

## TIER 2

### INFORMATION SHARING AGREEMENT FOR WAKEFIELD SAFEGUARDING ADULTS INTER-AGENCY SERVICES

#### 1. INTRODUCTION

- 1.1 This document is written within the context of and supported by the following documents:
- 1.2 “Calderdale, Kirklees and Wakefield-wide Interagency Information Sharing Protocol Framework for Sharing Information”
- 1.3 Wakefield & District Safeguarding Adults Board “Safeguarding Adults. Policy and Procedures” (2007)
- 1.4 “Sharing information about service providers” Commission for Social Care Inspection. (16 October 2006)
- 1.5 “Working in partnership. Getting the best from inspection, audit, review and regulation of health and social care” a voluntary agreement between organisations that regulate, audit, inspect or review elements of health and healthcare in England by 10 organisations, led by the Healthcare Commission. [www.concordat.org.uk](http://www.concordat.org.uk) (First published June 2005. Updated in May 2006.)
- 1.6 The Healthcare Commission and the General Medical Council (GMC) memorandum of understanding a formal agreement, ensuring they work together to improve health and other public services, share accurate and high quality information and ensure patients know the doctors treating them are appropriately qualified. (8 Dec 2006);
- 1.7 “Memorandum of understanding: Investigating patient safety incidents involving unexpected death or serious untoward harm A protocol for liaison and effective communications between the National Health Service, Association of Chief Police Officers and Health and Safety Executive” (1 February 2006)
- 1.8 “Safeguarding Adults- National Framework of Standards for good practice and outcomes” (ADSS October 2005)
- 1.9 These documents contain the overall principles for information sharing between the partner agencies upon which this agreement is based.

#### 2. LIST OF PARTNERS

- 2.1 The agencies who have signed up to this agreement are:

Wakefield and District PCT  
Mid Yorkshire Hospital Trust  
South Yorkshire Mental Health Trust  
Wakefield Metropolitan District Council

West Yorkshire Police  
West Yorkshire Probation  
Wakefield District Housing

## **The Aim of this document**

2.2 Increasingly different agencies are working together to provide an holistic approach to meeting the needs of adults over 18 who "*may be eligible for community care services*" whose independence and wellbeing would be at risk if they did not receive appropriate health and social care support.<sup>1</sup> In order to do this effectively it is important that agencies develop co-operative ways of working to ensure access to all the relevant information to secure the best outcome for the person. In the past confusion over what can legally be shared has led to poor service provision and in some cases fatalities. Whilst an understanding of the law is essential, there must also be legal guidance, good professional communication and collaborative working. An open and honest approach to working with these adults<sup>2</sup> and their families can also often overcome dilemmas about information sharing.

2.3 This agreement aims to :

2.4 Facilitate the lawful and appropriate sharing of information in an efficient and effective manner between all the organisations and departments party to this agreement who have responsibility for the care of adults

2.5 To encourage commitment by all agencies to work together to develop information sharing arrangements and working practices that will improve outcomes for adults

2.6 To reduce uncertainty as to the legal basis upon which information can be shared and help foster a shared understanding of the relevant provisions

2.7 To increase understanding of workers, volunteers, service users and carers about gaining consent before sharing information and how to go about doing this

2.8 To develop consistency in information sharing

2.9 To avoid the repetition and duplication of professional effort and minimise the number of times that adults are asked for the same information about themselves

## **3 STATEMENT OF PRINCIPLES**

---

<sup>1</sup> Safeguarding Adults- National Framework of Standards for good practice and outcomes (ADSS October 2005)

<sup>2</sup> They include adults with physical, sensory and mental impairments and learning disabilities. However those impairments have arisen e.g. whether present from birth or due to advancing age, chronic illness or injury. They also include carers: family and friends who provide personal assistance and care to adults on an unpaid basis. (Safeguarding Adults)

