
**Information Sharing Arrangement
for
County Durham Children's Trust**

**(Information Sharing & Assessment
of Children & Young People)**

**INFORMATION SHARING
ARRANGEMENT**

Effective From : 28th January 2009

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1. PREAMBLE

This Information Sharing Arrangement is one of a hierarchy of documents which supports both the strategic approach to information sharing within County Durham, and the application of this approach in operational settings. The highest strategic level document is the County Durham, Tees Valley and North Yorkshire “Sharing Information Protocol”. The lowest, operational level, of documents, consists of guides to practitioners engaged in information sharing, such as the CAF Practitioner Guide.

This Arrangement forms part of the intermediate level of documents, alongside, for example, planned Data Flow Agreement documents. It is intended to formalise information sharing between partner agencies within County Durham.

2. THE ARRANGEMENT AND SAFEGUARDING

Safeguarding children and young people is everyone’s business and must be a key consideration for all partners of the Children’s Trust if we are to ensure all children and young people enjoy opportunities to achieve their full potential within the framework of the 5 Every Child Matters Outcomes :-

- Stay Safe
- Be Healthy
- Enjoy & Achieve
- Make a Positive Contribution
- Achieve Economic Wellbeing

Sharing Information is essential to enable early intervention for people who need additional services to achieve positive outcomes. It is vital for providing effective and efficient services that are coordinated around the needs of an individual or family and for safeguarding and protecting the welfare of individuals. The Children Act 2004 placed a clear duty on all agencies to make arrangements to safeguard and promote the welfare of children. Robust and effective Safeguarding practice requires effective joint working and good information sharing practice between all

agencies and professionals if children are to be protected from harm and their welfare promoted. All partners of the Children's Trust must be able to identify and act upon safeguarding and welfare concerns at the earliest opportunity. The Common Assessment Framework provides all workers with a framework through which needs can be assessed and information shared in order to meet needs in an integrated way which will enable the achievement of good outcomes for the individual child and their family. The purpose of this Information Sharing Arrangement is to ensure information is shared appropriately and in a timely manner to support children and young people with due regard for their safety and welfare.

In all cases, where there are concerns that a child is in danger of suffering significant harm, then action to protect the child must be taken immediately and in accordance with the immediately in line with the Durham Local Safeguarding Children Board's Child Protection Procedures which can be found on the following website: www.durham-lscb.gov.uk." Safeguarding referrals must be made to Social Care Direct (Telephone 0845 850 5010).

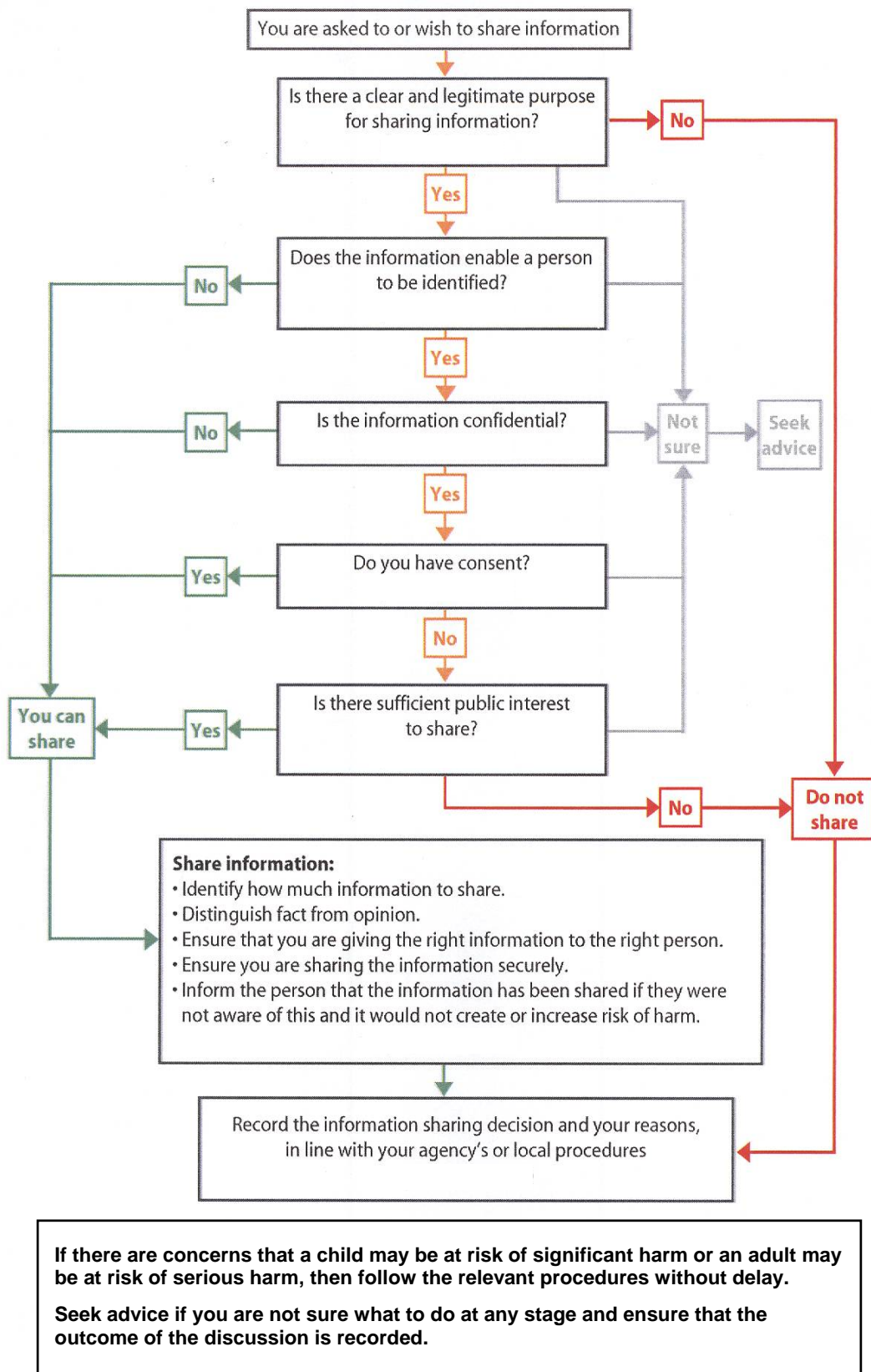
3. THE ARRANGEMENT AND GUIDANCE TO FRONT LINE PRACTITIONERS

In order to assist practitioners to conform to this arrangement, and in particular to meet their safeguarding responsibilities, the following guidance will be distributed across the Children's Workforce in County Durham in the form of a laminated A5 card:

Eight 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. If there are concerns that a child may be at risk of significant harm or an adult at risk of serious harm**, then it is your duty to follow the relevant procedures without delay. Seek advice if you are not sure what to do at any stage and ensure that the outcome of the discussion is recorded.
- 3. 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.
- 4. Seek advice** if you are in any doubt, without disclosing the identity of the person where possible.
- 5. Share with consent where appropriate** and, where possible, respect the wishes of those who do not consent to share confidential information. You should go ahead and share information without consent if, in your judgement, that lack of consent can be overridden in the public interest, or where a child is at risk of significant harm. You will need to base your judgement on the facts of the case.
- 6. 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.
- 7. 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.
- 8. 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.

