



Information Sharing: Further guidance on legal issues

This guidance supports the cross-Government guidance document *Information sharing: Guidance for practitioners and managers*. It provides practitioners, managers and trainers with additional information on:

- the law specifically concerned with information sharing;
- the pieces of legislation which may provide statutory agencies and those acting on their behalf with statutory powers to share information.

Alongside this guidance, we have published:

1. *Information Sharing: Guidance for practitioners and managers (published 22nd October 2008)*
2. *Information Sharing: Pocket guide* containing a summary of the key decision making considerations from this document (*published 22nd October 2008*);
3. *Information Sharing: Case examples* which illustrate best practice in information sharing situations (*made available online December 2008*);
and
4. *Information Sharing: Training materials* available for local agency and multi-agency training, and for use by training providers (*made available online December 2008*).

All documents available at www.everychildmatters.gov.uk/informationsharing

This guidance supersedes the HM Government information sharing guidance published in April 2006.

Who is this guidance for?

This guidance is for practitioners who have to make decisions about sharing personal information on a case-by-case basis, whether they are:

- working in the public, private or voluntary sectors;
- providing services to children, young people, adults and/or families; and
- working as an employee, a contractor or a volunteer.

This includes front-line staff working in health, education, schools, social care, youth work, early years, family support, offending and criminal justice, police, advisory and support services, culture, sports and leisure.

This guidance is also for managers and advisors who support these practitioners in their decision making and for others with responsibility for information governance.

What this guidance does not cover

As this guidance focuses on supporting front-line practitioners who have to make case-by-case decisions about sharing personal information, it does not provide detailed guidance for staff in agencies or government departments whose information sharing practice is governed by statute and/or specific policies or agreements.

This guidance does not deal in detail with arrangements for bulk or pre-agreed sharing of personal information between IT systems or organisations.

Contents

1. Introduction	3
2. The Human Rights Act 1998 and the European Convention of Human Rights.	5
3. Common law duty of confidentiality.....	6
4. Data Protection Act 1998	7
5. Specific legislation containing express powers or which imply powers to share information	11

1. Introduction

1.1 The main legal framework relating to the protection of personal information is set out in:

- The Human Rights Act 1998, which incorporates Article 8 of the European Convention on Human Rights (ECHR), including the right to a private and family life
- The common law duty of confidentiality
- The Data Protection Act 1998: covering protection of personal information

1.2 There is no general statutory power to share information, just as there is no general power to obtain, hold or process data. Some Acts of Parliament give public bodies **express statutory powers** to share information. These are often referred to as 'statutory gateways' and are enacted to provide for the sharing of information for particular purposes. These gateways may be permissive or mandatory.

- An example of a 'permissive statutory gateway' is section 115 of the Crime and Disorder Act 1998, which permits people to share information to help prevent or detect crime.
- An example of a 'mandatory statutory gateway' is section 8 of the National Audit Act 1983, which imposes a legal obligation on public bodies to provide relevant information to the National Audit Office.

1.3 Where there is no express statutory power to share information it may still be possible to **imply** such a power from the other duties and powers public bodies have. Many activities of statutory bodies will be carried out as a result of **implied statutory powers**, particularly as it may be difficult to expressly define all the numerous activities that a public body may carry out to deliver its main duties and powers.

1.4 Having express or implied statutory powers in any particular case does not mean that the Human Rights Act 1998, the common law duty of confidentiality, and the Data Protection Act 1998 can be disregarded. Where a statutory gateway explicitly removes the need to consider confidentiality, then confidential information can be shared however this will be rare and in limited circumstances. Where there are implied powers you need to consider the language of the gateway and the surrounding circumstances.

1.6 This document describes the main terms and impact of:

- the Human Rights Act 1998 (section 2);
- the common law duty of confidentiality (section 3);
- the Data Protection Act 1998 (section 4);
- other relevant pieces of legislation which either contain express or implied powers to share information (section 5).

2. The Human Rights Act 1998 and the European Convention of Human Rights

2.1 The European Convention on Human Rights has been interpreted to confer positive obligations on public authorities to take reasonable action within their powers (which would include information sharing) to safeguard the Convention rights of individuals. These rights include the right to life (Article 2), the right not to be subjected to torture or inhuman or degrading treatment (Article 3) and the right to liberty and security (Article 5).

