

What To Do If You're Worried A Child Is Being Abused

Summary



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Summary

Children's Services Guidance

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INTRODUCTION – SAFEGUARDING CHILDREN

All those who come into contact with children and families in their everyday work, including people who do not have a specific role in relation to child protection, have a duty to safeguard and promote the welfare of children. You are likely to be involved in three main ways:

- you may have concerns about a child, and refer those concerns to social services or the police (via your designated teacher in the case of staff in schools);
- you may be approached by social services and asked to provide information about a child or family or to be involved in an assessment or to attend a child protection conference. This may happen regardless of who made the referral to social services (for more about sharing information, see the appendix, which explains how you should share information in order to safeguard children);
- you may be asked to carry out a specific type of assessment, or provide help or a specific service to the child or a member of their family as part of an agreed plan and contribute to the reviewing of the child's progress (including attending child protection conferences).



The flow charts starting on page 10 illustrate the processes for safeguarding children:

- from the point that concerns are raised about a child and are referred to a statutory agency that can take action to safeguard the child (flow chart 1);
- through initial assessment of the child's situation and what happens after that (flow chart 2);
- taking urgent action, if necessary (flow chart 3);
- to the strategy discussion, where there are concerns about the child's safety, and beyond that to the child protection conference (flow chart 4); and
- what happens after the child protection conference, and the review process (flow chart 5).

EVERYONE WORKING WITH CHILDREN AND FAMILIES SHOULD...

- Be familiar with and follow your organisation's procedures and protocols for promoting and safeguarding the welfare of children in your area, and know who to contact in your organisation to express concerns about a child's welfare.
- Remember that an allegation of child abuse or neglect may lead to a criminal investigation so don't do anything that may jeopardise a police investigation, such as asking a child leading questions or attempting to investigate the allegations of abuse.

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- Refer any concerns about child abuse or neglect to social services or the police. If you are responsible for making referrals, know who to contact in police, health, education and social services to express concerns about a child's welfare.
- When referring a child to social services, you should consider and include any information you have on the child's developmental needs and their parents' /carers' ability to respond to these needs within the context of their wider family and environment. Similarly, when contributing to an assessment or providing services, you should consider what contribution you are able to make in each of these three areas. Specialist assessments, in particular, are likely to provide information in a specific dimension, such as health, education or family functioning.
- Communicate with the child in a way that is appropriate to their age, understanding and preference. This is especially important for disabled children and for children whose preferred language is not English. Where concerns arise as a result of information given by a child, it is important to reassure the child but not to promise confidentiality.
- See the child as part of considering what action to take in relation to concerns about the child's welfare.
- Record full information about the child, at first point of contact, including name(s), address(es), gender, date of birth, name(s) of person(s) with parental

responsibility (for consent purposes) and primary carer(s), if different, and keep this information up to date. In schools, this information will be part of the pupil's record.

- Record all concerns, discussions about the child, decisions made, and the reasons for those decisions. The child's records should include an up-to-date chronology, and details of the lead worker in the relevant agency – for example, a social worker, GP, health visitor or teacher.



IF YOU HAVE CONCERNS ABOUT A CHILD'S WELFARE...

EVERYONE SHOULD...

- Discuss your concerns and any differences of opinion with your manager, named or designated health professional or designated teacher. If you still have concerns, you or your manager could also, without necessarily identifying the child in question, discuss your concerns with your peers or senior colleagues in other agencies - this may be an important way of you developing an understanding of the reasons for your concerns about the child's welfare.
- If, after this discussion, you still have concerns, and consider the child and their parents would benefit from further services, consider to which agency, including another part of your own, you should make a referral. If you consider the child is or may

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be a child in need, you should refer the child and family to social services. This may include a child whom you believe is, or may be at risk of, suffering significant harm. Concerns about significant harm may also arise with children who are already known to social services. Information about these children should be given to the allocated social worker within social services. In addition to social services, the police and the NSPCC have powers to intervene in these circumstances.