Flowchart of key questions for information sharing



4. PARTIES TO THE ARRANGEMENT

THIS ARRANGEMENT IS MADE THE DAY OF 200...

BETWEEN:

Durham County Council (through its Children and Young People's Services portfolio, and Schools within the authority boundary, and including Adult and Community Services)

NHS County Durham

County Durham and Darlington NHS Foundation Trust

County Durham & Darlington Community Health Services

Tees Esk and Wear Valley NHS Trust

North East Strategic Health Authority

National Probation Service, County Durham

County Durham and Darlington Fire & Rescue Service

Durham Constabulary

Learning & Skills Council County Durham

County Durham Voluntary & Community Sector Community of Interest

(together known as the "**Partner Agencies**")

WHEREAS:

- (a) The Partner Agencies provide a range of services to children and their families within the County Durham areas and wish to improve the co-ordination and delivery of these services.
- (b) Each partner agency subscribes to the “Sharing Information Protocol” and will sign necessary Data Processing Agreements.
- (c) This Arrangement details the specific purposes for the sharing of appropriate information (electronic and document based) ,including the relevant legislative powers and duties for sharing information, the appropriate procedures required, what information is to be shared, consent processes involved, and the process for review.
- (d) It will indicate the degree of confidence that each party has in respect of their ability to fulfil the commitments outlined in the “Sharing Information Protocol”, what issues need to be addressed, who they are incumbent upon, the timeframe for completion and how they will be reviewed.
- (e) This Arrangement is binding on all parties and each organisation will work towards meeting the commitments made. It is a working document and therefore the contents will be reviewed and altered from time to time to reflect the changing circumstances. Such changes will be subject to the agreement of all parties

In consideration of the Partner Agencies involvement in ISA and their mutual exchange and disclosure of information on ContactPoint, CAF Processes , Team Around the Child (TAC) Processes , Network Directory and associated documentation IT IS HEREBY AGREED as follows:-

5. DEFINITIONS AND INTERPRETATION

Throughout this Arrangement, the following words and phrases shall have the following meanings:

"Authorised User"	Means <i>[an individual authorised by the Partner Agency to use the services offered by ISA.]</i>
"Caldicott Guardian"	Means <i>[a senior person within a Partner Agency who is responsible for protecting patient/client confidentiality as far as possible within that organisation]</i>
“ CAF”	Means <i>[the Common Assessment Framework processes and documentation as issued by the Department for Children, Schools and Families as adapted for use by the County Council and relevant partners]</i>
“ Children Act 2004”	Means <i>[the Children Act 2004 , in particular Sections 10, 11 and 12, and any associated Regulations issued in pursuance of the implementation of the Act]</i>
"Client"	Means <i>[a child or young person aged between 0-18 years normally resident within <u>and who is receiving a Service</u> from at least one of the Partner Agencies within the County Durham area]</i>
"Data Processor"	Has the meaning assigned to the term under Section 1, Part 1 of the DPA; For avoidance of doubt Durham County Council is regarded as the data processor for the purposes of this Arrangement where it processes information on behalf of other data controllers by written agreement.
" DPA"	Means the Data Protection Act 1998;
"ContactPoint"	Means <i>[the tool created under the Children Act 2004, containing Personal Information about Clients and managed by the Data Processor(s) on behalf of the Data Controllers]</i>
“ ISA”	Means <i>[the Information Sharing & Assessment , Common Assessment Framework (including e-CAF)</i>

and Service Directory processes and documentation in operation within County Durham]

"Partner Agencies"

Means [any party to this Protocol, individually known as a Partner Agency, and collectively known as the Partner Agencies to this Protocol. For the avoidance of doubt, a Partner Agency includes the functional divisions and services of the respective agencies, as represented in Schedule [A] attached to this Agreement];

"Personal Information"

Means [data as defined in the Data Protection Act and which relates to living individuals who can be identified from such data, and/or from other information which is in the possession of, or is likely to come into the possession of any Partner Agency as a result of ISA. This includes any expression of opinion about an individual and any indication of the intentions of any Partner Agency in respect of an individual. For the avoidance of doubt, Personal Information includes personally identifiable information held electronically or on associated documents about Clients, their representatives, Partner Agencies and their employees]

"Process/Processed/Processing"

Means [in relation to the Personal Information, obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including; organisation, adaptation or alteration of the information or data, retrieval, consultation or use of the information or data, disclosure or sharing of the information or data by transmission, dissemination or otherwise making available, or combination, blocking, erasure or destruction of the information or data]

" Service Directory"

Means [the Directory or Directories of services for children and young people provided by the partner agencies within County Durham or other relevant

providers]

"Services"

Means *[health, education, Youth Engagement Service and other social services, community and school based services as represented in Schedule A]*

" Specialist Assessments "

Means *[the processes and documentation utilised by partner agencies to assess a specific individual need for a child or young person e.g. APIR assessment within Connexions, Onset assessment within the Youth Engagement Service]*

" TAC (Team Around The Child) "

Means *[the meeting of relevant practitioners, child/young person and their parent/carer to review the assessed needs of the child or young person and to formulate and agree a plan of action to deliver services to meet those assessed needs]*

"The Protocol"

Means *[the overarching County Durham, Tees Valley and North Yorkshire Sharing Information Protocol]*

5.1 All references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends consolidates or replaces the same and shall include any orders, regulations codes of practice, instruments or other subordinate legislation made thereunder and any conditions attached thereto.

5.2 Schedule[s] are an integral part of this Arrangement and shall be interpreted accordingly.

In the event and to the extent only of any conflict between the Clauses and the Schedules, the Clauses shall prevail over the Schedules.

Words importing the singular only shall include the plural and vice versa.