2.2 Article 8 of the European Convention on Human Rights was incorporated into UK law by the Human Rights Act 1998 and recognises a right to respect private and family life:

- Article 8.1: Everyone has the right to respect for his private and family life, his home and his correspondence.
- Article 8.2: There shall be no interference by a public authority with 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 or disorder, protection of health and morals or for the protection of rights and freedoms of others.

2.2 Sharing confidential information may be a breach of an individual's Article 8 right: the question is whether sharing information would be justified under Article 8.2 and proportionate.

2.3 The right to a private life can be legitimately interfered with where it is in accordance with the law and is necessary, for example, for the prevention of crime or disorder, for public safety, for the protection of health or morals, or for the protection of the rights and freedoms of others. You need to consider the pressing social need and whether sharing the information is a proportionate response to this need and whether these considerations can override the individual's right to privacy. If a child or young person is at risk of significant harm, or an adult is at risk of serious harm, or sharing is necessary to prevent crime or disorder, interference with the individual's right may be justified under Article 8.

3. The common law duty of confidentiality

3.1 The common law duty of confidentiality is explained in sections 3.12 to 3.16 of the cross-Government guidance *Information Sharing: Guidance for practitioners and managers*. The common law provides that where there is a confidential relationship, the person receiving the confidential information is under a duty not to pass on the information to a third party. However this duty is not absolute and information can be shared without breaching the common law duty if:

- the information is not confidential in nature; or
- the person to whom the duty is owed has given explicit consent; or
- there is an overriding public interest in disclosure; or
- sharing is required by a court order or other legal obligation.

4. The Data Protection Act 1998

4.1 The Data Protection Act 1998 (DPA) deals with the processing of personal (both sensitive and non-sensitive) data. Personal data is data which relates to a living person, including the expression of any opinion or indication about the intentions in respect of the individual. Sensitive personal data is personal data relating to racial or ethnic origin, religious or other similar beliefs, physical or mental health condition, sexual life, political opinions, membership of a trade union, the commission or alleged commission of any offence, any proceedings for an offence committed or alleged to have been committed, the disposal of proceedings or the sentence of any court in proceedings.

4.2 Information about an individual will often contain information from several sources, for example from schools, doctors or the police and may contain their names and business addresses. It may also include information about other people, for example the individual's family members. These people are usually referred to in the DPA as 'third parties'. Information about third parties is personal information and should be treated accordingly.

4.3 If an individual is no longer alive their personal information is not covered by the DPA although a duty of confidence may require some or all of their personal information to be kept confidential.

4.4 Organisations which process personal data must comply with the data protection principles set out in schedule 1 of the DPA. These require data to be:

1. fairly and lawfully processed, in particular it shall not be processed unless a schedule 2 condition is met, and if sensitive personal data, a schedule 3 condition is also met;
2. processed for limited specified purposes;
3. adequate, relevant and not excessive for those purposes;
4. accurate and up to date;
5. kept for no longer than necessary;
6. processed in accordance with the data subject's rights under the DPA;
7. kept secure;
8. not transferred to non-EEA (European Economic Areas) without adequate protection.

4.5 An outline of those DPA principles that are **most** relevant to front-line information sharing is given in sections 4.6 to 4.14 below. Further information is available in a publication from the Information Commissioners Office entitled *Data Protection Act 1998 Legal Guidance*, available on the ICO website.

4.6 The first principle introduces the requirement that, as a requisite of fair and lawful processing, personal data shall not be processed unless at least one of the conditions in Schedule 2 of the Act (“the conditions for processing”) is met and, in the case of processing sensitive personal data (see paragraph 4.8 below) at least one of the conditions in Schedule 3 of the Act (“the conditions for processing sensitive data”) is also met. Meeting a Schedule 2 and Schedule 3 condition will not, on its own, guarantee that processing is fair and lawful. The general requirement that data be processed fairly and lawfully must be satisfied in addition to meeting the conditions.

