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## Information Sharing for Child Protection Purposes

### 1. Introduction

- 1.1 Children have a right to be safeguarded and protected. This is enshrined within the Children (Northern Ireland) Order 1995 (the Children Order) and the United Nations Convention on the Rights of the Child (UNCRC). Effective child protection stands or falls on the quality of assessment and analysis of the risks to an individual child. Effective analysis and assessment of

## CONSULTATION DOCUMENT

risk in turn relies on the availability of, and access to, relevant, accurate and up to date information. Access to relevant and up to date information for child protection purposes often means that personal, often sensitive, information has to be shared with and by Health and Social Care Trusts (HSCTs).

- 1.2 This is non-statutory guidance for HSCTs which aims to give practitioners the confidence to know when and how they can lawfully share information and when to expect information to be shared with them for child protection purposes. In all considerations on sharing information for child protection purposes, the welfare of the child must be the paramount consideration.
- 1.3 The purpose of this guidance document is to:
- describe the legal framework within which the sharing of personal information for child protection purposes takes place and by which it is facilitated;
  - establish clear principles which apply to the sharing of personal information for child protection purposes;
  - provide guidance on the sharing of personal information to and from agencies and practitioners who are engaged in work with children and with other third parties for child protection purposes;
  - distinguish information sharing for child protection purposes from information sharing for wider public protection purposes; and
  - identify other relevant information documents which should be read in conjunction with this guidance.
- 1.4 In this guidance the term ‘information sharing’ can refer both to:
- the reciprocal sharing of personal information for child protection purposes between HSCTs and agencies and practitioners who are engaged in work with children, including when information needs to be shared in order to obtain information; or
  - the sharing of personal information to an individual or third party for the purpose of assisting with the management of risk that an individual may pose to a specific child or children.

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*‘...the legislation was not the problem. I suggest, however, better guidance is needed on the collection, retention, deletion, use and sharing of information, so that police officers, social workers and other professionals can feel more confident in using information properly.’*

*Sir Michael Bichard in his Public Inquiry on child protection procedures in Humberside Police and Cambridgeshire Constabulary following the murders of Jessica Chapman and Holly Wells (2004)*

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- 1.5 This guidance replaces circular HSS CC 3/96 (Revised) – Sharing to Safeguard – September 2008 (amended May 2009). It should be considered within the context of ‘Cooperating to

Safeguard Children and Young People in Northern Ireland'<sup>1</sup>, the overarching policy framework for safeguarding children and young people in the statutory, private, independent, community and voluntary sectors. This document complements the Regional Core Child Protection Policy and Procedures,<sup>2</sup> guidance on the UNOCINI assessment framework<sup>3</sup> and the 'Code of Practice on Protecting the Confidentiality of Service User Information.'<sup>4</sup> It is intended that HSCT procedures for sharing information for child protection purposes will be developed and agreed on a regional basis.

## 2. Legal Framework for Information Sharing for Child Protection Purposes

- 2.1 Chapter 1 of 'Cooperating to Safeguard Children and Young People in Northern Ireland' provides an overview of the legal framework for child safeguarding in Northern Ireland. 'The Code of Practice on Protecting the Confidentiality of Service User Information'<sup>5</sup> provides a comprehensive summary of the law relating to sharing information generally by health and social care services. The following section focuses on the legal framework as it relates specifically to the sharing of information for child protection purposes.

### Children (Northern Ireland) Order 1995 (the Children Order)

- 2.2 The Children Order is the principal statute governing the care, upbringing and protection of children in Northern Ireland. It applies to all those who work with, and care for children, whether parents, paid carers or volunteers.
- 2.3 Under Article 66(1) of the Children Order, where a HSCT has reasonable cause to suspect that a child is suffering, or is likely to suffer significant harm, a HSCT has a duty to make inquiries or cause inquiries to be made to enable it to make a decision as to whether it should take any action to safeguard or promote the child's welfare. Where, as a result of the inquiries made under Article 66(1) a HSCT concludes that it should take action to safeguard or promote the child's welfare, Article 66(8) states that it must take that action, so far as it is within the power of the HSCT and reasonably practicable to do so. Article 66(9) requires certain bodies including the HSCB, the Education Authority, HSCTs and the Northern Ireland Housing Executive to assist when called upon to do so by a HSCT making inquiries under Article 66, in particular by providing relevant information and advice. Article 66(5) requires a HSCT to consult with the Education Authority where matters connected with a child's education become apparent during the course of inquiries made by the HSCT under Article 66.

### The General Data Protection Regulation and the Data Protection Act 2018

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<sup>1</sup> <https://www.health-ni.gov.uk/publications/co-operating-safeguard-children-and-young-people-northern-ireland>

<sup>2</sup> The Regional Core Child Protection Policies and Procedures are available at: <http://www.proceduresonline.com/sbni/>

<sup>3</sup> <https://www.health-ni.gov.uk/publications/understanding-needs-children-northern-ireland-unocini-guidance>

<sup>4</sup> <https://www.health-ni.gov.uk/publications/code-practice-protecting-confidentiality-service-user-information>

<sup>5</sup> The Code of Practice is currently being updated to reflect the GDPR and DPA 2018

### *The General Data Protection Regulation*

- 2.4 The sharing of information by a HSCT must be in accordance with the General Data Protection Regulation (GDPR)<sup>6</sup> and the Data Protection Act 2018. The GDPR and the DPA 2018 **do** allow for personal data to be shared where the sharing is lawful, fair and executed in a transparent manner in relation to the data subject. **This legislation should never be a barrier to sharing information where the failure to do so would result in a child being harmed, or placed at risk of harm.** The GDPR updates and modernises Data Protection law across the EU. It forms part of the data protection regime in the UK, together with the new Data Protection Act 2018 (DPA 2018).

There are 7 principles for the processing<sup>7</sup> (including sharing) of personal data set out under Article 5 of the GDPR<sup>8</sup>. In summary they are that data should be:

1. processed fairly, lawfully and in a transparent manner;
2. collected for purposes that are specified, explicit and legitimate (purpose limitation);
3. adequate, relevant and limited to what is necessary for the purposes for which it is processed (data minimisation);
4. accurate and kept up to date;
5. kept no longer than is necessary for the purposes for which the personal data is processed (storage limitation); and
6. processed in a secure manner.