The words "in writing" shall be interpreted to include any document which is recorded in manuscript, typescript, any electronic communication as defined in Section 15 of the Electronic Communications Act 2000 but excluding mobile telephone text messages. Where an oral communication is subsequently but at the earliest available opportunity confirmed in writing then this shall be treated as having been made in writing at the time that the oral communication was made.

6. SCOPE OF ISA

- 6.1 Information Sharing & Assessment (ISA) aims at improving the way all agencies, working with children & young people, share information and work together to better meet the needs of these people.

- 6.2 The Partner Agencies acknowledge that the scope of ISA extends only to providing a facility for the Partner Agencies to:
 - 6.2.1 Share Information, based upon the requirements of the Children Act (2004) and the CAF Processes, relating to Clients, and those Partner Agencies who are providing Services to the same Client; and to improve the exchange and use of data, including electronically between key agencies within the County Durham area, who provide services for children and their families;

 - 6.2.2 Improve the co-ordination and delivery of services for children and their families, particularly those suffering from social disadvantage, or at risk of developing needs, and using the improved data sharing system to help facilitate this process.

 - 6.2.3 Make further arrangements to meet and/or discuss, as between Partner Agencies how best to address concerns about mutual Clients and/or co-ordinate integrated and effective methods of providing the necessary services to mutual Clients.

- 6.2.4 Provide a means by which agencies outside the County Durham area can also be involved in the sharing of information provided that necessary safeguards are established .
- 6.3 The Partner Agencies acknowledge that disclosure of any Personal Information about Clients, between the Partner Agencies, which is outside of the activities listed in Clause 4.2 above, including the sharing of information relating to Clients' medical, education, social services and youth offending service records and/or social circumstances, can only be shared with the informed consent of the client or someone with parental responsibility for that client or through a statutory right/duty to do so which overrides the need for consent.
- 6.4 The Partner Agencies acknowledge that they are individually responsible for any sharing of Personal Information which they undertake, for whatever reason, beyond the scope of the ISA, and they undertake to ensure that any such activity is:
- 6.4.1 not represented as being part of the ISA; and
- 6.4.2 within the scope of their lawful, statutory and/or regulatory authority.

7. PARTICIPATION IN ISA

- 7.1 The Partner Agencies warrant to each other that:
- 7.1.1 they are lawfully entitled to enter into this Arrangement on behalf of the various *functional divisions* within their respective authorities. For the avoidance of doubt, a list of those *functional divisions* which will be taking part in ISA and on whose behalf the respective agencies are entering into this Agreement, are set out in [*Schedule A to this Agreement*];

7.1.2 they will comply with the Protocol in relation to all Personal Information which they Process as part of ContactPoint, CAF, TAC and the Network Directory and accordingly have signed the Protocol

7.1.3 they will only use the Personal Information made available to them on the ContactPoint , CAF, and the Service Directory for the purpose of improving the co-ordination and delivery of Services to Clients, particularly those suffering from social disadvantage or at risk of developing complex needs;

7.1.4 they will ensure, so far as is reasonably practicable, that they have considered the statutory, regulatory and legal implications of any disclosures made by them in relation to sharing information (including placing Personal Information on ContactPoint prior to sharing that Information.) The legal issues which each Partner Agency will need to consider in relation to the sharing of Personal Information on ContactPoint are set out at Schedule C to this Arrangement. Each Partner Agency must satisfy itself of its ability to comply with these obligations in relation to disclosures made within the scope of the ISA.

8 STATUS OF PARTNER AGENCIES UNDER THE DATA PROTECTION ACT IN RELATION TO CONTACTPOINT, CAF AND THE SERVICE DIRECTORY

8.1 For the purpose of ISA, the Partner Agencies acknowledge that they will be acting as '**data controllers**' under the DPA because they will, (either alone or jointly, or in common with other persons and/or Partner Agencies) determine the purposes for which and the manner in which any Personal Information is processed in relation to ContactPoint, CAF, TAC and Network Directory. The Partner Agencies acknowledge that they may share in the Processing of Personal Information on ContactPoint, CAF, TAC and Network Directory either together and/or independently of each other.

8.2 All Partner Agencies will therefore be responsible for the processing of Personal Information on ContactPoint, CAF, TAC and Network Directory in their respective

capacities as **data controllers** under the DPA.

8.3 All Partner Agencies are required to comply with their obligations under the DPA as data controllers in relation to the data they supply to the ContactPoint, CAF, TAC and Network Directory. These obligations include the requirement to comply with the eight Data Protection Principles contained in the DPA. (See Legal Checklist at Schedule C). All Participating Agencies must consider and comply with the eight Data Protection Principles in their Processing of Personal Information forming part of the ISA.

8.4 The Data processor will process all Personal Information supplied to it in order to provide an administrative and gatekeeper service in relation to ContactPoint, CAF, TAC and Network Directory, for the Partner Agencies. Accordingly, the Data Processor will:

8.4.1 only use Personal Information disclosed to it for the purpose of operating, managing and administering ContactPoint, CAF, TAC and Network Directory for the purpose of achieving the objectives of ISA;

8.4.2 provide and maintain appropriate technical and operational security measures in relation to the Personal Information processed in relation to ContactPoint, CAF, TAC and Network Directory

8.4.3 ensure that appropriate technical and organisational security measures are established and maintained

8.5 The Partner Agencies agree that no Partner Agency shall be entitled to allow a person who is not an Authorised User of ContactPoint, CAF, TAC and Network Directory (whether an employee, independent service provider, contractor, consultant or otherwise) to have access to ContactPoint, CAF, TAC and Network Directory & Personal Information contained thereon .