- In general, seek to discuss your concerns with the child, as appropriate to their age and understanding, and with their parents and seek their agreement to making a referral to social services unless you consider such a discussion would place the child at risk of significant harm (for further guidance on consent see the appendix).
- When you make your referral, agree with the recipient of the referral what the child and parents will be told, by whom and when.
- If you make your referral by telephone, confirm it in writing within 48 hours. Social services should acknowledge your written referral within one working day of receiving it, so if you have not heard back within 3 working days, contact social services again.

SOCIAL WORKERS AND THEIR MANAGERS, IN RESPONDING TO A REFERRAL, SHOULD...

- Following a referral, you and your manager should decide on the next course of action within one working day, and record the decision. Further action may include undertaking an initial assessment, referral to other agencies, provision of advice or information, or no further action.
- If you and your manager decide that you should take no further action at this stage, tell the referrer of this decision and the reasons for making it. Where a referral has been received from a member of the public, do this in a way that is consistent with respecting the confidentiality of each party.
- You and your manager should consider whether a crime may have been committed. If so, involve the police at the earliest opportunity, as it is their responsibility to carry out any criminal investigation in accordance with the agreed plan for the child.
- When you have received a referral from a member of the public, rather than another professional, remember that personal information about referrers, including anything that could identify them, should only be disclosed to third parties (including subject families and other agencies) with the consent of the referrer. If the police are involved, you will need to discuss with them when to inform the parents about referrals from third parties, as this will have a bearing on the conduct of police investigations.





POLICE OFFICERS SHOULD...

- Where you become involved with a child about whom you have child welfare concerns, refer to social services and agree a plan of action.
- Where you are contacted by social services about a child, consider whether to begin a criminal investigation and lead on any investigation.
- Undertake the evidence gathering process whilst working in partnership and sharing relevant information with social services and other agencies.
- Take immediate action where necessary to safeguard a child, consulting with social services and agreeing a plan of action as soon as practicable.

WHAT SHOULD HAPPEN LATER IN THE CHILD PROTECTION PROCESS...

SOCIAL WORKERS AND THEIR MANAGERS SHOULD...

- Lead on the assessment and planning processes, ensuring planned interventions are carried out and the child's developmental progress reviewed, and provide support or specific services to the child or member of the family as part of an agreed plan.

POLICE OFFICERS SHOULD...

- Investigate any allegations of crime or suspected crime and use the information gained to assist other agencies in understanding the child's circumstances, in the interests of the child's welfare.

- Investigate the criminal antecedents of any known or suspected offender and where appropriate refer to the multi-agency public protection arrangements (MAPPA) so that any future risk of serious harm can be properly assessed and managed.

EVERYONE ELSE SHOULD...

- provide relevant information to social services or the police about the child or family members;
- contribute to initial or core assessments and undertake specialist assessments, if requested, of the child or family members;
- provide support or specific services to the child or member of the family as part of an agreed plan, and contribute to the reviewing of the child's developmental progress.



IF YOU NEED MORE INFORMATION...

Framework for the Assessment of Children in Need and their Families.

Website: www.doh.gov.uk/qualityprotects/work_project_3.htm

Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children.

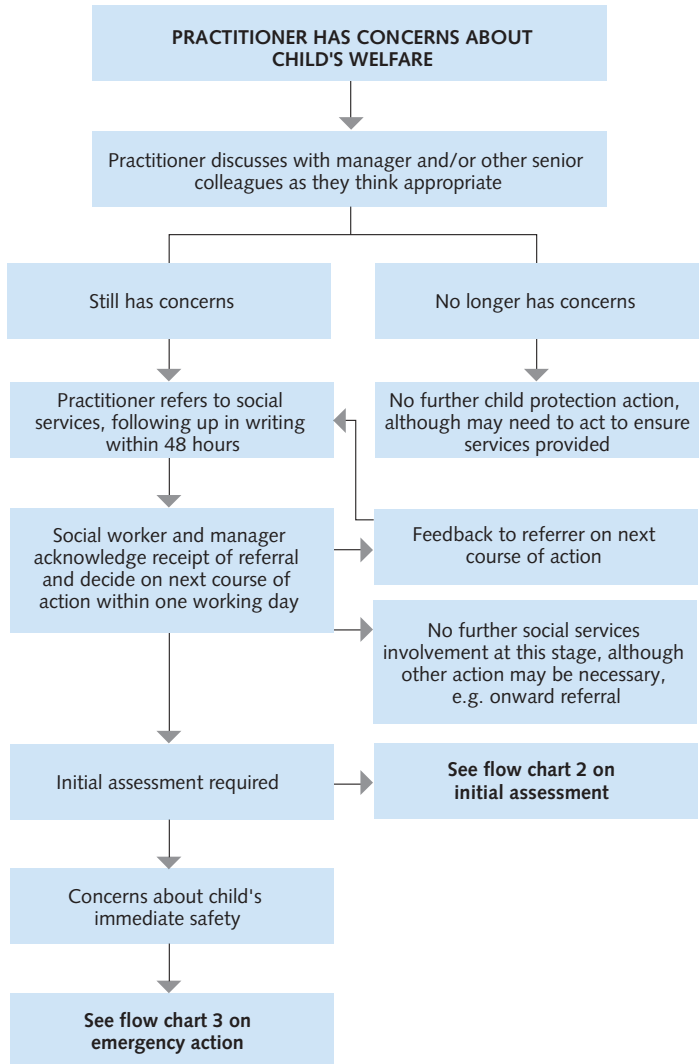
Website: www.doh.gov.uk/qualityprotects/work_project_3.htm