The 7<sup>th</sup> principle under GDPR requires the data controller to demonstrate compliance with the first 6 principles; this is generally referred to as the 'Accountability principle.'

### 2.5 Personal Data

Article 4 of the GDPR defines 'personal data' as any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier.

The GDPR makes provision in respect of various types of data, the processing of which require different conditions to be met in respect of each type of data.

Article 6 makes provision in relation to the processing of personal data and sets out the valid grounds under which personal data may be processed lawfully.

Article 9 makes provision in relation to the processing of personal data which is more sensitive in nature and therefore requires a higher level of protection. This type of data, called '**special category personal data**,' includes information about an individual's: race;

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<sup>6</sup> Comprehensive guidance on the GDPR can be found on the Information Commissioner's Website: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/principles/>

<sup>7</sup> 'Processing' is defined by the GDPR as 'any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.'

<sup>8</sup> The 8 principles of data protection under the Data Protection Act 1998 are largely carried over into the 6 principles of the GDPR and the data subject rights, which are covered under Chapter 3 of GDPR.

ethnic origin; politics; religion; trade union membership; genetics; biometrics (where used for ID purposes); health; sex life; or sexual orientation.

Article 10 makes provision in relation to the processing of **personal data relating to criminal allegations, proceedings or convictions** which also requires a higher level of protection.

### *The Data Protection Act 2018*

- 2.6 The GDPR should be read side by side with **the Data Protection Act 2018 (the DPA 2018)**<sup>9</sup> - it provides the details for the areas where the GDPR has given Member States discretion on specific points or where Member States must make their own rules.
- 2.7 The processing of personal data by the police and other criminal justice agencies for law enforcement purposes – the investigation, detection or prosecution of criminal offences or the execution of criminal penalties (law enforcement) - is dealt with under Part 3 of the DPA 2018.

### *The Human Rights Act 1998 (HRA)*

- 2.9 The Human Rights Act (HRA) gives effect in domestic law to the rights and freedoms guaranteed under the European Convention on Human Rights (ECHR). The HRA, makes it unlawful for public authorities to act in a manner which is incompatible with an individual's rights, and places a positive obligation on public authorities to take reasonable action within their powers to safeguard individual rights under the ECHR. The rights and freedoms guaranteed under the ECHR belong to all, there is no distinction between adult and child. The rights with particular relevance to this circular include the Article 2 right to life, the Article 3 right not to be subjected to torture or to inhuman or degrading treatment or punishment and, particularly in relation to the sharing of information, the Article 8 right to respect for private and family life:

*“Article 8 – Right to respect for private and family life*

- i. Everyone has the right to respect for his private and family life, his home and his correspondence.
- ii. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of crime and disorder, for the protection of health and morals, or for the protection of the rights and freedoms of others.”

### *Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (the SVGO)*

- 2.10 Under the SVGO, HSCTs have the power<sup>10</sup> to provide information to the Disclosure and Barring Service (DBS) on an individual who is, has been, or might in future be, engaged in

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<sup>9</sup> The main provisions of this Act commenced on 25 May 2018.

<sup>10</sup> Article 41 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

regulated activity<sup>11</sup> and who has committed a relevant offence or who the HSCT believes may harm a child (or vulnerable adult), cause a child (or vulnerable adult) to be harmed, put a child (or vulnerable adult) at risk of harm, attempt to harm a child (or vulnerable adult) or incite another to harm a child (where the HSCT is the regulated activity provider, it must refer the individual to the DBS<sup>12</sup>). HSCTs also have a duty to provide information on request to the DBS<sup>13</sup>. The DBS may provide relevant information for child protection purposes to a HSCT. It must provide information as to whether a person is barred by the DBS where the HSCT has requested it for child protection purposes.<sup>14</sup>

### Common Law Duty of Confidentiality

2.11 Personal information about children and families held by HSCTs is subject to a common law duty of confidentiality. When information is given in circumstances where it is expected that a duty of confidentiality applies, that information cannot normally be shared without the information provider's consent. **The sharing of information without consent can be justified in some circumstances, including:**

- **where not sharing would not be in the best interests of a child; or**
- **if there is a legal duty or obligation to share or if the sharing is for a public interest which overrides the public interest in maintaining confidentiality and other private interests. The public interest may include child protection or the prevention of serious harm to third parties.**

### Criminal Justice (Northern Ireland) Order 2008

2.12 Under Article 50 of the Criminal Justice (Northern Ireland) Order 2008, HSCTs have a statutory obligation to give effect to the Public Protection Arrangements Northern Ireland (PPANI) guidance (see section 7.6)

### United Nations Convention on the Rights of the Child

2.13 The United Nations Convention on the Rights of the Child is an international human rights treaty setting out the civil, political, economic, social and cultural rights of the child. It should be applied in conjunction with the HRA and provides the overarching framework to guide the development of local laws, policies and services so that all children and young people are nurtured, protected and empowered. Articles with particular relevance to this circular include:

- *Article 4 (Protection of rights):* governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled.<sup>15</sup>

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<sup>11</sup> Regulated activity is work that a barred person must not do. Regulated activity with children includes activities such as teaching, training, caring, supervising, transporting or providing advice to children, providing health care or personal care to child and work in specified places such as schools, nursery schools and children's homes. See Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, for a full definition of regulated activity. Factual notes on regulated activity with children (and adults) are available at <https://www.health-ni.gov.uk/articles/safeguarding-vulnerable-groups-disclosure-and-barring-service>

<sup>12</sup> Article 37 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

<sup>13</sup> Article 42 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

<sup>14</sup> Paragraphs (IB) and (1C) of Article 52A of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

<sup>15</sup> UNCRC Article 4:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and

- *Article 19 (Protection from all forms of violence):* governments should ensure that children are properly cared for and their right to be protected from harm and mistreatment is upheld.<sup>16</sup>

### **Safeguarding Board Act (Northern Ireland) 2011**

- 2.14 Section 11 of the Safeguarding Board Act (Northern Ireland) 2011 places a duty on bodies or persons to supply information requested by the Safeguarding Board Northern Ireland (SBNI) and sets out the specific conditions to be satisfied before such requests for information can be met.

