

Overarching Information Sharing Protocol

**Integrated working to
improve outcomes for the
people of Rotherham**

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Overarching Information Sharing Protocol

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1 Introduction

1.1 Background

This protocol complements and supports wider national guidance, professional body guidance and local policies and procedures to improve information sharing across services in Rotherham.

Government policy places a strong emphasis on the need to share information across organisational boundaries in order to ensure effective co-ordination of services, specifically in ensuring that there are integrated health and wellbeing services across the locality. Agencies arranging services to people within Rotherham are continually processing information about them. At times a single agency working with an individual may identify a range of issues that need to be addressed, some of which are outside its scope or expertise. Conversely, more than one agency could become involved with a service user but they are unaware of each other.

These agencies will be gathering the same basic information, undertaking similar assessments, producing and implementing plans of action that are appropriate to the agencies perceived response rather than the whole need of the individual. As a result there is often unnecessary duplication of effort, poor co-ordination and a lack of a coherent approach to the particular issues facing an individual which could be potentially detrimental.

The Health and Social Care Act states that Health and Wellbeing Boards, will need to look more widely at issues such as crime reduction, violence prevention and reducing offending along with the wider responsibility of ensuring there are integrated health and wellbeing services.

In these circumstances it has been recognised that a multi agency response is the best way of ensuring that service users receive the type and level of support most appropriate to their needs. In order to achieve this it is essential to have in place a framework that will allow the sharing of relevant information between professionals, when it is needed, with a degree of confidence and trust.

For the government statement on Information Sharing Protocols please see Appendix B.

1.2 Summary

The protocol is an overarching framework for sharing information between agencies which provide services to the people of Rotherham. It focuses on the sharing of personal information about service users. The protocol:

- Outlines the objectives and principles being achieved through the Rotherham Information Sharing Framework
- Summarises the legal background on information sharing
- Provides practical supporting guidance on how to share information

- Provides a framework within which services can develop service level information sharing protocols
- Includes arrangements for the monitoring, review and approval of the protocol

The protocol and supporting guidance provides the following benefits:

- Helping to promote information sharing
- Helping to ensure compliance with legislation and guidance
- Raising awareness of the key information sharing issues
- A comprehensive document that is relevant to all information sharing arrangements, allowing service level information protocols to focus on day to day specific information exchanges
- Establishes clear lines of responsibility

1.3 Purpose of the protocol

This protocol provides an overarching framework that enables partner organisations to utilise well established, appropriate and transparent information sharing systems (either manual or electronic) and processes that place the service user at the centre of how their information is processed in line with their rights to privacy and confidentiality.

It is a statement of the principles and assurances which govern information sharing by ensuring clarity and consistency in practice and in accordance with the:

- Data Protection Act 1998
- Human Rights Act 1998
- Common Law Duty of Confidentiality
- Caldicott Principles
- Any other relevant legislation and guidance

and upholds the rights of all the parties involved in a fair and proportionate manner. The key provisions of the above acts are summarised in HM Government national guidance, Information Sharing:

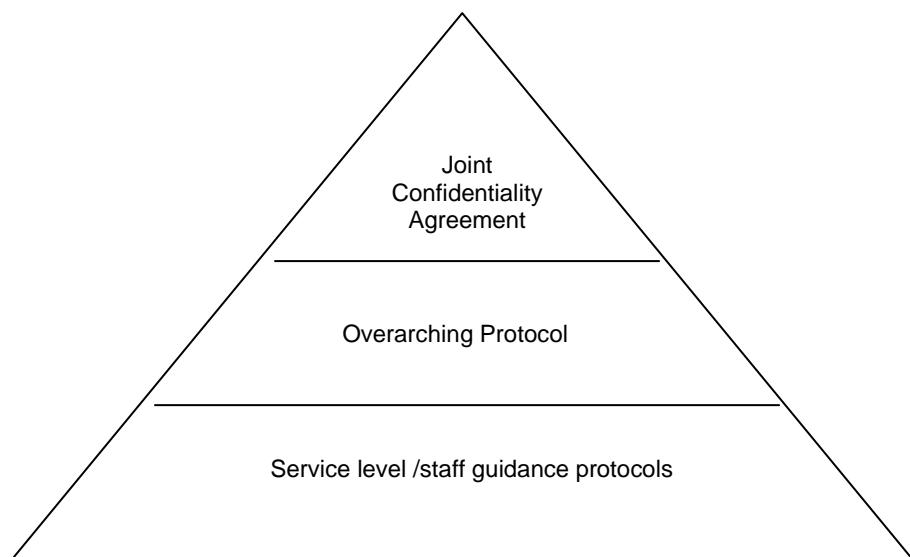
1.3.1 Rotherham Information Sharing Framework