4.7 Schedule 2 conditions include:

- the data subject has given consent to the data processing; or
- the processing is necessary for the performance of a contract to which the data subject is party, or for the taking of steps at the request of the data subject with a view to entering into a contract; or
- the processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract;
- the processing is necessary to protect the data subject’s vital interests; or
- the processing is necessary for the administration of justice, for the exercise of any functions of either House of Parliament, for the exercise of any functions conferred on any person by or under any enactment, for the exercise of any functions of the Crown, a Minister or a government department, for the exercise of any other public functions exercised in the public interest by any person; or
- the processing is necessary for the purposes of legitimate interests of the data controller, or of the third party or parties to whom the data is disclosed, except where the processing is unwarranted by reason of the rights and freedoms or interests of the data subject

When information is sensitive then a schedule 3 condition must also be met. These are:

- the data subject has given explicit consent to the processing; or

- the processing is necessary for the purposes of exercising any legal right or obligation on the data controller in connection with employment; or
- the processing is necessary to protect the vital interests of the data subject or someone else, in a case where the data subject cannot give consent or consent cannot reasonably be obtained, or, in order to protect another person's vital interests, the data subject is unreasonably withholding consent; or
- the processing is carried out by a not-for-profit body in the course of its legitimate activities and does not involve disclosure of the personal data to a third party without consent; or
- the information has been made public as a result of steps taken by the data subject; or
- the processing is necessary for the purposes of, or in connection with any legal proceedings, obtaining legal advice or to establish, exercise or defend legal rights; or
- the processing is necessary for the administration of justice, for the exercise of any functions of either House of Parliament, for the exercise of any functions conferred on any person by or under any enactment, or for the exercise of any functions of the Crown, a Minister or a government department; or
- the processing is necessary for medical purposes and is undertaken by a health professional; or
- the processing is of sensitive personal data consisting of information as to racial or ethnic origin and is necessary for the purpose of promoting racial or ethnic equality and is carried out with appropriate safeguards.

4.9 The second principle is that personal data shall be obtained only for one or more specified and lawful purposes, and shall not be processed further in any manner incompatible with that purpose or those purposes. The interpretation of the second principle further provides that in deciding whether any disclosure of personal data is compatible with the purpose or purposes for which the data were obtained; consideration will be given to the purpose or purposes for which the personal data are intended to be processed by any person to whom they are disclosed.

4.10 The third principle is that personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which it is processed. In complying with this principle, data controllers should seek to identify the minimum amount of information required in order to properly fulfil their purpose. This will be a question of fact in each case.

4.11 The fourth principle is personal data shall be accurate and, where necessary, kept up to date. The fourth principle is not to be taken as being contravened because of any inaccuracy in personal data which correctly records information obtained by the data controller from the data subject or a third party in a case where:-

- (a) taking account of the purpose or purposes for which the data was obtained and further processed, the data controller has taken reasonable steps to ensure the accuracy of the data, and
- (b) if the data subject has notified the data controller of their view that the data is inaccurate, the data indicates this fact.

4.12 The fifth principle is personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes. The DPA stipulates that records should be kept no longer than is necessary for the purposes for which the records are being processed. There are no actual timescales imposed. It is a matter for individual judgement, taking account of the nature and purpose of the records. It is advisable for all organisations to retain information on individuals to agreed timescales. Six years is a commonly used benchmark and is generally compatible with limitation periods for the commencement of legal proceedings. However longer or shorter periods may be appropriate, depending on the circumstances.

4.13 The seventh principle is that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

4.14 In relation to front-line practices, the ICO legal guidance on the DPA provides the following illustrative examples:

In relation to controlling access to information:

- can casual passers-by read information off screens or documents?
- is printed material disposed of securely, for example, by shredding?
- is there a procedure for authenticating the identity of a person to whom personal data may be disclosed over the telephone prior to the disclosure of the personal data?

In relation to staff selection and training:

- is proper weight given to the discretion and integrity of staff when they are being considered for employment, promotion or for a move to an area where they will have access to personal data?
- are the staff aware of their responsibilities? Have they been given adequate training and is their knowledge kept up to date?
- do disciplinary rules and procedures take account of the requirements of the Act? Are these rules enforced?

5. Specific legislation containing express powers or which imply powers to share information

5.1 This section sets out legislation which contains express or implied powers to share information which practitioners may find helpful, and also refers in some cases to relevant guidance. The references to legislation should not be considered as comprehensive as new legislation may come into force, adding new powers to share information or amending existing ones.

Practitioners should not rely solely on the description of the powers set out below and should consider the powers in light of all the applicable circumstances (including statutory restrictions on disclosure), also taking into account the requirements of the Human Rights Act 1998, the Data Protection Act 1998 and the law of confidentiality. It is good practice to consult a legal adviser if in any doubt.