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

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## **3. Principles for sharing information for child protection purposes**

- 3.1 There are principles that have emerged from statute and from judicial decisions on information sharing by public bodies that should inform the processes and procedures HSCTs develop for sharing personal or sensitive information for child protection purposes. These have been grouped into 3 categories:

- i. Lawful Authority;**
- ii. Proportionality;**
- iii. Accountability.**

### **i) Lawful Authority**

- 3.2 The sharing of personal data must be lawful under both the GDPR and the DPA 2018 and, when done by a public authority, it must be done by that authority acting within their

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cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

<sup>16</sup> UNCRC Article 19:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

statutory powers.

*Lawful processing under the GDPR and the DPA 2018.*

- 3.3 The guidance in this document seeks to ensure that information sharing for child protection purposes happens in accordance with the 7 GDPR principles as set out at para 2.4. This section addresses a specific aspect of the first principle: that the sharing of personal data must be lawful.
- 3.4 Under the GDPR there must be valid grounds for sharing personal data, known as a **lawful basis** in order to share personal data (Article 6).

The table at Appendix 1 sets out the most relevant lawful bases for the sharing of personal data for child protection purposes including **public task; legal obligation** and, on occasion, **vital interests**. Under the GDPR, **consent** must be considered carefully before it is used as a lawful basis to share personal data by a public authority (see 3.22).

3.5 **Public Task Basis**<sup>17</sup>

The public task basis can be used as a lawful basis for sharing personal data when the:

*‘processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.’<sup>18</sup>*

3.6 This can apply if you are **either**:

- carrying out a specific task in the public interest which is laid down by law; **or**
- exercising official authority (for example, a public body’s tasks, functions, duties or powers) which is laid down by law.

The DPA 2018<sup>19</sup> says that this includes (but is not limited to) processing of personal data that is necessary for-

- (a) the administration of justice,
- (b) the exercise of a function conferred on a person by an enactment or rule of law, or
- (c) the exercise of a function of the Crown, a Minister of the Crown or a government department.

3.7 The relevant task or authority must be laid down by domestic or EU law<sup>20</sup>. This will most often be a statutory function, however, it does not have to be an explicit statutory provision, providing the application of the law is clear and foreseeable. It can include clear

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<sup>17</sup> The ICO uses the term ‘public task’ to help describe and label this lawful basis.

<sup>18</sup> Article 6(1)(e) of GDPR

<sup>19</sup> Section 8 of the Data Protection Act 2018 (c.12).

<sup>20</sup> Article 6(3) of GDPR.

common law tasks, functions or powers as well as those set out in statute or statutory guidance.<sup>21</sup>

- 3.8 Specific legal authority for the actual sharing is not required. What is required is that the person/body proposing to rely on this basis can demonstrate that they are carrying out a task in the public interest or that they are exercising official authority and that that overall task or authority has a sufficiently clear basis in law.
- 3.9 To be lawful under the public task basis (in the absence of the data subject's consent), the processing must be necessary. The ICO guide advises that "necessary" means that the processing must be a targeted and proportionate way of achieving your purpose. This basis cannot be relied upon as a lawful basis for processing if there is another reasonable and less intrusive way to achieve the same result.<sup>22</sup> If you are a UK public authority the view of the ICO is that this is likely to give you a lawful basis for many if not all of your activities: *"If you need to process personal data to carry out your official functions or a task in the public interest - and you have a legal basis for the processing under UK law – you can."*<sup>23</sup>
- 3.10 As the sharing of information for child protection purposes by HSCTs will take place in the exercise of **functions conferred on a HSCT by the Children (Northern Ireland) Order 1995**, the public task basis is likely to be the most relevant basis for the sharing of information for child protection purposes by HSCTs.

#### Sharing Special Category Personal Data

- 3.11 For the sharing of special category personal data, both an Article 6 (GDPR) lawful basis and an additional condition for processing special category data (Article 9(2)) must be identified. Some of the conditions can be used directly, and some are dependent on further conditions in the DPA 2018. One of the conditions for processing special category data under the GDPR is where the processing is necessary for reasons of **substantial public interest** (Article 9(2)(g)).
- 3.12 Section 10(3) of the DPA 2018 says this GDPR condition is met where a condition in Part 2 of Schedule 1 to the DPA 2018, 'Substantial Public Interest Conditions,' is met. 'Substantial Public Interest Conditions' include where the sharing is necessary for the exercise of **a function** conferred on a person by an enactment or rule of law, and it is necessary for reasons of substantial public interest.<sup>24</sup>
- 3.13 **Safeguarding of children** and of individuals at risk is included as a 'Substantial Public Interest Condition.' This would apply where sharing personal data is necessary for

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<sup>21</sup> Recital 41 of GDPR

<sup>22</sup> ICO Guide to the General Data Protection Regulation <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/>

<sup>23</sup> ICO GDPR Guidance on Consent <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/consent/>

<sup>24</sup> Section 10(3) and paragraph 6 of Part 2 of Schedule 1 to the DPA 2018.

protecting an individual from neglect or physical, mental or emotional harm or protecting the physical, mental or emotional well-being of an individual, where the sharing has to take place without the consent of the data subject because a) consent cannot be given; b) the data controller cannot be expected to obtain the consent; or c) obtaining the consent would prejudice the provision of protection to the individual, and where the processing is necessary for reasons of substantial public interest. The DPA 2018 makes clear that the reference to the protection of an individual or of the well-being of an individual in this provision includes both protection relating to a particular individual and protection relating to a **type** of individual, for example, where it is necessary to share information in order to safeguard children, even where a specific child has not been identified at risk of harm.

3.14 The DPA 2018 also says that the administration of justice and preventing or detecting unlawful acts can meet the GDPR Article 9(g) condition of substantial public interest.

3.15 **The conditions most likely to be relevant to sharing special category personal data for child protection purposes are set out in the table at Appendix 1.**

#### Sharing criminal record personal data

3.16 Under Article 10 of the GDPR, personal data relating to criminal convictions and offences or related security measures can only be shared where it is being shared in an official capacity or where there is specific legal authorisation to do so. In the UK this authorisation is found in a condition under Part 1, 2 or 3 of Schedule 1 to the DPA 2018. This includes where the data sharing is necessary for reasons of substantial public interest and for the purpose of exercising a statutory function as set out in section 3.12 above.