What To Do If You're Worried A Child Is Being Abused

Website: www.doh.gov.uk/safeguardingchildren/index.htm

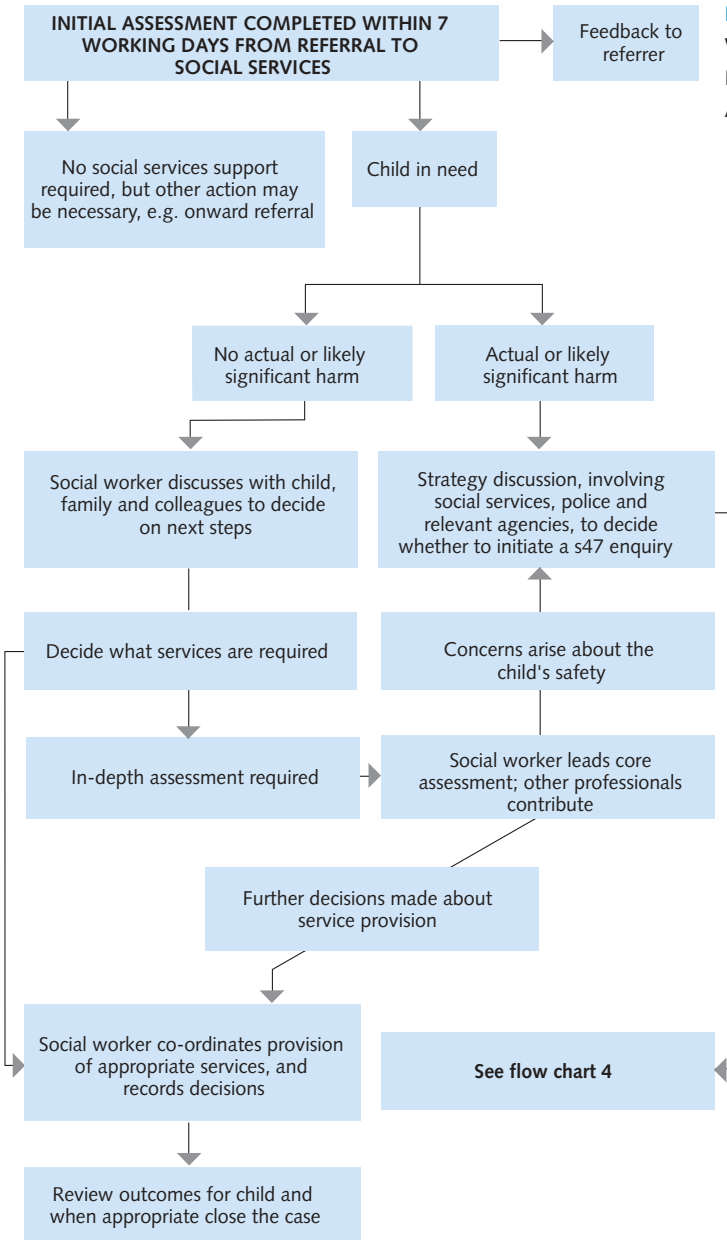
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FLOW CHART 1 REFERRAL