9 INFORMATION PROCESSING OBLIGATIONS

9.1 In Processing Personal Information as part of the ISA, CAF, TAC and the Network Directory and in accessing these each Partner Agency agrees to:

- 9.1.1 process personal Information made available to them in accordance with this Arrangement and the Protocol;
- 9.1.2 allocate sufficient resources (including finance and staff) in order to fulfil its obligations and duties under the Protocol, particularly security and training obligations;
- 9.1.3 comply with the technical and operational security provisions identified in the Protocol when accessing ContactPoint, CAF, TAC, the Network Directory and further Processing the Personal Information contained thereon;
- 9.1.4 treat as confidential, for the Term of the Arrangement and thereafter, all Personal Information about Clients which they have accessed on ContactPoint, CAF, TAC and Network Directory and/or which is provided to them during the Term of the Arrangement;
- 9.1.5 use all reasonable endeavours to ensure that only Authorised Users are nominated for access to ContactPoint, CAF, TAC and Network Directory and that any such access is subject to security and confidentiality obligations identified in the Protocol and confined to what is reasonably necessary for the Partner Agencies to perform their respective obligations under this Arrangement and the Protocol;
- 9.1.6 ensure that their staff, and in particular, those members of their staff who qualify as Authorised Users, are aware of and agree to abide by this Arrangement and the Protocol, and in particular, the security obligations contained therein, in relation to any access which they are granted on behalf of their Partner Agency;

- 9.1.7 not disclose, transfer or disseminate Personal Information obtained by them under ISA and /or from the ContactPoint, CAF, TAC and Network Directory to third parties, except as authorised and/or envisaged by this Arrangement and/or the Protocol;
 - 9.1.8 use all reasonable efforts to ensure the rights of Clients, including their Data Protection rights, Human Rights and confidentiality rights, are respected in relation to any Personal Information Processed about them as part of ISA;
 - 9.1.9 arrange for the timely deletion of information in accordance with partner agency retention policies and legislative requirements;
 - 9.1.10 appoint a suitably qualified person as their Caldicott Guardian to supervise their participation in the ISA & all disclosures of Personal Information in relation to ContactPoint, CAF, TAC and Network Directory;
 - 9.1.11 comply with any procedures and/or requirements specified by the Department of Children Schools and Families, Department of Health , Department of Work & Pensions and / or the Team for the Processing of Unique Identifier Numbers.
- 9.2 No Partner Agency is permitted to further Process any other's Personal Information about Clients and/or to access any other sections, files or parts of each other's computer systems and/or ISA under this Arrangement and/or the Protocol.
- 9.3 The Partner Agencies agree to use all reasonable efforts to assist the ISA Team in their administration of ContactPoint, CAF, TAC and Network Directory.
- 9.4 Children and young people and, where appropriate, their parents/guardians, will have the right to access the personal information held on them and to challenge its accuracy.

10 TERMINATION

10.1 This Arrangement shall continue until terminated by mutual agreement.

10.2 On termination of this Arrangement, the Partner Agencies agree that they shall be entitled to retain all information which they have obtained from each other during the Term of the ISA work provided they reasonably require such information to continue to fulfil their legal and/or contractual obligations with each other, the Clients and/or third parties following the termination of this Arrangement.

10.3 The Partner Agencies agree to use all good faith efforts, prior to and following termination, to return and/or provide copies of any information to the Partner Agency which initially provided or disclosed the information, where that party may reasonably request and/or require such information, to fulfil its legal and/or contractual obligations with each other and/or third parties.

10.4 The Partner Agencies agree, where appropriate, to return to owners all information and material relating to ISA (including all software and hardware used to operate ContactPoint, CAF, TAC and Network Directory) which was provided to the Partner Agencies for the purpose of conducting ISA, CAF, TAC and Network Directory.

10.5 No Partner Agency shall retain any Personal Information, which was provided by or accessed from ContactPoint, CAF, TAC and Network Directory during the course of ISA, where such Personal Information is no longer required by that party to comply with their obligations with each other, the Clients and/or third parties following termination. Such Information shall accordingly be returned to the Partner Agency which initially disclosed the Personal Information or destroyed within two months following termination.

11. LEGAL CONTEXT

11.1 MEDIATION/RESOLUTION OF DISPUTES

If any significant dispute or difference shall arise between the parties as to the construction of this Contract or any matter arising under it or in connection with it then the same shall be dealt with as follows:-

Stage 1 - day to day issues will be dealt with by the Council's Information Governance Officer and the Data Controller's appointed representative who shall be notified to the Council; both parties will act in good faith and use their best endeavours to resolve any dispute at this stage. If it has not been possible to resolve the dispute Stage 2 will be invoked by way of a written notice served on one Party by the other.

Stage 2 - If the dispute cannot be resolved as above then the matter shall be referred to the Council's Chief Executive and equivalent or such other person whom the Data Controller may nominate to the Council for this purpose; once again both parties will act in good faith and use their best endeavours to resolve any dispute at this stage. If the dispute cannot be resolved as in Stage (1) or (2) above then either Party may invoke:

Stage 3 - Either party may refer the matter to the Centre for Dispute Resolution 7 St Katherine's Way London E1 9LB ("CEDR") And the parties shall attempt to settle such dispute in accordance with "CEDR" Model Mediation Procedures and Agreement;

Neither party may commence any court proceedings in relation to any dispute arising out of this Agreement until they have attempted to settle by mediation and that mediation has terminated;

Stage 4 – if the dispute is not settled by the parties within 42 days from when the mediation was instituted by a notice from either party to the other then the parties reserve the right to take whatever action is deemed appropriate including the instigation of legal proceedings.

None of these mediation clauses will apply where either Party considers that there has been a fundamental breach of contract by the other and in such

circumstances the Parties reserves the right to terminate the contract with immediate effect.

11.2 UNLAWFUL CONDUCT

No Partner Agency to this Arrangement shall be required to act in a manner which would result in that Partner Agency contravening any applicable law, regulation or duty owed to a professional body to which that Partner Agency is a member at the relevant time. To the extent that the terms of this Arrangement and/or the Protocol oblige a Partner Agency to act or omit to act in such a manner that Partner Agency shall be relieved of liability for failing to so act or omit to act. In circumstances where a Partner Agency seeks to take advantage of this Clause, it will notify all other Partner Agencies and they shall meet as soon as reasonably practicable to consider in all good faith how this Arrangement and/or the Protocol ought to be varied to avoid contravention of applicable laws, regulations and/or professional duties.

11.3 RELEASE

This Agreement may not be released, discharged or varied in any manner except by agreement in writing signed by a duly authorised officer of each Partner Agency.

11.4 NO AGENCY

Nothing in this Arrangement shall be construed as establishing or implying a partnership or between the parties or shall be deemed to constitute any Partner Agency as the agent of the other or allow any Partner Agency to hold itself out as acting on behalf of the other.

11.5 ILLEGALITY

While the Parties consider the restrictions contained in this Arrangement to be fair and reasonable having regard to the circumstances known to and in the

contemplation of the parties at the date of this Arrangement in all circumstances it is recognised that certain of the restrictions and exclusions may become unfair and unreasonable due to unforeseen circumstances and accordingly it is agreed that, if any such restrictions and exclusions shall be judged to be void but would be valid if part of the wording thereof were varied or deleted, the said restriction or exclusion shall apply with such variation or deletion as may be necessary to make it valid and effective.