3.17 The **Conditions most likely to be relevant to sharing criminal record personal data for child protection purposes are set out in the table at Appendix 1.**

#### Consent

3.20 One of the lawful bases for sharing personal data under the GDPR is that consent has been obtained (explicit consent for special category personal data). Explicit consent also allows information, which is subject to the common law duty of confidentiality, to be shared.<sup>25</sup>

3.21 The GDPR definition of consent is: “any freely given, specific, informed and **unambiguous** indication of the data subject’s wishes by which he or she, **by a statement or by a clear affirmative action**, signifies agreement to the processing of personal data relating to him or her.”

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<sup>25</sup> The ICO has published draft guidance on consent under the GDPR: <https://ico.org.uk/media/about-the-ico/consultations/2013551/draft-gdpr-consent-guidance-for-consultation-201703.pdf>

- 3.22 The ICO has advised that while there is no ban on public authorities using consent as a lawful basis, it will be more difficult under GDPR for public authorities to use consent as a lawful basis for sharing personal data as consent will not be ‘freely given’ where there is an imbalance in the relationship between the individual to whom the information relates and the data controller. **The nature of child protection work means it will be inappropriate to seek consent in many instances where doing so, or the delay incurred from doing so, could put a child at increased risk of harm, place an adult at risk of serious harm or jeopardise a criminal investigation.** In addition the ICO advises that where personal data is likely to be shared regardless of whether consent has been given or not, for example where it needs to be shared in order to protect a child, leading the individual to believe they have a genuine choice by seeking consent is inherently unfair and likely to breach of the first data processing principle which states that information must be used fairly and lawfully.
- 3.23 While cognisance also needs to be taken of the common law duty of confidentiality, outlined above, the general rule is that consent should not be sought where there is a statutory obligation or court order to disclose or where the sharing needs to take place regardless of whether the individual consents or not. Therefore it will not be appropriate for a HSCT to seek consent in fulfilling its statutory duties under Article 66 where it is established that a HSCT has reasonable cause to suspect that a child is suffering or likely to suffer significant harm. Sharing to fulfil these duties will take place regardless of whether the individual consents.
- 3.24 When the threshold for a child protection investigation under Article 66 has not yet been reached, it may be appropriate to seek consent but where consent cannot be obtained, and the threshold for an Article 66 investigation has still not been reached, information may be shared in order to make an initial assessment of the child’s circumstances. Careful consideration must be given to notifying the individual to whom the information relates **in advance** of sharing the information. The sharing of information must be purposive and proportionate to the making of an initial assessment; only that information which is necessary to facilitate an initial assessment should be shared.
- 3.25 ICO guidance says that children should be provided with the same information about what you do with their personal data as adults receive. This needs to be given in age appropriate terms and in the context of a child’s level of understanding.<sup>26</sup>
- 3.26 The Assistant Information Commissioner for Scotland and Northern Ireland previously acknowledged that practitioners are at times less confident about sharing information where circumstances do not yet reach the ‘child protection trigger’ but professional concerns exist. The Assistant Commissioner advised that, *‘where a practitioner believes, in their professional opinion, that there is risk to a child or young person that may lead to harm, proportionate sharing of information is unlikely to constitute a breach of the Act in such circumstances.’* That advice issued in 2013 remains relevant under the new data protection legislation. The

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<sup>26</sup> ICO Children and the GDPR Guidance <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/children-and-the-gdpr/how-does-the-right-to-be-informed-apply-to-children/>

assistant commissioner also advised that, *'it is very important that the practitioner uses all available information before they decide whether or not to share. Experience, professional instinct and other available information will all help with the decision making process as will anonymised discussions with colleagues about the case. If there is any doubt about the wellbeing of the child and the decision is to share, the Data Protection Act should not be viewed as a barrier to proportionate sharing.'*

3.27 Fairness demands that a HSCT is able to demonstrate that the sharing of personal data is lawful and proportionate – personal data should not be shared in ways that unjustifiably have a negative effect on the individual. When consent is not sought it should be explained to the individual to whom the information relates, that the information will be shared. An individual should at least be aware that personal data about them has been, or is going to be shared even if their consent for the sharing is not appropriate.

3.28 An individual **must not** be informed of proposed personal data sharing, however, where:

- it would put a child at increased risk of significant harm<sup>27</sup> or an adult at risk of serious harm<sup>28</sup>;
- the delay in seeking consent would increase the risk of harm to the child;
- it would undermine the prevention, detection or prosecution of a serious crime including where seeking consent might lead to interference with any potential investigation.

3.29 Where appropriate, notice should be given to an individual of the fact that allegations or concerns have been made in respect of him/her and also the details of those allegations or concerns so that the individual can understand what is being alleged and can respond. The decision as to whether an individual should be put on notice of allegations or concerns made in respect of him/her must be made jointly with the PSNI on a case by case basis and will depend on a number of factors including the nature of the information: for example, where there are allegations of abuse, consideration should be given to providing the individual with the right to reply; where the accuracy or validity of information is not in dispute, it may not be necessary to seek representations. An individual should not be informed of allegations or concerns made against them or given the opportunity to make representations if doing so would put a child at risk of significant harm, or an adult at risk of serious harm, cause a delay that would increase the risk of harm to a child or **would undermine the prevention, detection or prosecution of a serious crime or lead to interference with a police investigation**. The grounds for a decision not to inform an individual of allegations or concerns made against them or to afford an individual the opportunity to make representations should be clearly documented. When a HSCT receives

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<sup>27</sup> See section 2.3 of *Co-operating to Safeguard Children and Young People* and the *Regional Child Protection Policies and Procedures* for more on 'significant harm'

<sup>28</sup> See the adult safeguarding policy for Northern Ireland – *Adult Safeguarding: Prevention and Protection in Partnership* - for further information on 'serious harm' in relation to adults.

<https://www.health-ni.gov.uk/articles/adult-safeguarding-prevention-and-protection-partnership>

information on historical allegations of abuse, the individual should not be alerted to the fact that allegations have been made without consulting first with the PSNI.

**A decision to share personal or sensitive information without consent, and the reasons for doing so, must be clearly recorded.**

#### Subject Access Requests

- 3.30 A data subject's right of access, commonly referred to as subject access, under Article 45 of the DPA 2018 gives individuals the right to obtain a copy of their personal data as well as other supplementary information. Only a data subject has the right to make a subject access request to a data controller. A subject access request is **not** an appropriate way to gather information in relation to Article 66 inquiries. Any request by a public authority to submit a subject access request to obtain information for the purpose of a child protection inquiry or investigation should be challenged in the strongest terms.