The Children Act 1989

5.2 Section 47 of the Children Act 1989 places a duty on local authorities to make enquiries where they have reasonable cause to suspect that a child in their area may be at risk of suffering significant harm. Section 47 states that unless in all the circumstances it would be unreasonable for them to do so, the following authorities must assist a local authority with these enquiries if requested, in particular by providing relevant information:

- any local authority;
- any local education authority;
- any housing authority;
- any health authority;
- any person authorised by the Secretary of State.

5.3 A local authority may also request help from those listed above in connection with its functions under Part 3 of the Act. Part 3 of the Act, which comprises of sections 17-30, allows for local authorities to provide various types of support for children and families. In particular, section 17 places a general duty on local authorities to provide services for children in need in their area. Section 27 enables the authority to request the help of one of those listed above where it

appears that such an authority could, by taking any specified action, help in the exercise of any of their functions under Part 3 of the Act. Authorities are required to co-operate with a request for help so far as it is compatible with their own statutory duties and does not unduly prejudice the discharge of any of their functions.

5.4 In practice, when required to help under sections 47 or 17 of the Act, authorities may be approached by social services and asked to:

- provide information about a child, young person or their family where there are concerns about a child's well-being, or to contribute to an assessment under section 17 or a child protection enquiry;
- undertake specific types of assessments as part of a core assessment or to provide a service for a child in need;
- provide a report and attend a child protection case conference.

5.5 The Act does not require information to be shared in breach of confidence, but an authority should not refuse a request without considering the relative risks of sharing information, if necessary without consent, against the potential risk to a child if information is not shared.

The Children Act 2004

5.6 Section 10 of the Act places a duty on each children's services authority to make arrangements to promote co-operation between itself and relevant partner agencies to improve the well-being of children in their area in relation to:

- Physical and mental health, and emotional well-being;
- Protection from harm and neglect;
- Education, training and recreation;
- Making a positive contribution to society;
- Social and economic well-being.

5.7 The relevant partners must co-operate with the local authority to make arrangements to improve the well-being of children. The relevant partners are:

- district councils;
- the police;
- the Probation Service;
- youth offending teams (YOTs);
- strategic health authorities and primary care trusts;
- Connexions;
- the Learning and Skills Council.

5.8 This statutory guidance for section 10 of the Act states good information sharing is key to successful collaborative working and arrangements under this section should ensure information is shared for strategic planning purposes and to support effective service delivery. It also states these arrangements should cover issues such as improving the understanding of the legal framework and developing better information sharing practice between and within organisations.

5.9 Section 11 of the Act places a duty on key persons and bodies to make arrangements to ensure their functions are discharged with regard to the need to safeguard and promote the welfare of children. The key people and bodies are:

- local authorities (including district councils);
- the police;
- the Probation Service;
- bodies within the National Health Service (NHS);
- Connexions;
- YOTs;
- governors/directors of prisons and young offender institutions;
- directors of secure training centres;
- the British Transport Police.

5.10 The section 11 duty does not give agencies any new functions, nor does it override their existing ones, it simply requires them to:

- carry out their existing functions in a way that takes into account the need to safeguard and promote the welfare of children;
- ensure services they contract out to others are provided having regard to this need (to safeguard and promote the welfare of children).

5.11 In order to safeguard and promote the welfare of children, arrangements should ensure that:

- all staff in contact with children understand what to do and are aware of the most effective ways of sharing information if they believe a child and family may require targeted or specialist services in order to achieve their optimal outcomes;
- all staff in contact with children understand what to do and when to share information if they believe that a child may be in need, including those children suffering or at risk of significant harm.

Education Act 2002

5.12 The duty laid out in section 11 of the Children Act 2004 mirrors the duty imposed by section 175 of the Education Act 2002 on LEAs and the governing bodies of both maintained schools and further education institutions. This duty is to make arrangements to carry out their functions with a view to safeguarding and promoting the welfare of children and follow the guidance in *Safeguarding Children in Education* (DfES 2004).

5.13 The guidance applies to proprietors of independent schools by virtue of section 157 of the Education Act 2002 and the Education (Independent Schools Standards) Regulations 2003.