This protocol forms part of the wider Rotherham Information Sharing Framework which aims to deliver a planned and structured approach to information sharing at all levels across the partner organisations. This will be achieved through Rotherham's information sharing framework.

The diagram below illustrates how the Rotherham Joint Confidentiality Agreement provides a high level agreement which identifies a common set of principles under which organisations share information. It commits those who sign it to facilitate the sharing of information whilst protecting the rights of the individual.

A middle tier of overarching information sharing protocols underpins this. At this level information sharing communities are established, the type of

information shared is defined and the purpose for which it is shared is identified. This protocol is an overarching protocol, in which children and young people's services are identified as an information sharing community. The third tier is made up of specific information sharing procedures and staff guidance, which can be used at service level to help staff make day to day decisions and support good practice. They are detailed information sharing agreements between individual agencies within the information sharing community at an operational level.



1.3.2 Other Protocols and contractual arrangements

Where other 'protocols' already exist between organisations then, if appropriate, this protocol and associated service level protocols will run concurrently with them and parties can continue to adhere to existing protocols.

If it is a requirement to disclose personal service user information between organisations as part of a funding/contractual arrangement then all parties (including NHS Independent contractors) should be made aware of this as part of the funding/contractual process. It is recommended that all new partnerships entered into should be covered by an appropriate service level information sharing protocol.

1.4 Objectives of the protocol

The objectives in relation to this information sharing protocol are to:

- Facilitate the lawful and appropriate sharing of information between all organisations and departments in an efficient and effective manner
- To encourage commitment by all agencies to work together to develop information sharing arrangements and working practices that will improve outcomes

- To reduce uncertainty as to the legal basis upon which information can be shared and help foster a shared understanding of legal and statutory duties
- To help organisations and professionals to understand when you need to get consent before sharing information and when you can share without consent or knowledge of the service user
- To develop consistency in information sharing
- To help organisations to develop clear service level protocols that set out the basis upon which they share information and of their respective responsibilities and duties

1.5 Information Sharing Principles

This section sets out the general principles governing the sharing of information as set out in the Rotherham Joint Confidentiality Agreement. They are:

Staff at the initial point of contact with a service user should: -

- Explain the purpose of information collection
- Explain that information may need to be shared between partner organisations
- Seek consent for sharing of such information

A service user's request that information is not shared must be respected unless: -

- Disclosure is in the public interest, including for the purpose of prevention or detection of crime, apprehension or prosecution of offenders
- Disclosure is to protect the vital interest of the service user
- Disclosure is enabled by legislation

All agencies should: -

- Facilitate the exchange of information wherever such exchange is lawful
- Ensure that collected data is complete, accurate and relevant to the care of the individual
- Disclose the minimum amount of relevant information on a strict need to know basis only
- Notify the data owner of information that is discovered to be inaccurate or inadequate for purpose
- Rectify inaccurate or inadequate data and notify all other recipients who should ensure the correction is made
- Ensure that shared information is physically secure, and password protected where held on electronic systems
- Ensure that, as part of their ongoing development, staff are made aware of their responsibilities and rights in respect of service user information
- Ensure that information is readily available to service users on their rights in respect of personal information held including complaints procedure

- Ensure that alleged breaches of confidentiality are investigated under their respective agencies complaints procedures, liaising with partner agencies where shared information or care is involved
- Work together to develop frameworks, procedures and protocols for the sharing of information and to facilitate partnership arrangements

1.6 Purposes for which information may be shared

“Whilst the law rightly seeks to preserve individuals’ privacy and confidentiality, it should not be used (and was never intended) as a barrier to appropriate information sharing between professionals. The safety and welfare of children is of paramount importance, and agencies may lawfully share confidential information about the child or the parent, without consent, if doing so is in the public interest. A public interest can arise in a wide range of circumstances, including the protection of a child from harm, and the promotion of child welfare. Even where the sharing of confidential medical information is considered inappropriate, it may be proportionate for a clinician to share the fact that they have concerns about a child.”