#### Statutory Functions, Duties and Powers

- 3.31 Public sector organisations derive their authority from statute and must act in accordance with that authority. The sharing of information by a public sector organisation will not be lawful when acting outside of its statutory authority (*ultra vires*). Authority to share information can be derived from an express obligation or duty to share, such as the duty in Article 66(9) to share information with a HSCT. It can also be derived from an express power to share, such as the powers a HSCT has to share information with the DBS under the SVGO. A public sector organisation may rely on implied powers to share information, when the sharing of the information is reasonably incidental to those functions which are expressly permitted or required to be carried out.
- 3.32 The sharing of personal data for child protection purposes should normally be carried out within the child protection functions established under Article 66 of the Children (Northern Ireland) Order 1995.
- 3.33 There are 2 likely scenarios where a HSCT has powers to share personal data under Article 66:
- where a HSCT is collecting, weighing and analysing information in the course of a child protection investigation;
  - where a HSCT discloses information as an action to safeguard or promote the welfare of a child who is at risk of significant harm.

#### *Collecting, weighing and analysing information in the course of a child protection investigation.*

- 3.34 Where a HSCT has reasonable cause to suspect that a child is suffering, or is likely to suffer significant harm,<sup>29</sup> it must make (or cause to be made) such inquiries as it considers necessary

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<sup>29</sup> See section 2.3 of *Co-operating to Safeguard Children and Young People* and the *Regional Child Protection Policies and Procedures* for more on 'significant harm'

to enable it to decide whether it should take any action to safeguard or promote the child's welfare. Such inquiries will require HSCTs to collect information, including information known to other organisations, agencies and professionals, weigh that information (to determine whether - on the balance of probabilities - the information is credible) and then analyse it to assess the risk and to determine if and what action should be taken to safeguard or promote the child's welfare. Inquiries under Article 66 will involve the receipt of and sharing of personal data with other agencies or with third parties in various forms. Article 66 (9) compels certain bodies including the HSCB, the Education Authority, HSCTs and the Northern Ireland Housing Executive to assist with such inquiries.

***Taking action to safeguard or promote the welfare of a child at risk of significant harm***

- 3.35 Where a HSCT has established that it should take action to safeguard or promote the child's welfare, it must then decide what that action should be. The action may include the sharing of personal data. For example, where a HSCT has made findings of fact (on the balance of probabilities), that an individual poses a risk of significant harm to a child, an appropriate action to protect that child may be to disclose personal data about that individual to a third party or other agency. There is an implied power to do so under Article 66 if, as a result of the inquiries under Article 66, it is decided that this action is necessary to safeguard the child or promote the child's welfare.

3.36

<b>Sharing Information for Child Protection Purposes</b>				
<b>Action</b>	<b>Statutory Power</b>	<b>Consent</b>		
Sharing information for the purposes of making an <b>initial assessment</b> of a child’s circumstances to establish if there is ‘reasonable cause’ to suspect that a child is suffering or is likely to suffer significant harm.	Article 66	Consideration should be given as to whether consent should be sought or is required to share information.. If it is not appropriate to seek consent or if consent is withheld or cannot be obtained, personal data may be shared in a purposeful and proportionate manner in order to make an initial assessment. Only that information which is necessary to facilitate an initial assessment should be shared.	<b>Duty under Article 66(9) of bodies, including HSCB, the Education Authority, HSCTs and NIHE to assist with inquiries.</b>	<b>The sharing must be necessary and proportionate and the rationale for sharing clearly articulated and recorded.</b>
Sharing information in the course of Article 66 inquiries to assess the harm or risk of harm and to determine what action, if any, is required to safeguard or promote the welfare of the child	Article 66(1)(b):Where an authority has reasonable cause to suspect that a child who lives, or is found, in the authority's area is suffering, or is likely to suffer, significant harm, the authority shall make, or cause to be made, such inquiries as it considers necessary to enable it to decide whether it should take any action to safeguard or promote the child's welfare.	In undertaking Article 66 inquiries the HSCT has established reasonable cause to suspect that a child is suffering or at risk of suffering significant harm, therefore consent should not be sought as the individual has no real choice in the matter – the information will be shared regardless of whether consent is obtained or not. The reasons for sharing information without consent must be formally recorded. The individual should be informed of the personal data to be shared unless to do so would place the child at risk of significant harm; an adult at risk of serious harm; or would undermine the prevention, detection or prosecution of a serious crime including where seeking consent might lead to interference with any potential investigation		
Sharing information as an action to safeguard or promote the child’s welfare	Article 66(8): Where, as a result of complying with this Article, an authority concludes that it should take action to safeguard or promote the child's welfare the authority shall take that action (so far as it is both within the power of the authority and reasonably practicable for it to do so).	In taking action under Article 66, the HSCT is fulfilling a statutory obligation and it is not appropriate to seek consent as the information will be shared regardless of whether the individual consents or not. The individual should be informed of the personal data to be shared unless to do so would place the child at risk of significant harm; an adult at risk of serious harm; the delay in seeking consent would increase the risk of harm to the child; or seeking consent would undermine the prevention, detection or prosecution of a serious crime including where seeking consent might lead to interference with any potential investigation. Consider whether an individual should be informed of allegations/concerns and/or given the opportunity to make representations.		

