share, and should follow organisation procedures. **The most important consideration is whether sharing information is likely to support the safeguarding and protection of a child.**

There are a number of principles that can assist practitioners in making decisions about sharing information:

Necessary and proportionate - When taking decisions about what information to share, you should consider how much information you need to release. Not sharing more data than is necessary to be of use is a key element of the GDPR and Data Protection Act 2018, and you should consider the impact of disclosing information on the information subject and any third parties. Information must be proportionate to the need and level of risk.

Relevant - Only information that is relevant to the purposes should be shared with those who need it. This allows others to do their job effectively and make informed decisions.

Adequate - Information should be adequate for its purpose. Information should be of the right quality to ensure that it can be understood and relied upon.

Accurate - Information should be accurate and up to date and should clearly distinguish between fact and opinion. If the information is historical then this should be explained.

Timely - Information should be shared in a timely fashion to reduce the risk of missed opportunities to offer support and protection to a child. Timeliness is key in emergency situations and it may not be appropriate to seek consent for information sharing if it could cause delays and therefore place a child or young person at increased risk of harm. Practitioners should ensure that sufficient information is shared, as well as consider the urgency with which to share it.

Secure - Wherever possible, information should be shared in an appropriate, secure way. Practitioners must always follow their organisation's policy on security for handling personal information.

Record - Information sharing decisions should be recorded, whether or not the decision is taken to share. If the decision is to share, reasons should be cited including what information has been shared and with whom, in line with organisational procedures. If the decision is not to share, it is good practice to record the reasons for this decision and discuss them with the requester. In line with each organisation's own retention policy, the information should not be kept any longer than is necessary. In some rare circumstances, this may be indefinitely, but if this is the case, there should be a review process scheduled at regular intervals to ensure data is not retained where it is unnecessary to do so.

Myth-busting guide

Sharing of information between practitioners and organisations is essential for effective identification, assessment, risk management and service provision. Fears about sharing information cannot be allowed to stand in the way of the need to safeguard and promote the welfare of children and young people at risk of abuse or neglect. Below are common myths that can act as a barrier to sharing information effectively:

The GDPR and Data Protection Act 2018 are barriers to sharing information

No – the GDPR and Data Protection Act 2018 do not prohibit the collection and sharing of personal information. They provide a framework to ensure that personal information is shared appropriately. In particular, the Data Protection Act 2018 balances the rights of the information subject (the individual whom the information is about) and the possible need to share information about them. Never assume sharing is prohibited – it is essential to consider this balance in every case. You should always keep a record of what you have shared.

Consent is always needed to share personal information

No – you do not necessarily need the consent of the information subject to share their personal information.

Wherever possible, you should seek consent and be open and honest with the individual from the outset as to why, what, how and with whom, their information will be shared. You should seek consent where an individual may not expect their information to be passed on. When you gain consent to share information, it must be explicit, and freely given.

There may be some circumstances where it is not appropriate to seek consent, either because the individual cannot give consent, it is not reasonable to obtain consent, or because to gain consent would put a child or young person's safety or well-being at risk.

Where a decision to share information without consent is made, a record of what has been shared should be kept.

Personal information collected by one organisation cannot be disclosed to another organisation

No - this is not the case, unless the information is to be used for a purpose incompatible with the purpose it was originally collected for. In the case of children in need, or children at risk of significant harm, it is difficult to foresee circumstances where information law would be a barrier to sharing personal information with other practitioners.

Practitioners looking to share information should consider which processing condition in the Data Protection Act 2018 is most appropriate for use in the particular

circumstances of the case. This may be the safeguarding processing condition or another relevant provision.

Being clear upfront as part of the original privacy notice where possible helps ensure transparency and that the requirements of GDPR are met but issues such as safeguarding will still provide a justification for sharing even if it was not possible to set out all data sharing at the point of collection.

The common law duty of confidence and the Human Rights Act 1998 prevent the sharing of personal information

No - this is not the case. In addition to the GDPR and Data Protection Act 2018, practitioners need to balance the common law duty of confidence, and the rights within the Human Rights Act 1998, against the effect on children or individuals at risk, if they do not share the information.

If information collection and sharing is to take place with the consent of the individuals involved, providing they are clearly informed about the purpose of the sharing, there should be no breach of confidentiality or breach of the Human Rights Act 1998. If the information is confidential, and the consent of the information subject is not gained, then practitioners need to decide whether there are grounds to share the information without consent. This can be because it is overwhelmingly in the information subject's interests for this information to be disclosed. It is also possible that a public interest would justify disclosure of the information (or that sharing is required by a court order, other legal obligation or statutory exemption).

In the context of safeguarding a child or young person, where the child's welfare is paramount, it is possible that the common law duty of confidence can be overcome. Practitioners must consider this on a case-by-case basis. As is the case for all information processing, initial thought needs to be given as to whether the objective can be achieved by limiting the amount of information shared – does all of the personal information need to be shared to achieve the objective?

IT Systems are often a barrier to effective information sharing

No – IT systems can be useful in supporting information sharing. IT systems are most valuable when practitioners use the data that has been shared to make more informed decisions about how to support and safeguard a child. Evidence from the Munro Review is clear that IT systems will not be fully effective unless individuals from organisations co-operate around meeting the needs of the individual child.

Professional judgment is the most essential aspect of multi-agency work, which could be put at risk if organisations rely too heavily on IT systems.

The Information Commissioner's Office is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. Their website contains resources and advice.

<https://ico.org.uk/>

The Welsh Government would like to acknowledge that this guide has been adapted from the UK Government's Department for Education publication [Information sharing: advice for practitioners providing safeguarding services](#) as updated in July 2018.

¹ *Working together to safeguard children 'A guide to inter-agency working to safeguard and promote the welfare of children'*, March 2015.

² Relevant partners are defined by section 162(4) of the Social Services and Well-being (Wales) Act 2014 as:

- (a) the local policing body and the chief officer of police for a police area any part of which falls within the area of the local authority;
- (b) any other local authority with which the authority agrees that it would be appropriate to co-operate under this section;
- (c) the Secretary of State to the extent that the Secretary of State is discharging functions under sections 2 and 3 of the Offender Management Act 2007 in relation to Wales;
- (d) any provider of probation services that is required by arrangements under section 3(2) of the Offender Management Act 2007 to act as a relevant partner of the authority;
- (e) a Local Health Board for an area any part of which falls within the area of the authority;
- (f) an NHS Trust providing services in the area of the authority;
- (g) the Welsh Ministers to the extent that they are discharging functions under Part 2 of the Learning and Skills Act 2000;
- (h) such a person, or a person of such description, as regulations may specify¹.

³ <https://gov.wales/docs/phhs/publications/160404part7guidevol1en.pdf>

⁴ Section 135 of the Social Services and Well-being (Wales) Act 2014, Functions and Procedures of Safeguarding Boards.