- 3.3 This document is based on the following principles:
- 3.4 The top priority must always be the safety of the vulnerable person and any others who may be at risk, not to disturb any evidence which may be of use to a Police investigation and to ensure that best evidence can be obtained in order to assist any investigation; information is shared in order to promote the best interests of the adult and others who may be at risk.
- 3.5 Information sharing will be done under the legal premise of the Data Protection Act, Human Rights Act, Children Act, the Caldicott Principles and any other relevant legislation (see Calderdale, Kirklees and Wakefield-wide Interagency Framework for Sharing Information)
- 3.6 The partner agencies are committed to being open and honest with service users about the fact that information relating to them will be shared between partner agencies.
- 3.7 Any individual should have the opportunity to gain access to information held about them and to correct any factual errors that have been made. Similarly, where opinion about them has been recorded and the person feels this opinion is based on incorrect factual information, they should have the opportunity to correct the factual error and record their disagreement with the recorded opinion.
- 3.8 A professional who is supplying information held on their records pertaining to any individual should clearly state whether the information being supplied is fact, opinion, or a combination of the two. The sources of any information (fact or opinion) should also be recorded as they may need to be disclosed.
- 3.9 Parents and other family members of service users with capacity do not have a right to know what information about the person's welfare is shared between partner agencies to support judgements unless the capacitated person has provided consent so that they may be informed or where the disclosure is permitted by legislation. (For example there may be a need to share information with the nearest relative of the service user under the terms of the Mental Health Act 1983).
- 3.10 When sharing information in respect of adults who lack the capacity to provide any required consent, information should only be shared when it is permitted by relevant legislation and if considered to be in the best interests of the incapacitated person. Decision makers must balance the duty to consult other people with the right to confidentiality of the person who lacks capacity. Healthcare and social care staff who are trying to determine a person's best interests must follow their professional guidance, as well as other relevant guidance, about confidentiality.<sup>3</sup>
- 3.11 Each partner agency will have their own file retention and access to records policies which will be based on the relevant legislation and guidance and can be shared with partner agencies and service users.

---

<sup>3</sup> 5.56 How can decision-makers respect confidentiality? Mental Capacity Act 2005 Code of Practice Issued by the Lord Chancellor on 23 April 2007 in accordance with sections 42 and 43 of the Act (further guidance on this is given in chapter 16).

- 3.12 Information exchanged between professionals will be normally available to the service user and be placed on their records, to which they have a right of access as set out in the Data Protection Act 1998.
- 3.13 Where professionals request that information supplied by them be kept confidential from the service user, the outcome of this request and the reasons for taking the decision should be recorded and should be in accordance with the Data Protection legislation.
- 3.14 Where information is required to be exchanged in relation to deceased persons, the Data Protection Act does not apply. In these circumstances the general principles of this protocol will be applied. Careful consideration will be given to the disclosure of information concerning a deceased person and if necessary, legal advice should be sought on each individual case.
- 3.15 Adults should be aware that statistical information which does not identify individuals may be shared between partner agencies for strategic planning purposes. If required, further information can be supplied to them on request.
- 3.16 All partner agencies will take the necessary steps to ensure that personal data held by them, both paper and electronic records, are held securely and are only available to others on a 'need to know' basis.

#### **4 SHARING PERSONAL INFORMATION**

4.1 The issue of whether personal information about a person can be shared **without** consent continues to be a cause for concern for many partner agencies.

4.2 The circumstances in which agencies are likely to be permitted by legislation to share information without consent are;

- Where a crime may have been committed
- Where the alleged perpetrator is a member of staff or volunteer employed by a care agency
- Where the care of the person allegedly being abused is the legal responsibility of an individual or agency
- Where the care of the alleged perpetrator is the legal responsibility of an individual or agency
- Where abuse is alleged to have happened on property owned or managed by a care agency providing services to that person or to the alleged perpetrator
- Where other service users are at risk from the alleged perpetrator<sup>4</sup>

#### **5 PURPOSE OF SHARING THE INFORMATION**

5.1 Under this agreement information will need to be shared between the partner agencies. There are four main reasons for sharing information:

5.2 To make an assessment of the adult's needs in order that appropriate services can be provided

---

<sup>4</sup> In order to cope with exchanges of information which might otherwise have infringed the Data Protection legislation, Section 115 of the Crime and Disorder Act 1998 provides an explicit power, where none previously existed, for people to disclose information to a number of agencies if the disclosure is necessary or expedient for any of the purposes of the Act, including the 'Crime and Disorder Reduction Partnerships' (another name used for the Community Safety Partnership Groups).

- 5.3 To assess whether an adult is at risk or likely to be at risk of serious harm
- 5.4 To make decisions about courses of action to secure the safety of an adult
- 5.5 To make decisions about the development of services for adults in the Wakefield area
- 5.6 To facilitate the statutory functions of partner agencies see appendix