11.6 INVALIDITY

Any provision of this Arrangement which is held to be invalid or unenforceable under English law shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

12 ENTIRE AGREEMENT

12.1 This Arrangement constitutes and reflects both Partner Agencies' understanding of the access arrangements and/or further processing of each other's Personal Information as part of ISA and their use of ContactPoint, CAF, TAC and Network Directory. The Arrangement supersedes all previous understandings and negotiations in respect of the Parties' obligations as provided in this Arrangement

12.2 Any variations or amendments to this Arrangement must be in writing and agreed by the Partner Agencies . Evidence of such amendments shall be reflected by the signature of such amendments by authorised officers of each Partner Agency .

13 SIGNATORIES

Information Sharing & Assessment

I, the undersigned, on behalf of the organisation named below, agree to support the implementation and operation of this Arrangement in accordance with the conditions detailed in this document, including the resolution of any action points arising.

I also understand that my organisation may share relevant information with other Partner Organisations whom are signatories to the Information Sharing Arrangement within the legislative framework.

I declare that we have given notification to the Office of the Information Commissioner and that the said notification is up to date and states our current use and storage of data

My organisation's Data Protection Registration Number is _____

Name : _____

Position : _____

Organisation: _____

Address _____

Post Code : _____

Signature : _____

Date : _____

Designated Liaison Officer

The person named below is the nominated contact for this organisation in respect of any enquiries relating to this Arrangement. These details will be shared with all Partner Organisations who are signatories to this Arrangement.

Name : _____

Position : _____

Address ;

Post Code : _____

Tel No : _____

Fax No. : _____

Email ; _____

SCHEDULE "A"

OTHER DATA CONTROLLERS

For those employees within the following organisations who have a direct involvement with a particular child.

Durham County Council (through its Children and Young People's Services portfolio, and Schools within the authority boundary, and including Adult and Community Services)

NHS County Durham

County Durham and Darlington NHS Foundation Trust

County Durham & Darlington Community Health Services

Tees Esk and Wear Valleys NHS Trust

North East Strategic Health Authority

National Probation Service, County Durham

County Durham and Darlington Fire & Rescue Service

Durham Constabulary

Learning & Skills Council County Durham

County Durham Voluntary & Community Sector Community of Interest

SCHEDULE [B]

*List of Datasets, Source Systems and Documents to be utilised for the purposes of
Information Sharing under this Arrangement*

1. ContactPoint

Demographic Data

Given Name of Child/Young Person

Other Names of Child/Young Person

Family Name of Child/Young Person

Address of Normal Residence

Post Code

Other Relevant Addresses

Other Post Codes

Date of Birth

Date of Death (if relevant)

Gender

Client Unique Identifier

Parent / Carer (& contact details)

Place of Education (& contact details)

General Practitioner (& contact details)

Feeder System Identifier (s)

Agreement to Share Data

Agency /Practitioner Data –

Agency Name (s)

Address of agency

Indicator that a Practitioner has information to share

Contact Details for above

Contact Details for Involved Lead Professional

CAF Information Status/Assessments

Indicator that a Common Assessment has been initiated or carried out

The consent of the child, where appropriate, or someone with parental responsibility is required before contact details for mental health services, sexual health services or substance use services are recorded on ContactPoint.

2. Common Assessment Framework (CAF) and Team Around Child (TAC) Processes

CAF Documents Completed

Specialist Assessments Completed

TAC Plans

Names of Practitioners who are authorised to view the above

3. Service Directory

To be defined

4. Source IT Systems

<i>System Name</i>	<i>Data Controller</i>
CMIS /SIMS	School Heads
Connexions	
Capita/ONE System	Head of ITSS
ICS / SSID	Safeguarding and Specialist Services

Others to be added as the ISA Programme developed

Schedule "C"

INFORMATION SHARING CHECKLIST

CHECKLIST TO ESTABLISH THE LEGALITY OF INFORMATION SHARING

1.
 - a) Is there a statutory basis (express or implied) for obtaining/ sharing the information or a Court Order requiring it? (see (i))
 - b) If so, are there any limits on what I can do with the information under the Statute or Order?



2.
 - a) It is likely to be personal or sensitive personal information to which the Data Protection Act applies.
 - b) You will need to have complied with a condition of Schedule 2 (personal information) and Schedule 3 (sensitive personal information) so as to permit the obtaining/sharing. (see (ii))



3.
 - a) Why do I/they want the information?
 - b) Can I/they show a sufficient "need to know?"



4.
 - a) Generally consent should be sought before the information is shared. If consent can be obtained it will overcome many of the obstacles to disclosure.
 - b)
 - (1) If you decide to seek consent is it clear, unconditional and, where necessary, explicit?
 - (2) If consent cannot realistically be obtained is there another justification for disclosure without consent?
 - (3) If a duty of confidence arises and you do not have any consent to share the information you need to weigh the harm that would result from the breach of confidence against the harm from a failure to disclose, i.e. is there an "overriding public interest" to disclose? (see (iii))



5.
 - a) You need to be able to demonstrate that you have considered Article 8 of the European Convention of Human Rights, i.e. the right to respect to a private and family life. You recorded reasons for sharing the information should make reference to this (see (iv)).
 - b) Is the disclosure
 - (1) in accordance with a statutory or other power authorising disclosure?
 - (2) necessary for the prevention of crime/disorder or for the protection of
 - (i) health or morals, or
 - (ii) the rights and freedom of others
 - (3) proportionate i.e. only to the extent necessary to achieve the particular pressing purpose.



6

- a) Will there be a further disclosure to a “third party”? Consider all of the questions in this checklist and see (v).



7.

- a) Do you intend to share information about an (alleged) abuser (as opposed to a specific child or vulnerable adult)? Consider all of the questions in this checklist and see (vi).
Do you “honestly and reasonably” believe there is “pressing need” to share information so as to protect another individual? Consider the following:
- (1) How strong is your belief in the truth of the particular allegation?
 - (2) What is the interest of the third party in receiving the information?
 - (3) What is the degree of risk posed by the individual if disclosure is not made?
- b)
- (1) The greater the conviction that the allegation is true the more compelling the need for disclosure.
 - (2) The greater the legitimacy of the interest of the third party is having the information the more important the need to disclose.



8.

- a) Consider consulting (rather than seeking consent from) the individual about any proposed disclosure.
- b) This should generally be done unless it would increase the risks of harm. Often it will be appropriate to inform the individual of a proposed disclosure in sufficient time to enable that person to seek an injunction.