What To Do If You're Worried A Child Is Being Abused

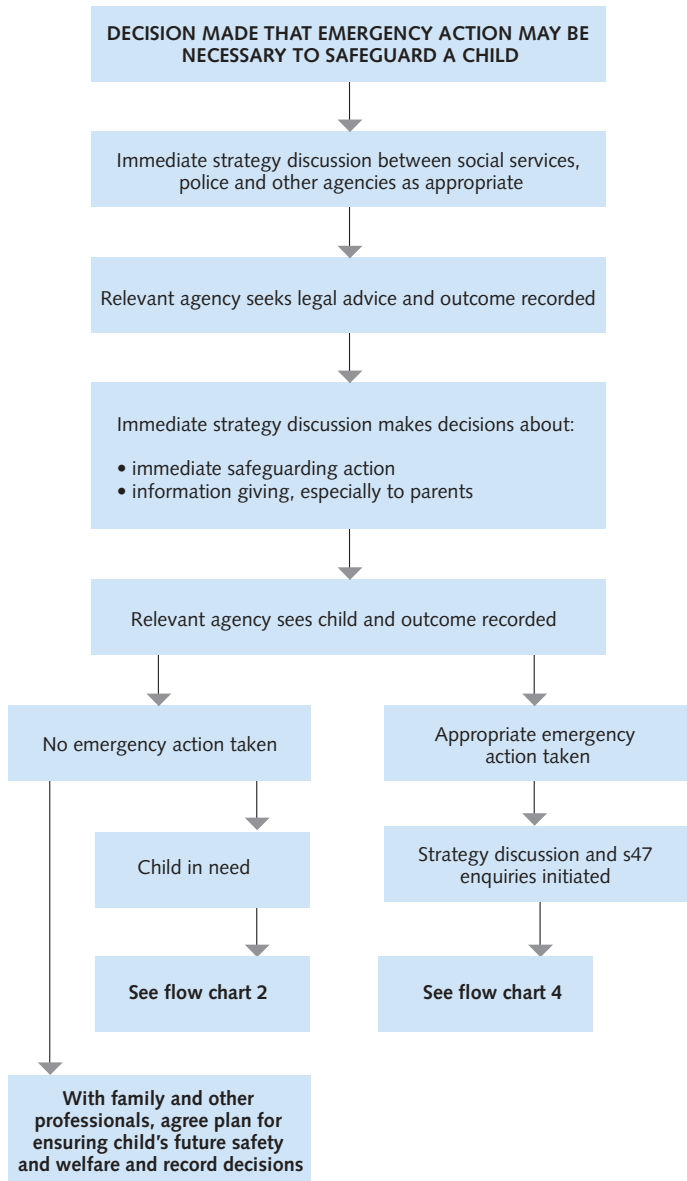
FLOW CHART 2
WHAT HAPPENS FOLLOWING INITIAL ASSESSMENT?