## ii) Proportionality

- 3.37 The information shared must be proportionate to the purpose for sharing the information. This requires the HSCT to apply **professional judgment** in weighing the relevant interests and considerations and to make **reasonable** decisions on the outcome of this **balancing exercise**. The decision maker must take reasonable steps to ensure all available information is obtained and considered for the purposes of this balancing exercise. There must be evidence that this balancing exercise has been carefully conducted. The following factors should be considered:
- The sharing must be **rationally connected to the legitimate purpose**. For the purposes of this guidance the legitimate purpose is to safeguard the child or promote the child’s welfare under Article 66 of the Children Order.
  - Whether the **rights** of an individual (most commonly an individual’s Article 8 ECHR rights to privacy and right to confidentiality) are endangered as a consequence of the sharing. The child also has rights under both the HRA and the UNCRC that must be respected, protected and fulfilled; neither individual’s entitlement to rights has precedence over the other, but, where there is an apparent conflict, in line with the principles on which the Children Order is based, the welfare of the child is paramount.
  - The sharing must be **necessary** to achieve the legitimate purpose and there must be a **“pressing need”** to share (where failing to share would put the child at risk of significant harm).
  - The **impact** the sharing may have on the life of the subject of the information. The risk to the individual should be considered and mitigated as far as possible, but it should not outweigh the potential risk to the child were the information not to be shared. The impact on other persons affected by sharing information should also be considered, this may require ascertaining the views and interests of the individual and of others who may be adversely affected. Where appropriate an individual should be informed of allegations or concerns made against him/her and given the opportunity to make representations before the information is shared, for example in relation to allegations of abuse - see paragraph 3.29.
  - The **nature** and the **extent** of the information to be shared. The information must be relevant and no more than is necessary in order to achieve the legitimate purpose for which it is being shared. The **integrity** of the information should be considered and a judgment made about its accuracy, veracity and credibility. The process of assessing the credibility of the information may require a HSCT to find facts on the balance of probabilities and in some situations, **fairness** will require that individuals are given a **right to reply**, for example in relation to allegations of abuse. Where the information is already in the public domain, it will be easier to justify the sharing of it.
  - The **vulnerabilities** of the child or children who may be at risk.
  - The **magnitude of the risk**: the more serious the potential risk to the child, the more likely the sharing of information is to be justified.
  - The ability of the **parent** and others to protect the child may be a factor to consider in making a decision as to whether information needs to be shared more widely with others who could act in a protective role for the child.

### iii) Accountability

- 3.38 A decision to share, or *not* to share information may be challenged by way of judicial review. A judicial review will succeed where the person bringing the case can show that either the HSCT is under a legal duty to act or make a decision in a certain way and is unlawfully refusing or failing to do so (the HSCT should have done something and did not); or a decision or action that has been taken is *ultra vires* (the HSCT did something it should not have done or did it outwith its proper powers).<sup>30</sup>
- 3.39 A HSCT should demonstrate that its decisions are considered, measured, balanced and proportionate and should **have a clearly articulated rationale for disclosing, or not disclosing, information and be able to demonstrate how the sharing of information was assessed to be necessary for the purposes of safeguarding a child or promoting the child’s welfare.** Accurate, clear and timely record keeping is important. A full record must be made of all discussions, actions and decisions taken.
- 3.40 Under the GDPR ‘accountability principle’ (Article 5(2)), data controllers must be able to demonstrate compliance with the principles for the processing of personal data contained in Article 5. This means that a HSCT must be able to evidence proper consideration behind the selection of a lawful basis for the sharing of personal data and be able to justify that decision. When relying on the public task basis, the relevant task, function or power should be specified and the basis in common law or statute identified. It is also important to be able to demonstrate that there was no other reasonable and less intrusive means to achieve the purpose than by sharing the personal data. Article 30 of GDPR and Part 4 of Schedule 1 to the DPA 2018 requires organisations to document their processing activities.
- 3.41 HSCTs, in designing and implementing processes for the lawful sharing of information for child protection purposes, must consider the types of information that they share and are in receipt of, identify and document the lawful basis (or bases), additional conditions for processing personal data, special category personal data and criminal record personal data and establish processes for documenting the lawful basis and special category conditions in order to be able to demonstrate compliance and accountability, as required under Article 5(2) of GDPR and Part 4 of Schedule 1 to the DPA 2018<sup>31</sup>. Further information on the accountability principles can be found in the ICO’s GDPR Guide.<sup>32</sup>

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<sup>30</sup> See the Public Law Project brief guide to the grounds for judicial review: [http://publiclawproject.org.uk/wp-content/uploads/data/resources/113/PLP\\_2006\\_Guide\\_Grounds\\_JR.pdf](http://publiclawproject.org.uk/wp-content/uploads/data/resources/113/PLP_2006_Guide_Grounds_JR.pdf)

<sup>31</sup> The Data Protection Act 2018 - para 5(1) of Part 2 of Schedule 1 and paras 38 and 39 of Part 4 of Schedule 1 require data controllers to have a policy document in place for the processing of special category personal data and personal data relating to criminal conviction information in certain circumstances, including when the information is shared using the additional condition of substantial public interest. The document must explain the controller’s procedures for securing compliance with the principles in Article 5 of the GDPR, the controller’s policies as regards the retention and erasure of personal data processed in reliance on the condition, with an indication of how long the personal data is likely to be retained. The controller must, during the relevant period, keep the policy document under review and updated and must make it available to the Commissioner on request.

<sup>32</sup> <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/>

## 4. Sharing Information with Third Parties for Child Protection Purposes

- 4.1 The principles set out in section 3 must be more arduously applied when a HSCT is making a decision to share personal data with third parties where no information sharing agreement or protocol is in place. There is no hard or fast rule either for or against sharing; each case turns on its own facts and must be considered individually.
- 4.2 The principles must be applied and the balancing exercise at section 3.34 carried out. The HSCT must ensure that the information is being disclosed to the right person and for the right reasons. The right person will be the person who needs to know for the purposes of safeguarding the child or promoting the child's welfare. The person with whom the information is shared must know **why** they have been given it, understand the confidential and sensitive nature of the information they have received; and be informed on how to make use of the information, including the need to manage the information securely and what to do or who to contact should they need to share further information.
- 4.3 **A HSCT must not take a decision to share information in respect of an individual believed to pose a risk to a child or to a third party without consulting the PSNI. Such action could prejudice a police investigation or place others at risk of harm.**

## 5. Information Sharing Agreements

- 5.1 HSCTs must have **information sharing agreements** (ISAs) or protocols in place with those agencies, practitioners and organisations with which they share personal data regularly. This extends to those bodies which provide services under contract to HSCTs. Those who have a statutory duty to cooperate with HSCTs under Article 66(9) of the Children Order must have procedures in place to comply with this. Sections 8 and 14 of the ICO Data Sharing Code of Practice<sup>33</sup> provides guidance on what an information sharing agreement should cover. The SBNI Information Sharing Agreement for Safeguarding Children provides a framework for the sharing of information between agencies which work with children and young people. ISAs ensure that proper processes for sharing information are identified and in place so that organisations can share information in a lawful and efficient way for child protection purposes.

## 6. Protocol for Joint Investigation

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<sup>33</sup> The ICO Data Sharing Code of Practice is currently being reviewed in light of GDPR and the DPA 2018.