9.

- a) Are you satisfied that the practical systems are sufficiently secure and controlled to ensure that the information will only be seen by those who need to know. (see (vii))
- b) Disclosure must be to the correct person i.e. the person who can avoid/ prevent the risks. They must know what to do with it and understand its confidential and sensitive nature.



10.

- a) Ensure that only that information which is necessary to prevent harm is disclosed. It will rarely be all the information available.
- b) Consider asking the potential recipient whether they already have any relevant information. If they do disclosure may not be necessary.

(i) Lawful authority requirement (vires)

The first step for a public body seeking to collect, use or share data will be to identify a statutory duty or power enabling it to act. This may be from express or implied statutory powers. As far as children are concerned the express statutory provisions of direct relevance are as follows:

Children Act

Section 17: it shall be the general duty of every Local Authority to safeguard and promote the welfare of children within their area who are in need.

Part 1 of Schedule 2 - Local Authorities must take reasonable steps to:

- identify the extent to which there are children in need in their area
- to prevent children within their area from suffering ill-treatment or neglect

The CYPU guidance states: "In order to fulfil their general duties under s.17, Local Authorities must be able to collect and analyse relevant information in order to establish how many children in need there are within their area and the nature of the needs for which they must provide appropriate services." Although it should be noted that s.17 is only concerned with children in need the DoH's "Working Together" Guidance notes that "the definition of a "child in need" is wide and will embrace children in a diverse range of circumstances."

Section 27: Local Authorities can seek assistance from others such as Housing, Health and Education if it believes it would assist it to perform its functions under Part III of the Children Act. Those consulted must provide help by responding to the request unless to do so would be "incompatible with its own duties or would unduly prejudice the discharge of its own functions."

Section 47: Where a Local Authority has reasonable cause to suspect that a child [in its area] is suffering, or is likely to suffer significant harm, it shall make such enquiries as it considers necessary to enable it to decide whether it should take any action to safeguard or promote the child's welfare.

As with s.27, Housing, Health, PCTs and NHS Trusts have a duty to assist the Local Authority with its enquiries under s.47 unless to do so would be "unreasonable in all the circumstances."

The DoH's Framework for the Assessment of Children in Need states: "Where there are concerns that a child may be suffering or is likely to be suffering significant harm, it is essential that professionals and other people share information for it is often only when information from a number of sources has been shared and is then put together that it becomes clear that a child is at risk or is suffering significant harm. Unless to do so would place the child at increased risk of significant harm the nature of the child protection concerns should be explained to family members and their consent to contact other agencies sought."

The CYPU guidance states: "A positive duty is imposed upon Local Authorities to safeguard and promote the welfare of children in need in their area and to make enquiries if they suspect that a child is suffering or likely to suffer significant harm....These duties can only be fulfilled if there is an open culture and willingness to share relevant, or potentially relevant information..... Provided you have some reasonable cause to suspect that the child may be suffering or likely to suffer significant harm you are entitled to make all the enquiries you consider necessary to establish whether your suspicions are well-founded.

Local Government Act 1972

Section 111(1) - provides that a Local Authority "shall have power to do anything... which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their statutory functions".

Local Government Act 2000

Section 2(1) - empowers Local Authorities, amongst other things, to do anything which they consider is likely to promote or improve the social well-being of their area, provided it is not prohibited by other legislation.

ODPM guidance encourages Councils to regard s.2 as a power of “first resort” and to use it in appropriate situations rather than searching for a specific power elsewhere.

The CYPU guidance states: “S2 provides a very wide basis for the sharing of information wherever that information is required to enable the Local Authority to fulfil its functions which promote the well-being of people (including a sub-group such as children) within its area.... The reduction or elimination of risk factors for children will promote their well-being.

The Department of Constitutional Affairs advises: “Section 2 is of particular relevance as it is designed to ensure that service delivery is co-ordinated in ways which minimise duplication and maximise effectiveness. Section 2 would permit many types of data sharing partnership between Local Authorities and other where the proposed data sharing will achieve one of the objects set out in section 2(1) and where there is no statutory prohibition (express or, in very rare cases, implied) restricting the data sharing proposed. Section 2(5) makes it clear that a Local Authority may do anything for the benefit of a person outside their area if it achieves one of the objects of section 2(1).

Education Act 1996

Section 13: “A LEA shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary and secondary education are available to meet the needs of the population of their area.”

The CYPU guidance states: “Details of the number of children in the Local Authority’s area and an analysis of their needs would be required in order to fulfil this duty... Provided the information sought is genuinely needed to enable the Local Authority to carry out its general functions under s.13, this section provides a useful basis for seeking information on a broad range of issues that will, or are likely to affect a child’s development.”

Crime and Disorder Act 1998

Section 115: authorises (but does not require) relevant Authorities (such as Local Authorities, Health and Police) to disclose information where it is “necessary or expedient” for the purposes of any provision of the Act i.e. the prevention and reduction of crime and the identification and apprehension of offenders or suspected offenders.

S.115 overrides the common law duty of confidence and whilst there is no need to obtain consent from the person to whom the information relates prior to its disclosure, certain general principles still apply i.e. information should only be disclosed on a need to know basis and the minimum amount of information necessary to fulfil the statutory duty should be provided.

Non-Statutory Bodies

The CYPU guidance suggests that the legislative provisions listed above can be exercised by non-statutory bodies such as voluntary agencies which are assisting statutory undertakings to fulfil statutory functions.

Implied Statutory Powers

The Department of Constitutional Affairs gives the following guidance:

Where there is no express statutory power to share data it may still be possible to imply such a power.

Many activities of statutory bodies will be carried out pursuant to implied statutory powers particularly as it might be difficult to expressly define all the numerous activities that a public body may carry out in connection with its day to day operations. This is particularly in relation to activities such as data collection and sharing which are not of themselves usually express statutory functions. In order to imply a power to share data, one must first of all be satisfied that the body in question has the vires to carry out the basic function, to which the sharing of data is ancillary. Without the power to do the activity there can be no implicit power to share data.

It is clear that government departments that are created by statute do have implied powers to share data where there is no express statutory power to do so. There are a number of authorities that support this in the context of disclosing confidential information prevent wrongdoing. For example, in *R v Chief Constable of the North Wales Police, ex parte AB* [1998] 3 ALL ER 310 the extent of data sharing power was considered in relation to the disclosure of information about paedophiles to individuals living in an area that put them at risk. Here it was accepted that the police has the power (either implied statutory or common law) to disclose information for the purposes of performing their public duties. A similar conclusion was reached in the case of *Woolgar v Chief Constable of Sussex Police* [2000] 1 WLR 25 where it was accepted that the police had the power to disclose information to a regulatory body for the purposes of an inquiry as this was in the public interest. Here, there was clearly a strong public interest for making the disclosure in question.