5.14 Section 21 of the Act, as amended by section 38 of the Education and Inspections Act 2006, places a duty on the governing body of a maintained school to promote the well-being of pupils at the school. Well-being in this section is defined with reference to section 10 of the Children Act 2004 (see paragraph 5.5 above). The Act adds that this duty has to be considered with regard to any relevant children and young person's plan.

5.15 This duty extends the responsibility of the governing body and maintained schools beyond that of educational achievement and highlights the role of a school in all aspects of the child's life. Involvement of other services may be required in order to fulfil this duty so there may be an implied power to work collaboratively and share information for this purpose.

Education Act 1996

5.16 Section 13 of the Education Act 1996 provides that an 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 is available to meet the needs of the population of the area. Details of the number of children in the local authority's area and an analysis of their needs are required in order to fulfil this duty, therefore there may be an implied power to collect and use information for this purpose.

5.17 Section 408 and the Education (Pupil Information)(England) Regulations 2005 requires the transfer of the pupil's common transfer file and educational record when a pupil changes school.

5.18 Section 434 (4) of the Act requires LEAs to request schools to provide details of children registered at a school.

Learning and Skills Act 2000

5.19 Section 117 of the Learning and Skills Act 2000 provides for help to a young person to enable them to take part in further education and training.

5.20 Section 119 enables Connexions Services to share information with Jobcentre Plus to support young people to obtain appropriate benefits under the Social Security Contributions and Benefits Act 1992 and Social Security Administration Act 1992.

Education (SEN) Regulations 2001

5.21 Regulation 6 provides that when the LEA is considering making an assessment of a child's special educational needs, it is obliged to send copies of the notice to social services, health authorities and the head teacher of the school (if any) asking for relevant information.

5.22 Regulation 18 provides that all schools must provide Connexions Services with information regarding all Year 10 children who have a statement of special educational needs.

Children (Leaving Care) Act 2000

5.23 The main purpose of the Act is to help young people who have been looked after by a local authority, move from care into living independently in as stable a fashion as possible. To do this it amends the Children Act 1989 (c.41) to place a duty on local authorities to assess and meet need. The responsible local authority is under a duty to assess and meet the care and support needs of **eligible** and **relevant** children and young people and to assist **former relevant**

children, in particular in respect of their employment, education and training.

5.24 Sharing information with other agencies will enable the local authority to fulfil the statutory duty to provide after care services to young people leaving public care.

Mental Capacity Act 2005

5.25 The Mental Capacity Act 2005 (MCA) and the associated Code of Practice contain guidance that is applicable to considerations of a person's capacity or lack of capacity to give consent to information sharing.

5.26 Section 1 of the MCA sets out 5 statutory principles on capacity:

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

Mental Capacity Act 2005 Code of Practice

5.27 Chapter 4 of the Mental Capacity Act 2005 Code of Practice provides guidance on how to assess whether someone has the capacity to make a decision. In this chapter, as throughout the Code, a person's capacity (or lack of capacity) refers specifically to their capacity to make a particular decision at the time it needs to be made.

5.28 Assessing capacity: Anyone assessing someone's capacity to make a decision for themselves should use the two-stage test of capacity:

1. Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (It

doesn't matter whether the impairment or disturbance is temporary or permanent).

2. If so, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?

5.29 Assessing ability to make a decision

- Does the person have a general understanding of what decision they need to make and why they need to make it?
- Does the person have a general understanding of the likely consequences of making, or not making, this decision?
- Is the person able to understand, retain, use and weigh up the information relevant to this decision?
- Can the person communicate their decision (by talking, using sign language or any other means)? Would the services of a professional (such as a speech and language therapist) be helpful?

5.30 Assessing capacity to make more complex or serious decisions

- Is there a need for a more thorough assessment (perhaps by involving a doctor or other professional expert)?

Immigration and Asylum Act 1999

5.31 Section 20 provides for a range of information sharing for the purposes of the Secretary of State:

- to undertake the administration of immigration controls to detect or prevent criminal offences under the Immigration Act;
- to undertake the provision of support for asylum seekers and their dependents.

Local Government Act 2000

5.32 Part 1 of the Local Government Act 2000 gives local authorities powers to take any steps which they consider are likely to promote the well-being of their area or the inhabitants of it.