- 6.1 The 'Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse – Northern Ireland (March 2016)' ("the Joint Protocol") provides an agreed way of working, including on the sharing of information, on the investigation of alleged or suspected child abuse between social workers and the PSNI. Investigations may be conducted under the Joint Protocol where there is an allegation or reasonable cause to suspect the abuse of a child or suspicion that a crime has been committed against a child.

## 7. Information Sharing for Public Protection Purposes

- 7.1 There will be times when a HSCT will receive information that indicates that an individual may pose a risk to children, this can include information on historical allegations of abuse. Where an initial assessment by the HSCT does not identify a specific child as being at risk of significant harm, child protection procedures under Article 66 cannot be initiated: a HSCT cannot demonstrate reasonable cause relating to children 'unknown.' **In such circumstances the HSCT should formally discuss the information with PSNI and as part of that discussion determine whether a multi-agency meeting should be convened with any other agency or professional.** The DPA 2018 introduced a condition that allows the sharing of personal data to protect the physical, mental or emotional well-being of an individual including where this relates to a particular individual and where it relates to a *type* of individual (see section 3.13 above). PSNI will take the lead in public protection where no specific child is identified as being at risk of significant harm. Procedural guidance on the multi-agency meetings will be developed on a regional basis.
- 7.2 The PSNI has statutory responsibility to prevent and detect crime and to gather evidence in the investigation of alleged or suspected offences committed against children. Where a HSCT has reason to suspect that a criminal offence may have been committed or may potentially be committed against an unspecified child or children, a referral must immediately be made to the PSNI. Investigations by PSNI may lead to a specific child or children being identified as at risk of harm. When this occurs the relevant HSCT will be informed and should then initiate child protection procedures under Article 66 and a joint investigation may be commenced under the Joint Protocol.

### Common Law Police Disclosure

- 7.3 Common Law Police Disclosure (CLPD) is a scheme that ensures that where there is a public protection risk, the PSNI will pass relevant information to an employer or regulatory body to enable them to act swiftly and put in place measures to mitigate any danger. The focus of CLPD is to provide timely and relevant information which might indicate that a person poses a public protection risk. Information is passed on at the time someone is arrested or charged, rather than on conviction as happened previously.

- 7.4 Where the HSCT has concerns about an individual who works closely with children in a voluntary or paid capacity, the HSCT should ensure that the information is formally shared with the PSNI, and that the sharing, including the details of what has been shared, when, and with whom in PSNI, is recorded.
- 7.5 The Department of Education Circular 2014/27 outlines the arrangements that are in place between schools and the PSNI in relation to sharing information on individuals who may pose a risk to children in, or in connection with attendance, at school.

### **Public Protection Arrangements Northern Ireland (PPANI)**

- 7.6 Certain sexual and violent offenders are managed on a multi-agency basis within the Public Protection Arrangements Northern Ireland (PPANI). HSCTs have a statutory obligation to give effect to PPANI guidance under Article 50 of the Criminal Justice (Northern Ireland) Order 2008. Each HSCT has an individual officer with lead responsibility for that HSCT's involvement in PPANI who acts as the Health and Social Care Local Area Public Protection Panel (LAPPP) representative. The LAPPP representative can be a useful source of advice to HSCT professionals and should always be consulted when considering issues on sharing information about individuals who may pose a risk of harm to children. When making a decision to share or disclose information in relation to offenders being managed by PPANI, a HSCT should act in accordance with PPANI guidance and the Regional Child Protection Policy and Procedures. The principles outlined in this document on the sharing of information, however, will still apply.

### **Child Protection Disclosure Arrangements**

- 7.7 Individual members of the public can apply at a police station for the disclosure of relevant conviction information under the Child Protection Disclosure Arrangements. This scheme builds on existing PPANI processes by offering a direct route for a member of the public to bring any concerns they may have to the police about someone they know who has access to a child. Information about relevant convictions will only be provided to the person with primary care responsibility for the specific child (children) and only if considered as necessary to protect that child.<sup>34</sup> Where there is information that may indicate a child protection concern the police will consult with the relevant HSCT as set out in PPANI guidance.<sup>35</sup>

## **8. Information Sharing in relation to individuals working or volunteering with children**

- 8.1 Where a HSCT has reasonable cause to suspect that a child has suffered or is likely to have suffered significant harm due to the action or inaction of an individual, including in relation to allegations of historical abuse, and the HSCT is aware that the individual works or volunteers

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<sup>34</sup> PPANI Manual of Practice 2016 (Revised July) and Child Protection Disclosure Arrangements - Information Leaflet. <http://www.publicprotectionni.com/index.php/publications>

<sup>35</sup> Appendix 9 of PPANI Manual of Practice 2016 (Revised July)

closely with children, the information should be shared with the PSNI.

- 8.2 A HSCT should also use its powers under the SVGO to refer an individual who is, has been, or may be engaged in regulated activity and who has committed a relevant offence or who the HSCT believes may harm a child (or vulnerable adult), cause a child (or vulnerable adult) to be harmed, put a child (or vulnerable adult) at risk of harm, attempt to harm a child (or vulnerable adult) or incite another to harm a child to the DBS. Where a HSCT, as a regulated activity provider has removed an individual from regulated activity because of concerns that they may harm a child or vulnerable adult, the HSCT has a *duty* to refer to the DBS. HSCTs also have duties to provide information on request to the DBS.
- 8.3 The Joint Protocol requires that once a decision is made to conduct a joint investigation, every effort should be made from the outset to determine if the alleged perpetrator is in paid or voluntary employment with children; has been AccessNI checked; DBS (Disclosure Barring Service) checked; or subject of a Bench Warrant or European Arrest Warrant. The DBS must provide information as to whether a person is barred by the DBS where the HSCT has requested it for child protection purposes.<sup>36</sup>

## 9. References and Further Information

Adult Safeguarding: Prevention and Protection in Partnership, DHSSPS (2015).

<https://www.health-ni.gov.uk/articles/adult-safeguarding-prevention-and-protection-partnership>

Code of Practice on Protecting the Confidentiality of Service User Information, DHSSPS (2012).

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Co-operating to Safeguard Children and Young People in Northern Ireland DHSSPS (2017).