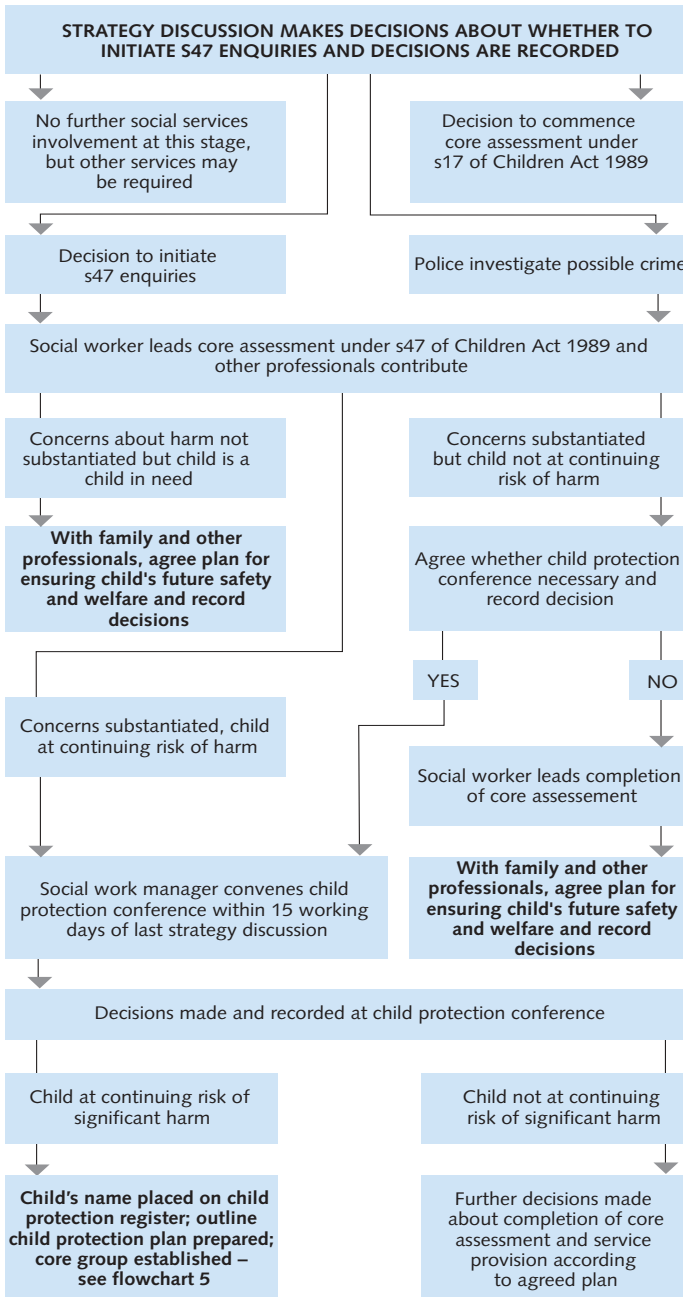
Summary

FLOW CHART 3

URGENT ACTION TO SAFEGUARD CHILDREN



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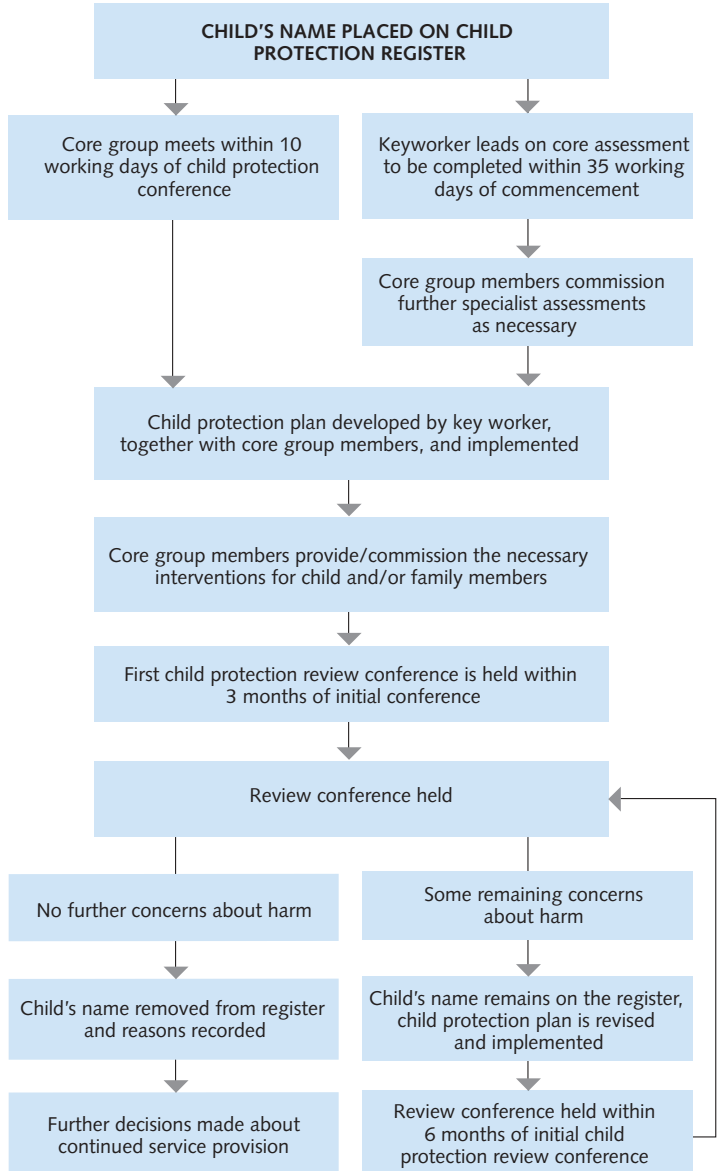