## **6 WHAT PERSONAL INFORMATION MAY BE SHARED**

- 6.1 Information which does not identify the individual but which can be used for monitoring and evaluation purposes, e.g. numbers of people being offered a particular service.(e.g. Direct payments, IMCA service)
- 6.2 Basic details for identification purposes e.g. name of person, , address, gender, ethnicity, date of birth, name of family carers, name of those with legal responsibilities (e.g. Lasting powers of attorney (LPA), Court appointed deputies.)
- 6.3 Information regarding a service provider made available by CSCI or the Healthcare Commission.
- 6.4 Information to enable workers to undertake an assessment of the persons needs. This information is based on current best practice for identifying and recording the health and social care risks and needs of an individual and evaluating their impact on daily living and quality of life, so that appropriate action can be planned such as a mental health assessment, information gained whilst acting as an appropriate adult.<sup>5</sup> or single assessment process (SAP) for older people introduced in the National Service Framework for Older People or the assessment of Carers' needs under the Carers Act
- 6.5 For the purposes of undertaking assessments of risk all the above information will be collected and also the following: Sensitive personal information including offending behaviour of adults within the family (including Schedule 1 offences), health issues affecting the well-being of the person, mental health issues, domestic violence issues, previous

---

<sup>5</sup> What is an Appropriate Adult? When someone is arrested by the police and taken to a police station they have three basic rights: -

- The right to free and independent legal advice
- The right to have someone informed of their arrest
- The right to consult the Codes Of Practice (concerning police powers and procedures)

They will also be given a written notice informing them of their rights and entitlements whilst in custody. The custody officer (usually a police sergeant) who is responsible for all detained people must make sure that interviews and other procedures are conducted as soon as possible and in the proper manner. They also have a responsibility to identify vulnerable people. Those considered vulnerable are anyone who appears (to the custody officer) to be under the age of 17, people with mental health difficulties, people with a learning disability and those who have trouble communicating and understanding things. Having identified a young person or a vulnerable adult the custody officer has a duty to request the attendance of a responsible adult, who is known as an Appropriate Adult. This person is different to a solicitor. An Appropriate Adult can be a family member, friend or a volunteer or social/health care professional. The role of the Appropriate Adult was created in the Police and Criminal Evidence Act (PACE) 1984, with the intention of further safeguarding the rights and welfare of young people and vulnerable adults in custody

involvement of social services for reasons of adult protection, information regarding alleged perpetrators necessary to support an investigation.

## **7 Obtaining Agreement to share information**

7.1 Agencies will have their own systems for obtaining consent and these will still be valid<sup>6</sup>

7.2 Each person will have explained to them in a way which they can understand what information they are agreeing to be shared, with whom and why. All practical and appropriate steps must be taken to help people to make a decision for themselves. Information must be tailored to an individual's needs and abilities. It must also be in the easiest and most appropriate form of communication for the person concerned.<sup>7</sup>

7.3 Where possible agreement should be obtained in writing

7.4 In some cases it may not be possible to gain written agreement. Where verbal consent to obtain and share information has been given, this fact must be clearly recorded in the case records. Written consent must be obtained at the earliest opportunity

7.5 Where a professional makes a judgement in relation to the capacity of an adult they must clearly record their reasons for reaching these decisions.<sup>8</sup> The advice of managers and/or legal advice may need to be sought in particularly complex circumstances

## **8 Keeping Information Safe**

8.1 Methods of information exchange covered by this protocol include: verbal exchanges by telephone or face-to-face, faxes, letters and other written material, and electronic records.

8.2 Information transferred via email must be password protected.

---

<sup>6</sup> The five statutory principles of the Mental Capacity Act 2005 are:

- 1 A person must be assumed to have capacity unless it is established that they lack capacity.
- 2 A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- 3 A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- 4 An act done or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- 5 Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

<sup>7</sup> See 3.8 Mental Capacity Act 2005 Code of Practice Issued by the Lord Chancellor on 23 April 2007 in accordance with sections 42 and 43 of the Act. 'Sometimes there is no way for a person to communicate. This will apply to very few people, but it does include: people who are unconscious or in a coma, or those with the very rare condition sometimes known as 'locked-in syndrome', who are conscious but cannot speak or move at all. If a person cannot communicate their decision in any way at all, the Act says they should be treated as if they are unable to make that decision.'

<sup>8</sup> See 4.61 'Professional records'. Mental Capacity Act 2005 Code of Practice

- 8.3 Information transferred via post must be clearly marked 'Private and confidential'
- 8.4 With regard to the retention and destruction of information held within partner agencies – each agency will produce their own File Retention policy to inform service users and other agencies. Such policies must adhere to Data Protection Guidance.
- 8.5 Where partner agencies have agreements with other bodies to provide automatic rights of access to case records, they undertake to publish a list of which organisations have automatic rights of access to case records held within that agency.
- 8.6 This Protocol will be circulated to the staff within partner agencies through multi-agency briefings and training events. It will be posted on the Council web-site and be available via the Council's Intranet. Each of the partner agencies will keep sufficient copies to enable the Protocol to be readily available to members of the public who require it.