

Sharing Information in Cases of Suspected Domestic Abuse

Why Do You Need To Know About Sharing Information In Cases of Domestic Abuse?

Practitioners who encounter domestic abuse victims, perpetrators and their families often need to assess whether and how to share personal information about clients with other professionals.

Lawful and responsible information sharing can be vital to help keep victims and their children (or other dependents) safe, to carry out risk assessment, to provide support and advocacy services and to help bring perpetrators to justice.

This guide explains when you can share information in relation to domestic abuse cases.

Legal framework and guidance for information sharing

If you have consent, you can share information. But what is consent?

The Data Protection Act 1998 defines consent as: a 'freely given specific and informed indication of his or her wishes by which the data subject signifies his or her agreement to personal data relating to him or her being processed'.

When obtaining consent to disclose personal information it should be made clear:

- Why the information is to be shared (the reasons, purpose and intended outcome);
- Which agencies or named practitioners the information will be shared with;
- What information is to be shared.

For the purposes of this guidance, it is assumed that no consent has been obtained from any individual (the victim, the victim's children and/or the alleged/suspected perpetrator) as to the sharing of their information.

In practice, consent should always be sought if possible and it is safe to do so, although the individual practitioner needs to take an independent decision on whether sharing information is necessary and permitted by law to address the safety of the individual or individuals.

If consent is not obtained, disclosures can still be made under the Data Protection Act (DPA), the Human Rights Act (HRA) and the Caldicott Guidelines. Decisions to disclose must:

- be reached on a case-by-case basis
- be based on a necessity to disclose
- ensure that only proportionate information is disclosed in light of the level of risk of harm to a named individual or a known household in each case
- be properly documented at the time a disclosure decision is made, identifying the reasons why the disclosures are being made (i.e. what risk is believed to exist), what information will be disclosed and what restrictions on use of the disclosed information will be placed on its recipients.

What are the key pieces of law and guidance governing domestic abuse disclosures (including at Multi Agency Risk Assessment Conference (MARAC) meetings)?

- Data Protection Act 1998 (the DPA)
- Human Rights Act 1998 (the HRA)
- Caldicott Guidelines: although as these are guidelines only, if there is any conflict between them and DPA and HRA, the legislation must take precedence)
- Common law duty of confidence
- The Crime and Disorder Act 1998

Data Protection Act - The prevention of crime exemption under Section 29 of the DPA can be used if disclosure is necessary to prevent a crime against a named individual or specified household. The risk of crime must be a genuine or likely risk.

Common law duty of confidence - An obligation of confidence will exist where the individual has provided the information to another in circumstances where it is reasonable to assume that the provider of the information expected it to be kept confidential. Where there is a clear duty of confidence the information can only be disclosed to “third parties” if there is informed consent, compulsion of law or public interest.

Human Rights Act - A disclosure will comply with the HRA if it:

(a) is made for the purposes of preventing crime, protecting the health and/or safety of alleged victims and/or the rights and freedoms of those who are victims of domestic violence and/or their children; and

(b) is necessary for the purposes referred to in (a) above and is no more extensive in scope than is necessary for those purposes; and

(c) complies with all relevant provisions of law, including the DPA and the Caldicott Guidelines.

The Crime and Disorder Act 1998 - Any person may disclose information to a relevant authority under Section 115 of the Crime and Disorder Act 1998, ‘where disclosure is necessary or expedient for the purposes of the Act (reduction and prevention of crime and disorder)’. ‘Relevant authorities’, broadly, are the police, local authorities, health authorities (clinical commissioning groups) and National Probation Service and Bristol/ Gloucestershire/ Wiltshire and Somerset (BGSW) Community Rehabilitation Company.

Caldicott Guidelines - Where an individual has not consented to the use of their information, that individual’s wishes should be respected unless there are exceptional circumstances. One such exceptional circumstance arises where there is a serious public health risk or risk of harm to the patient or other individuals, or for the prevention, detection or prosecution of serious crime.

The Seven Caldicott Principles are:

- Justify the purpose(s) of using confidential information
- Only use personal confidential data unless absolutely necessary
- Use the minimum necessary personal confidential data that is required
- Access should be on a strict need-to-know basis

- Everyone must understand his or her responsibilities
- Understand and comply with the law
- The duty to share information can be as important as the duty to protect patient confidentiality

Cases considered at MARAC meetings are likely to constitute exceptional circumstances as defined in the Caldicott Guidelines, because MARACs are a forum to discuss the most serious cases of alleged or suspected domestic abuse. However, each case must be considered individually, taking into account its specific circumstances. Practitioners should be aware that Caldicott Guidelines are not law and that the DPA, HRA and common law will always take precedence. If there is an apparent conflict between legislation and the common law, legislation takes precedence.

Seven Golden Rules For Information Sharing

1. **Remember that the Data Protection Act is not a barrier to sharing** information but provides a framework to ensure that personal information about living persons is shared appropriately.
2. **Be open and honest** with the person (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. **Seek advice** from other practitioners if you are in any doubt about sharing the information concerned, without disclosing the identity of the person where possible.
4. **Share with consent where appropriate** and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, that lack of consent can be overridden in the public interest. You will need to base your judgement on the facts of the case.
5. **Consider safety and well-being:** Base your information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.
6. **Necessary, proportionate, relevant, 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 people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.
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.

Taken from HM Government's publication, 'Information Sharing: Guidance for practitioners and managers'.



Useful information sharing guides

- [SafeLives: Information sharing without consent form](#)
- [SafeLives: Disclosure of Information During and After MARAC meetings: Frequently Asked Questions](#)
- [Gov.uk Information Sharing Guidance for practitioners and managers](#)



Other Domestic Abuse Information Sharing

Domestic Violence Disclosure Scheme

The Domestic Violence Disclosure Scheme (DVDS) commenced on 8 March 2014. The DVDS gives members of the public a formal mechanism to make enquires about an individual who they are in a relationship with, or who is in a relationship with someone they know, where there is a concern that the individual may be violent towards their partner. This scheme adds a further dimension to the information sharing about children where there are concerns that domestic violence and abuse is impacting on the care and welfare of the children in the family.

Members of the public can make an application for a disclosure, known as the '**right to ask**'. Anybody can make an enquiry, but information will only be given to someone at risk or a person in a position to safeguard the victim. The scheme is for anyone in an intimate relationship regardless of gender.

Partner agencies can also request disclosure is made of an offender's past history where it is believed someone is at risk of harm. This is known as '**right to know**'. If a potentially violent individual is identified as having convictions for violent offences, or information is held about their behaviour which reasonably leads the police and other agencies to believe they pose a risk of harm to their partner, a disclosure will be made.

To make a request please contact the Police on 101 or by visiting a Police Station.



For More Information On Somerset's Domestic Abuse Services, Information Briefings and Awareness Raising Materials please visit

[www.sometsurvivors.org.uk](http://www.somerset survivors.org.uk)