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Centre of Excellence on Information Sharing. <http://informationsharing.co.uk/>

Circular HSS CC 3/96 (Revised) –Sharing to Safeguard, DHSSPS (2008, revised May 2009)

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<sup>36</sup> Paragraphs (1B) and (1C) of Article 52A of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

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Guidance on Disclosure and Barring under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 <https://www.health-ni.gov.uk/articles/safeguarding-vulnerable-groups-disclosure-and-barring-service>

Guidance to HSC Trust Staff and Police Regarding the Information Sharing Agreement (ISA) for Concurrent Care and Criminal Proceedings.

Information Commissioner's Office Data Sharing Code of Practice: [https://ico.org.uk/media/for-organisations/documents/1068/data\\_sharing\\_code\\_of\\_practice.pdf](https://ico.org.uk/media/for-organisations/documents/1068/data_sharing_code_of_practice.pdf)

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Information: To share or not to share? The Information Governance Review. 2013. Caldicott, F Department of Health. <https://www.gov.uk/government/publications/the-information-governance-review>

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MARAC Information Sharing Guidance. <http://www.safelives.org.uk/practice-support/resources-marac-meetings/resources-professionals-northern-ireland>

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/533826/Triennial Analysis of SCRs 2011-2014 - Pathways to harm and protection.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/533826/Triennial_Analysis_of_SCRs_2011-2014_-_Pathways_to_harm_and_protection.pdf)

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Protection of Freedoms Act 2012 <http://www.legislation.gov.uk/ukpga/2012/9/contents>

Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0093>

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REGINA V CHIEF CONSTABLE FOR NORTH WALES POLICE AREA AUTHORITY EX PARTE AB AND CD ETC: ADMN 10 JUL 1997: [1997] EWHC Admin 667 <https://swarb.co.uk/regina-v-chief-constable-for-north-wales-police-area-authority-ex-parte-ab-and-cd-etc-admn-10-jul-1997/>

**Appendix 1**

<p><b>GDPR Article 6 Lawful Bases for processing personal data relevant to sharing information for child protection purposes</b></p>	<p><b>Article 9 Conditions re: processing of special category personal data relevant to sharing information for child protection purposes.*</b></p>	<p><b>“Substantial Public Interest” Conditions relevant to sharing information for child protection purposes: Part 2 of Schedule 1 to the Data Protection Act 2018.</b></p>	<p><b>“Additional Conditions Relating to Criminal Convictions Etc”: Part 3 of Schedule 1 of the Data Protection Act 2018.**</b></p>
<ul style="list-style-type: none"> <li>• Consent (6(1)(a));</li> <li>• Contract (6(1)(b));</li> <li>• Legal Obligation (6(1)(c));</li> <li>• Vital Interests (6(1)(d));</li> <li>• Public Task (6(1)(e));</li> <li>• Legitimate Interests (only available to public authorities in very limited circumstances, which would not include sharing for child protection purposes) (6(1)(f)).</li> </ul>	<ul style="list-style-type: none"> <li>• Necessary for reasons of public interest in the area of public health (9(2)(i));</li> <li>• <i>Explicit</i> consent(9(2)(a));</li> <li>• Necessary for carrying out obligations or exercising rights under employment, social security, or social protection law (9(2)(b))</li> <li>• Vital interests (9(2)(c))</li> <li>• Information has been made public by the individual (9(2)(e))</li> <li>• Necessary for establishment, exercise or defence of legal claims or by courts acting in judicial capacity (9(2)(f))</li> <li>• <b>Substantial public</b></li> </ul>	<ul style="list-style-type: none"> <li>• Statutory and government purposes: <b>sharing is necessary for the exercise of a function conferred on a person by an enactment or rule of law</b>; the exercise of a function of the Crown, a Minister of the Crown or a government department (paragraph 6).</li> <li>• Administration of justice (paragraph 7(a))</li> <li>• Preventing or detecting unlawful acts (paragraph 10)</li> <li>• Counselling (paragraph 17)</li> <li>• <b>Safeguarding of children and of individuals at risk</b> (paragraph 18)</li> <li>• Publication of legal judgments (para 26).</li> </ul>	<ul style="list-style-type: none"> <li>• Consent (paragraph 29)</li> <li>• Vital interests (paragraph 30)</li> <li>• The information has been made public by the individual (paragraph 32)</li> <li>• Necessary in connection with legal proceeding; obtaining legal advice; establishing, exercising or defending legal rights (paragraph 33)</li> <li>• Administration of accounts used in commission of indecency offences involving children (para 35);</li> <li>• Where processing</li> </ul>

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	<p><b>interest (9)(2)(g)</b></p> <ul style="list-style-type: none"> <li>• Necessary for preventative / occupational medicine; medical assessments; diagnosis; health or social care treatment; management of health or social care systems and services (9(2)(h))</li> <li>• Necessary for archiving purposes (9(2)(j))</li> </ul>		<p>would meet a Part 2 condition except for the express requirement for the sharing to be necessary for substantial public interest (para 36).</p>
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This table shows the lawful conditions **most relevant** to sharing information by HSC bodies for child protection purposes. It does not list all the GDPR conditions for sharing special category personal data nor all the conditions for processing under the DPA 2018.

\* special category personal data can be lawfully shared when a lawful basis under Article 6, and a separate condition for processing special category personal data under Article 9 are identified.

When using some conditions under Article 9, additional conditions under the DPA 2018 must also be met. For Article 9(2)(b), (h), (i) or (j) additional conditions under Part 1 of Schedule 1 to the DPA 2018 must also be met.

Article 9(2)(g) of the GDPR is the condition most relevant to sharing personal data for child protection purposes. The requirement in Article 9(2)(g) (ie that processing is necessary for reasons of substantial public interest) is met where a condition in Part 2 of Schedule 1 to the DPA 2018 is met.

\*\* Criminal conviction personal data can be shared when a condition under Part 1, 2 or 3 of Schedule 1 to the Data Protection Act 2018 is met.

The Data Protection Act 2018 (para 5(1) of Part 2 of Schedule 1 and paras 38 and 39 of Part 4 of Schedule 1) require data controllers to have a policy document in place for the processing of special category personal data and personal data relating to criminal conviction information in certain circumstances, including when the information is shared using the additional condition of substantial public interest. The document must explain the controller's procedures for securing compliance with the principles in Article 5 of the GDPR, the controller's policies as regards the retention and erasure of personal data processed in reliance on the condition, with an indication of how long the personal data is likely to be retained. The controller must, during the relevant period, keep the policy document under review and updated and must make it available to the Commissioner on request.

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