**The Protection of Children in England: A Progress Report
Lord Laming (March 2009)**

“The key factors in deciding whether or not to share confidential information are necessity and proportionality, ie 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 judgement.”

**Information sharing: Guidance for practitioners and managers
HM Government (2008)**

“The Director of Public Health will work closely with local partners and the new Police and Crime Commissioners to promote safer communities. And he/she will engage with wider civil society to enlist them in fostering health and wellbeing. In short the Director of Public Health will be the critical player in ensuring there are integrated health and well being services across the locality.”

Public Health in Local Government: The role of the Director of Public Health. Health and Social Care Act 2012

This protocol applies to the sharing of information between organisations for the following purposes:

- Improve the well being and life opportunities through educational, health and social care opportunities
- Protect peoples and communities
- Supporting people in need
- Crime reduction
- Violence reduction

- Preventing Health inequalities
- Provide seamless provision of children and young people's services
- Enabling service users to access universal and specialist services
- Enabling staff to meet statutory duties across organisations
- Prevention and detection of crime
- Data integrity and information quality improved
- Investigating complaints
- Managing and planning services
- Commissioning and contracting services
- Developing inter agency strategies
- Performance management and audit
- Research relating to clinical, educational or social care objectives

Information Sharing Protocols are not required before frontline practitioners can share information about a person. By itself, the lack of an Information Sharing Protocol must never be a reason for not sharing information that could help a practitioner deliver services to a person.

2 Parties to the protocol

The Rotherham Health and Wellbeing Board will own Rotherham Overarching Information Sharing Protocol on behalf of their respective organisations. Participating partners commit their organisation to following the approach to information sharing which is detailed within.

3 Statutory powers and duties relevant to information sharing

The legal basis that underpins this protocol to facilitate the lawful sharing of information Appendix A

The powers and duties identified, when taken together, create a framework for the sharing of information between different groups of professionals and agencies including the voluntary sector and professionals working across service area and local authority boundaries. Used pro-actively, they can facilitate the collection and sharing of information in many of the situations where people are most in need of help and targeted services. These situations are not limited to those where risks have materialised or where the client is at risk of imminent or serious harm. Indeed it is a responsibility to share information in order to prevent risk materialisation.

However, we must ensure that information is shared in a lawful way and that we do not infringe the right of the service user to privacy.

The issue of consent is fundamental to appropriate information sharing.

Even if there is no legal requirement to obtain consent before sharing information it is often good practice to do so. This might be done for example when it has been decided that a service should be offered to the client and their voluntary cooperation is needed. Consent will always be needed at the

stage where services are offered unless there are child protection concerns where there is a statutory duty to intervene.

In most cases telling the client, family, young person or their carers that information has been shared about them or seeking their consent will help build up a relationship of trust.

In some situations consent will be required to comply with the Data Protection Act 1998 to entitle you to use personal information. In other cases it will be a matter of professional judgement as to whether your primary aim of securing the best outcome for the young person is more likely to be achieved if you seek permission to share information or not.

But there are many situations where you can and must share information legally without obtaining the consent of the client, family, young person or their carers. For example where doing so would:

- Place a child at increased risk of significant harm
- Place an adult at increased risk of serious harm
- Prejudice the prevention, detection or prosecution of a serious crime
- Lead to unjustified delay in making enquiries about allegations of significant harm or serious harm.

All information sharing must be undertaken in a manner that is compatible with the requirements of the Freedom Of Information Act , the Data Protection Act, the common law duty of confidentiality and the Human Rights Act , and any other specific statute that authorises or restricts disclosure Service level protocols will be developed which will set out the specific procedures to be followed to ensure these requirements are met.

4 Implementation of the protocol

4.1 Development Process

This protocol has been developed by the Rotherham Metropolitan Borough Council's Information Governance Officer.