In *Maddox v Devon Council* the Council had disclosed information extracted from its files to a university at which Mrs Maddox had obtained a place to study to become a social worker. She argued the information gave an unfair and misleading impression of her in relation to her parenting skills and her fitness to be a social worker.

The council accepted that there was an obligation of confidentiality in respect of the files, but argued that the disclosure of the information was necessary in the public interest. In particular, the council was concerned that her fitness to be a social worker given that social services had been involved in the upbringing of her son (S) almost since his birth. S had exhibited considerable signs of disturbance during his childhood and she had refused to accept any responsibility for his difficulties. His name was eventually placed on the child protection register on the basis of emotional abuse.

The Court held that the council's disclosure was not a disproportionate reaction to the perceived problem. It was proper for the council to draw the university's attention to its concerns so that the university could make its own decision. It was a matter of public interest that unsuitable persons should not become social workers.

The primary obligation lay on the council to decide whether or not to make the disclosure and there was no requirement for it to obtain a ruling from the court before doing so. In general, as a matter of good practice, before making a disclosure in a case such as the present, a party in the council's position should inform the subject of the disclosure of that intention in enough time to enable that person to seek an injunction from the courts.

(ii) Data Protection Act 1998

The Data Protection Act applies to personal data which is widely defined as data whether stored electronically or in a relevant (manual) filing system, which relates to a living individual who can be identified from those data. It includes manual records held in a "relevant filing system i.e. a filing system structured so that the information relating to a specific individual can be readily accessed. It includes any expression of opinion about the individual and any indication of the intentions of any person in respect of the individual.

It applies to anything at all done to personal data ("processing"), including collection, use, disclosure, destruction and merely holding data. Even disclosing personal data from one part of an organisation to another will amount to processing.

Organisations processing personal data ("controllers") must comply with the data protection principles. The key principles for the purposes of this guidance are that data must be:

- fairly and lawfully processed (1st):- this requires, amongst other things, that there must be a statutory power enabling the processing and that the person from whom the data is obtained must not be deceived or misled as to the purposes for which the data is to be processed. You cannot use information obtained for one purpose for another “incompatible” purpose. It is a particular requirement that the conditions of Schedules 2 and 3 (see below) are met.
- processed only for specified, lawful and compatible purposes (2nd)
- adequate, relevant and not excessive (3rd)
- accurate and where necessary, kept up to date (4th)
- kept for no longer than necessary (5th)
- kept secure (6th)

“Personal Data”

Sharing of personal data is legitimate (Schedule 2, Data Protection Act 1998) if at least one of the following applies:

- (1) with the data subject’s consent, which may be implied.
- (2) for compliance with any legal obligation (other than contractual).
- (3) to protect the vital interests of the data subject.
- (4) where processing is necessary: for the administration of justice or the exercise of any powers conferred on any person by or under enactment. This will cover data processing carried out pursuant to express statutory powers or reasonably required or ancillary to the exercise of express or implied statutory powers.
- (5) for the legitimate interests of the data controller unless outweighed by the interests of the data subject.

Sensitive Personal Data

“Sensitive personal data” includes information regarding a person’s physical or mental health, sexual life, racial or ethnic origin, political/religious/other opinions and beliefs, trade union membership and commission or alleged commission of offences. The sharing of sensitive personal data is legitimate (Schedule 3, Data Protection Act 1998) if at least one of the following also applies:

- (1) with the explicit consent of the data subject.
- (2) necessary,
 - (a) in order to protect the vital interests of the data subject or another person, in a case where -
 - (i) consent cannot be given by or on behalf of the data subject, or
 - (ii) it cannot reasonably be expected to obtain the consent of the data subject, or
 - (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.
- (3) necessary for administration of justice or in the exercise of functions conferred by an enactment.

(N.B. The Information Commissioner has advised that “vital interests” should be equated with life or death situations).

Exemptions

There are a number of important exemptions contained in the DPA that may be relevant in the context of public sector data sharing, although as a matter of good practice public bodies wishing to share data should seek to do so in accordance with the data protection principles where possible, even if an exemption is available.

Certain exemptions apply to “non-disclosure provisions” which are defined in section 27(3) and (4) as including:

- (a) the first data protection principle, except to the extent to which it requires compliance with the conditions in Schedules 2 and 3, and
- (b) the second, third, fourth and fifth data protection principles, (see above), to the extent to which they are inconsistent with the disclosure in question”.

This is an important caveat, as if in any particular case compliance with (for example) the fairness requirement in the first data protection principle is not inconsistent with the disclosure in question, there will be no exemption from that requirement.

Section 29 of the DPA exempts from certain provisions of the Act personal data processed for (i) the prevention or detection of crime; (ii) the apprehension or prosecution of offenders; but only where the application of those provisions would be “likely to prejudice” any of these purposes. This exemption applies to, among other things, the First Data Protection Principle (except to the extent to which it requires a compliance with Schedules 2 and 3) and the non-disclosure provisions. Accordingly, this exemption would cover disclosure of personal information for the specified purposes provided that a Schedule 2 or Schedule 3 condition is also met. Public bodies may benefit from this exemption particularly those for whom the investigation of crime or the prosecution of offenders is their primary purpose. It should be noted that the “likely to prejudice” test is not a light one and must be satisfied in the circumstances of a particular case; thus the exemption must be applied on a “case by case” basis and could not be used to justify routine data matching or sharing.

(iii) Common Law Duty of Confidence

The processing of both personal and sensitive personal data may be shared (without consent), under the Data Protection Act if necessary for a particular statutory function. Certain functions have been identified above.

However, even if you can satisfy the Data Protection Act “necessity” test, it is imperative to consider whether a common law duty of confidence attaches to the data.

Information will be regarded as confidential where it is reasonable to assume in circumstances that the provider of the information expected it to be kept confidential. A duty of confidence is characteristic of several types of relationship such as medical (doctor/patient), legal (solicitor/client) and caring (counsellor/client). However, a duty of confidence does not necessarily arise just because a document is marked “confidential”, although such a marking may be indicative of an expectation of confidentiality.