Section 2 gives local authorities 'a power to do anything which they consider is likely to achieve any one or more of the following objectives':

- the promotion or improvement of the economic well-being of their area;
- the promotion or improvement of the social well-being of their area;

- the promotion or improvement of the environmental well-being of their area.

5.33 Section 2 (5) makes it clear that a local authority may do anything for the benefit of a person or an area outside their authority, if the local authority considers that it is likely to achieve one of the objectives in Section 2(1).

5.34 Section 3 is clear that local authorities are unable to do anything (including sharing information) for the purposes of the well-being of people - including children and young people - where they are restricted or prevented from doing so on the face of any relevant legislation, for example, the Human Rights Act, the Data Protection Act or by the common law duty of confidentiality.

Criminal Justice Act 2003

5.35 Section 325 of this Act details the arrangements for assessing risk posed by different offenders:

- The “responsible authority” in relation to any area, means the chief officer of police, the local probation board and the Minister of the Crown exercising functions in relation to prisons, acting jointly.
- The responsible authority must establish arrangements for the purpose of assessing and managing the risks posed in that area by:
 - a) relevant sexual and violent offenders; and
 - b) other persons who, by reason of offences committed by them are considered by the responsible authority to be persons who may cause serious harm to the public (this includes children)
- In establishing those arrangements, the responsible authority must act in co-operation with the persons identified below
- Co-operation may include the exchange of information.

5.36 The following agencies have a duty to co-operate with these arrangements:

- a) every youth offending team established for an area
- b) the Ministers of the Crown, exercising functions in relation to social security, child support, war pensions, employment and training
- c) every local education authority
- d) every local housing authority or social services authority
- e) every registered social landlord who provides or manages residential accommodation
- f) every health authority or strategic health authority

- g) every primary care trust or local health board
- h) every NHS trust
- i) every person who is designated by the Secretary of State as a provider of electronic monitoring services

Crime and Disorder Act 1998

5.37 Section 17 applies to a local authority (as defined by the Local Government Act 1972); a joint authority; a police authority; a national park authority; and the Broads Authority. As amended by the Greater London Authority Act 1999 it applies to the London Fire and Emergency Planning Authority from July 2000 and to all fire and rescue authorities with effect from April 2003, by virtue of an amendment in the Police Reform Act 2002.

5.38 It recognises that these key authorities have responsibility for the provision of a wide and varied range of services to and within the community. In carrying out these functions, section 17 places a duty on them to do all they can to reasonably prevent crime and disorder in their area.

5.39 The purpose of this section is simple: the level of crime and its impact are influenced by the decisions and activities taken in the day to day business of local bodies and organisations. Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across a wide range of local services that influence and impact upon community safety and putting it at the heart of local decision making. Section 17 is a key consideration for these agencies in their work in crime and disorder reduction partnerships, drug action teams, YOTs, children's trusts and local safeguarding children boards.

5.40 Section 37 sets out that the principal aim of the youth justice system is to prevent offending by children and young people and requires everyone carrying out youth justice functions to have regard to that aim.

5.41 Section 39(5) sets out the statutory membership of YOTs reflecting their responsibilities both as a criminal justice agency and a children's service. The membership and consists of the following:

- at least one probation officer;
- at least one police officer;
- at least one person nominated by a health authority;
- at least one person with experience in education;
- at least one person with experience of social work in relation to children.

5.42 YOTs have a statutory duty to coordinate the provision of youth justice services including advising courts, supervising community interventions and sentences, working with secure establishments in respect of young people serving custodial sentences and also in the latter category of a children's service.

5.43 As YOTs are multi-agency teams, members will also need to be aware of the need to safeguard and promote the welfare of children in their constituent agency.

5.44 Section 115 provides any person with a power but not an obligation to disclose information to responsible public bodies (e.g. police, local and health authorities) and with co-operating bodies (e.g. domestic violence support groups, victim support groups) participating in the formulation and implementation of the local crime and disorder strategy.

5.45 The police have an important and general common law power to share information to prevent, detect and reduce crime. However, some other public organisations that collect information may not have previously had the power to share it with the police and others. Section 115 clearly sets out the power of any organisation to share information with the police authorities, local authority (including parish and community councils), Probation Service and health authority (or anyone acting on their behalf) for the purposes of the Act.

5.46 This ensures that information may be shared for a range of purposes covered by the Act, for example for the functions of the crime and disorder reduction partnerships and YOTs, the compilation of reports on parenting orders, anti-social behaviour orders, sex offender orders and drug testing orders.