4.1.1 Formal approval of the protocol and associated responsibilities

Partner agencies, will be requested to approve and adopt the overarching protocol formally.

4.1.2 Dissemination

- 4.1.3 A number of copies of the protocol will be provided to all partner agencies for circulation to relevant staff.
- 4.1.4 Partner agencies will ensure copies of the protocol are available to members of the public through their Freedom of Information Publication Schemes.

4.1.5 Review

Reviews will be carried out every two years:

4.2 Reporting breaches

- 4.2.1 Breaches should be reported to following each organisations internal policy
- 4.2.2 If an organisation receives a complaint about an information disclosure from a service user this should be investigated in accordance with the organisation's complaints procedure. If any disciplinary action is felt to be necessary this will be an internal matter for the organisation concerned.

4.3 Adoption of the protocol

The parties to the Overarching Information Sharing Protocol agree that the procedures detailed in the document provide a secure framework for the sharing of information between their respective organisations in compliance with their professional responsibilities.

Agencies that are party to this protocol will undertake to:

- Implement procedures within their organisations to ensure confidentiality of service user related information is in line with the Joint Confidentiality Agreement
- Ensure that staff adhere to the procedures and structures set out in this protocol
- Implement and audit compliance with this protocol within their organisations
- Ensure that where these procedures are adopted, no restriction will be placed on the sharing of information other than those specified within this protocol
- Ensure that all service level protocols established between partner agencies are consistent with this protocol

5 Document Control

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| <u>2.1</u> | <u>Update to include Lord Laming references and include Safer Rotherham Partnership</u> | <u>To widen coverage of protocol to include Safer Rotherham</u> | <u>Gary Walsh</u> | <u>June 2009</u> |
| <u>3.0</u> | <u>Update to become more generic and include new Public Health Responsibilities</u> | <u>To widen coverage and include Public Health responsibilities as detailed with Health and Social Care Bill</u> | <u>Gary Walsh</u> | <u>Jan 2012</u> |
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Appendix A: Statutory powers and duties relevant to information sharing

The legal basis that underpins this protocol and the duties and powers to facilitate the lawful sharing of appropriate information between agencies are summarised below. Details of the key legislation and guidance affecting the sharing and disclosure of information are set out in HM Government national guidance, **Information Sharing: Further Guidance on Legal Issues**

The key pieces of legislation that allow information sharing to take place and determine the extent to which it can be shared are:

- The Children Act 1989 (sections 17, 27, 47)
- The Children Act 2004 (sections 10, 11)
- The Education Act 1996 (sections 13 and 434)
- The Education Act 2002 (section 175)
- Learning and Skills Act (sections 117 and 119)
- Education (SEN) Regulations 2001 (Regulation 6 and 18)
- Children (Leaving Care) Act 2000
- Protection of Children Act 1999
- Immigration and Asylum Act 1999 (section 20)
- Local Government Act 2000 (Part 1, section 2 and 3)
- Criminal Justice Act 2003 (section 325)
- National Health Service Act 1977 (section 2)
- The Health Act 1999 (section 27)
- The Adoption and Children Act 2002
- The Crime and Disorder Act 1998 (sections 17, 37, 39 and 115)
- Housing Act 1985 & 1988 (schedule 2, grounds 2 & 14)
- The Protection from Harassment Act 1997
- The Homelessness Act 2002
- The Civil Evidence Act 1995
- The Crime and Disorder Act 1998 (section 115)
- Common Law Powers of Disclosure
- The Rehabilitation of Offenders Act 1974
- The Human Rights Act 1998 (article 8)
- The Data Protection Act 1998 (sections 29(3) & 35(2))
- Housing Act 1996 (sections 135, 152 & 153)
- Mental Health Act 1983
- The Law of Confidentiality
- The Health and Social Care Act 2001/2008
- *The Health and Social Care Bill*
- Limitation Act 1980

A good deal of information can be shared within the existing legal framework. But there is considerable confusion among agencies and practitioners about this. Sometimes, fear of breaking the law means practitioners share less than they can - and not enough to ensure the service user's needs are properly met.