Information provided by a family to a social worker in the course of that social worker’s functions in giving assistance to that family will be confidential to the family

Where a clear duty of confidence arises, the information cannot be disclosed to “third parties” without either consent or the requirement of an overriding public interest. It will also be overridden by an express statutory duty such as is found in s.47 of the Children Act or s.115 of the Crime and Disorder Act. There will be a clear public interest in disclosing the data where there is a risk to the life of the child or that they will be seriously injured. It will be less clear when considering other established “public interest” criteria such as the protection of health and morals or the rights and freedoms of others. The CYPU guidance advises that in deciding whether or not disclosure of information given in confidence is justified you need to weigh the harm that would result from the breach of confidence

against the harm that might result from a failure to disclose. Any disclosure must be proportionate and the minimum necessary to achieve the public interest objective.

The Framework for the Assessment of Children in Need summarises the position in a paragraph it suggests should be explained to families at the commencement of any assessment: "Any information you give to us will be held in confidence within the Social Services Department. If there is a need to discuss this information with anyone else, we will normally ask for your permission. The only exception to this is if information comes to light which, in the Social Worker's view, may indicate a serious threat to the welfare of your child".

(iv) Human Rights Act 1998

Public authorities must, of course, act in a way that is compatible with and promotes individuals' rights under the European Convention of Human Rights and all legislation must be read and interpreted as far as possible in a way which is consistent with those rights. Even if a statutory power to share information has been identified and any common law duty of confidentiality overridden, the disclosure must still comply with the Human Rights Act.

Article 3: no-one shall be subjected to inhuman or degrading treatment.

Article 8: guarantees an individual's right to respect to their private and family life. Interference with this right by a public authority can only be justified if:-

- (1) It is in accordance with a statutory or other power authorising disclosure.
- (2) It is necessary for one of the following reasons
 - (a) the prevention of disorder or crime.
 - (b) the protection of health or morals.
 - (c) the protection of the rights and freedom of others.
- (3) The interference (e.g. the disclosure) was proportionate i.e. only to the extent necessary to achieve the particular pressing purpose.

Disclosure of information to safeguard a child will usually be for the one or more reasons set out in para (2) above.

In order to satisfy this criterion, it must be shown that the managing and assessing of the risk could not effectively be achieved other than by the sharing of the information in question.

In the House of Lords case of *R v Secretary of State for the Home Department, ex parte Daly* [2001] UKHL 26 Lord Steyn set out a new test to be adopted by the courts in assessing the proportionality principle. In his judgment he emphasised the high level of intensity of review under the proportionality approach in that:

- The reviewing court may need to assess the balance which the decision maker has struck;
- The court may need to direct attention to the relative weight accorded to interests and consideration;
- The proportionality test may require the court to go further than the test of "heightened scrutiny" previously adopted on judicial review. The more substantial the interference with human rights, the more the court would require by way of justification before it was satisfied that the decision was reasonable. However, the court would still only interfere with an administrative decision

where it was satisfied the decision was beyond the range of reasonable responses open to a reasonable decision maker.

(vi) Sharing Information About (Alleged) Abusers

Where cases have gone to Court in this area they have often concerned a decision by a Local Authority to disclose information about an individual thought to pose a risk to children, rather than sharing personal data relating to a specific child. The Court of Appeal (in *R(A) v Hertfordshire County Council* [2001] ALL ER (D) 259) has held that the general duty to protect the welfare of children in s.17 of the Children Act along with s.27, 47 and Schedule 2 (see above) gives rise to the implied power to communicate a belief that a particular individual presents a risk of significant harm to children in its area. The Local Authority must “honestly and reasonably believe” that such a step was necessary to protect children and must use the test of “pressing social need”. To pass this test the relevant agency must consider the following issues:-

- (1) How strong is their belief in the truth of the particular allegation? The greater the conviction that the allegation is true the more compelling the need for disclosure.
- (2) What is the interest of the third party in receiving the information? The greater the legitimacy of the interest in the third party in having the information the more important the need to disclose.
- (3) What is the degree of risk posed by the individual if disclosure is not made?

Decisions about who needs to know and what needs to be known should be taken on a case by case basis. It is vital there is a balancing exercise undertaken weighing the serious consequences of disclosure against risks of the child. Clearly the issue of proportionality will be vital.

(v) Disclosures to other third parties

There may, exceptionally, be some cases where the risk posed by an individual in the community cannot be managed without the disclosure of some information to a third party outside the statutory agencies. For example, where an employer, voluntary group organiser or church leader has a position of responsibility/control over the individual and other persons who may be at serious risk.

The principles underpinning disclosure to third parties are the same as for information sharing, but inevitably involve greater sensitivities given that disclosure may be to individual members of the public as opposed to central or local government or law enforcement bodies. Because of this, great caution should be exercised before making any such disclosure: it should be seen as an exceptional measure. The following checklist may be of assistance:

- the individual presents **a risk of serious harm** to the child, or to those for whom the recipient of the information has responsibility;
- **there is no other practicable, less intrusive means of protecting the child(ren), and failure to disclose would put them in danger.** Also, only that information which is necessary to prevent the harm may be disclosed, which will rarely be all the information available;
- **the risk to the individual should be considered although it should not outweigh the potential risk to others were disclosure not to be made.** The individual retains his rights (most importantly his Article 2 right to life) and consideration must be given to whether those rights are endangered as a consequence of the disclosure. It is partly in respect of such consideration that widespread disclosure of the identity and whereabouts of an individual is very, very rarely if ever justified;
- the **disclosure is to the right person** and that they understand the confidential and sensitive nature of the information they have received. The right person will be

the person who needs to know in order to avoid or prevent the risks;

- **consider consulting the individual** about the proposed disclosure. This should be done in all cases unless to do so would not be safe or appropriate. If it is possible and appropriate to obtain the individual's consent then a number of potential objections to the disclosure are overcome. Equally, the individual may wish to leave the placement rather than have any disclosure made, and if this is appropriate, this would also avoid the need for any disclosure;
- **ensure that whoever has been given the information knows what to do with it.** Again, where this is a specific person, this may be less problematic but in the case of an employer, for example, you may need to provide advice and support; and
- before actually disclosing the information, particularly to an employer or someone in a similar position, **first ask them whether they have any information about the individual.** If they have the information then no disclosure is necessary. If they have some but possibly incorrect information your disclosure can helpfully correct it.

(vii) The information is shared safely and securely

Good practice should ensure that all personal information is kept securely and is shared with and available only to those who have a legitimate interest in knowing it. Essentially, arrangements must be in place which ensure that information is only shared with those with a legitimate interest and cannot by accident or design be accessed by others.