National Health Service Act 1977

5.47 The National Health Service Act 1977 Act provides for a comprehensive health service for England and Wales to improve the physical and mental health of the population and to prevent, diagnose and treat illness.

5.48 Section 2 of the Act provides for sharing information with other NHS professionals and practitioners from other agencies carrying out health service functions that would otherwise be carried out by the NHS.

National Health Service Act 2006

5.49 Section 82 of the National Health Service Act 2006 places a duty on NHS bodies and local authorities to co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.

The Adoption and Children Act 2002

5.50 The Adoption and Children Act 2002 and the associated Regulations make provision for obtaining, recording and keeping confidential information about adopted children and/or their relatives. The Act and Regulations, give limited express power to share information, in prescribed circumstances as laid out in the legislation. Information about pre-2002 Act adoptions remains governed by the provisions of the Adoption Agencies Regulations 1983. Legal advice should be sought before any disclosure from adoption records.

Links and resources

The Human Rights Act 1998. Available at
http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980042_en_1

The European Convention on Human Rights. Available at
<http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/The+European+Convention+on+Human+Rights+and+its+Protocols/>

Data Protection Act 1998. Available at
http://www.opsi.gov.uk/acts/acts1998/ukpga_19980029_en_1

ICO guidance for organisations on Data Protection Act and other legislation including good practice notes, codes of practice and technical guidance notes Available at
http://www.ico.gov.uk/for_organisations/data_protection_guide.aspx

Crime and Disorder Act 1998. Available at
http://www.opsi.gov.uk/acts/acts1998/ukpga_19980037_en_1

Data Protection Act 1998 Legal Guidance, Information Commissioners Office. Available at
http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/data_protection_act_legal_guidance.pdf

The Children Act 1989. Available at
http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_1.htm

The Children Act 2004. Available at
http://www.opsi.gov.uk/acts/acts2004/ukpga_20040031_en_1.htm

Guidance on the Children Act 2004 (HMG, 2004) Available at
www.ecm.gov.uk/strategy/guidance

Education Act 2002. Available at
http://www.opsi.gov.uk/acts/acts2002/ukpga_20020032_en_1

Education Act 1996. Available at
http://www.opsi.gov.uk/acts/acts1996/ukpga_19960056_en_1

Learning and Skills Act 2000. Available at
http://www.opsi.gov.uk/acts/acts2000/ukpga_20000021_en_1

Special Educational Needs And Disability Act 2001. Available at
http://www.opsi.gov.uk/acts/acts2001/ukpga_20010010_en_1.htm

Children (Leaving Care) Act 2000. Available at
http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000035_en_1

Mental Capacity Act 2005. Available at
http://www.opsi.gov.uk/acts/acts2005/ukpga_20050009_en_1

Mental Capacity Act: 2005 Code of Practice (DCA, 2007). Available at
<http://www.dca.gov.uk/menincap/legis.htm#codeofpractice>

Immigration and Asylum Act 1999. Available at
http://www.opsi.gov.uk/acts/acts1999/ukpga_19990033_en_1.htm

Local Government Act 2000. Available at
http://www.opsi.gov.uk/acts/acts2000/ukpga_20000022_en_1

Criminal Justice Act 2003. Available at
http://www.opsi.gov.uk/acts/acts2003/ukpga_20030044_en_1

National Health Service Act 1977. Available at
http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1977/cukpga_19770049_en_1

National Health Service Act 2006. Available at
http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/DH_064103

The Adoption and Children Act 2002. Available at
http://www.opsi.gov.uk/acts/acts2002/ukpga_20020038_en_1

Further information about adoption and information sharing is available at
<http://www.everychildmatters.gov.uk/socialcare/childrenincare/adoption/>

You can download this publication online at
www.ecm.gov.uk/informationsharing

ISBN: 978-1-84775-276-5

D35(3933)/0109

© Crown Copyright 2009

Published by the Department for Children, Schools and Families,
and Communities and Local Government

Extracts from this document may be reproduced for
non-commercial research, education or training purposes
on the condition that the source is acknowledged. For any
other use please contact hmsolicensing@opsi.x.gsi.gov.uk

75% recycled

This publication is printed
on 75% recycled paper



When you have finished with
this publication please recycle it