Appendix B: Statement on Information Sharing

Sharing personal information: How governance supports good practice Agreements and Protocols (Aug 2008)

This statement aims to summarise how information sharing governance can support good practice at the front-line and to clarify the role of information sharing protocols.

To provide effective and efficient services, agencies and practitioners need to share personal information, particularly when it would help prevent an individual's life or life chances being jeopardised. Practitioners recognise the importance of information sharing and there is much good practice. However, it appears that in some situations they feel constrained from sharing personal information by uncertainty about when they can do so lawfully. In addition, practitioners need to understand their organisation's position and commitment to information sharing and to have confidence in the continued support of their organisation where they have used their professional judgement and shared information professionally.

This statement will be relevant to information officers and implementation managers who are responsible for information sharing governance or protocols. It will also help to provide clarity to practitioners at the front line who have to make case-by-case decisions about sharing personal information and for the managers and advisors who provide support them in this decision making.

Information sharing governance frameworks

It is good practice to establish an information sharing governance framework to provide clarity to all staff of the organisation's position on information sharing. An information governance framework must always recognise the importance of professional judgement in information sharing at the front-line and should focus on how to improve practice in information sharing within and between agencies. These should be communicated to the frontline so that practitioners have confidence in their organisation's commitment and support for professional information sharing.

An information sharing governance framework would be expected to include:

- An **Information Sharing Code of Practice**, which outlines the principles and standards of expected conduct and practice of the organisation and staff within the organisation. The Code of Practice establishes the organisation's intentions, commitment and level of acceptability of practice of sharing information.
- **Information Sharing Procedures**, which describe the chronological steps and considerations required after a decision to share personal information has been made, e.g. the steps to be taken to ensure that information is shared securely. Information Sharing procedures set out, in detail, good practice in sharing personal information.
- **Privacy, confidentiality, consent (service users)** The organisation should have in place a range of processes and documentation for service users including 'Privacy/Confidentiality Statement', 'Fair Processing Notice', 'Consent', 'Subject Access'. Relevant staff within the organisation must understand these processes and be able to access documentation when required.

Applicability of Information Sharing Protocols (ISPs)

There has been some uncertainty about the applicability of ISPs to information sharing practices at the front line. This section aims to provide clarity on this issue.

An ISP is sometimes taken to mean a document that sets out principles and general procedures for sharing information. However there are also definitions and templates for ISPs that include detailed specification of what data fields will be shared, what the storage and archive principles are, etc. The latter type of ISP is designed to support bulk or regular sharing of information between IT systems or organisations.

Although neither type of ISP is required for information sharing at the front-line, the first is good practice and is covered in the definitions of Codes of Practice and Procedures above; the second is unsuitable for front-line practices. It is misunderstandings around what is involved in an ISP and a potential reliance on ISPs over professional judgement that we are seeking to address.

Where practitioners have to make decisions about sharing information on a case-by-case basis that are not clearly covered by statute, the decision to share or not share information must always be based on professional judgement. It should be taken in accordance with legal, ethical and professional obligations, supported by cross-Government information sharing guidance and informed by training and experience.

Information Sharing Protocols are not required before frontline practitioners can share information about a person. By itself, the lack of an Information Sharing Protocol must never be a reason for not sharing information that could help a practitioner deliver services to a person.

This approach is supported by the Information Commissioner's Office – see below:

"All organisations can accomplish information sharing lawfully by adhering to governing legislation and the principles of the Data Protection Act whether an Information Sharing Protocol is in place or not. An Information Sharing Protocol is a useful tool in some circumstances. It is not a legal requirement."

There are two distinct types of information sharing. Organisations may share large amounts of data with one or more partner organisations on a regular basis, or practitioners may share information with each other on an ad hoc basis as individual situations require.

An Information Sharing Protocol is a useful tool with which to manage large scale, regular information sharing. It creates a routine for what will be shared, when and with whom and provides a framework in which this regular sharing can take place with little or no intervention by practitioners.

It is not a useful tool for managing the ad hoc information sharing which all practitioners find necessary. Most importantly it is not intended to be a substitute for the professional judgement which an experienced practitioner will use in those cases and should not be used to replace that judgement." Information Commissioner's Office