FLOW CHART 4

WHAT HAPPENS AFTER THE STRATEGY DISCUSSION?

Summary

FLOW CHART 5
WHAT HAPPENS
AFTER THE CHILD
PROTECTION
CONFERENCE,
INCLUDING THE
REVIEW PROCESS?



INFORMATION SHARING

1 This guidance is about sharing information for the purposes of safeguarding and promoting the welfare of children. Sharing of information amongst practitioners working with children and their families is essential. In many cases it is only when information from a range of sources is put together that a child can be seen to be in need or at risk of harm.

2 You may be anxious about the legal or ethical restrictions on sharing information, particularly with other agencies. You should be aware of the law and should comply with the code of conduct or other guidance applicable to your profession. These rarely provide an absolute barrier to disclosure. You should be prepared to exercise your judgement. A failure to pass on information that might prevent a tragedy could expose you to criticism in the same way as an unjustified disclosure.

3 A decision whether to disclose information may be particularly difficult if you think it may damage the trust between you and your patient or client. Wherever possible you should explain the problem, seek agreement and explain the reasons if you decide to act against a parent or child's wishes. It is often helpful to discuss such concerns with a senior colleague, designated professional, or, if you are working in the NHS or local authority social services, your Caldicott Guardian.

WHAT ARE THE LEGAL RESTRICTIONS?

4 The decision whether to disclose information may arise in various contexts. You may have a niggling concern about a child that might be allayed or confirmed if shared with another agency. You may be asked for information in connection with an assessment of a child's needs under s17 of the Children Act 1989 or an enquiry under s47 of that Act or in connection with court proceedings. In all cases the main restrictions on disclosure of information are:

- common law duty of confidence;
- Human Rights Act 1998;
- Data Protection Act 1998.

5 Each of these has to be considered separately. Other statutory provisions may also be relevant. But in general, the law will not prevent you from sharing information with other practitioners if:

- those likely to be affected consent; or
- the public interest in safeguarding the child's welfare overrides the need to keep the information confidential; or
- disclosure is required under a court order or other legal obligation.

COMMON LAW DUTY OF CONFIDENCE

6 The circumstances in which a common law duty of confidence arises have been built up in case law over time. The duty arises when a person shares information with another in circumstances where it is reasonable to expect that the information will be kept confidential.

The courts have found a duty of confidence to exist where –

- *a contract provides for information to be kept confidential;*
- *there is a special relationship between parties, such as patient and doctor, solicitor and client, teacher and pupil;*
- *an agency or government department, such as Inland Revenue, collects and holds personal information for the purposes of its functions.*

The duty is not absolute. Disclosure can be justified if –

- *the information is not confidential in nature;*
- *the person to whom the duty is owed has expressly or implicitly authorised the disclosure;*
- *there is an overriding public interest in disclosure;*
- *disclosure is required by a court order or other legal obligation.*

Is the information confidential?

7 Some kinds of information, such as medical records and communications between doctor and patient, are generally recognised as being subject to a duty of confidence. Other information may not be, particularly if it is trivial or readily available from other sources or if the person to whom it relates would not have an interest in keeping it secret. For example, a social worker who was concerned about a child's whereabouts might telephone the school to establish whether the child was in school that day.

Maintaining confidentiality

8 As a general rule you should treat all personal information you acquire or hold in the course of working with children and families as confidential and take particular care with sensitive information.

Disclosure by consent

9 There will be no breach of confidence if the person to whom a duty of confidence is owed consents to the disclosure. Consent can be express (that is orally or in writing) or can be inferred from the circumstances in which the information was given (implied consent).

- **Whose consent is required?** The duty of confidence is owed to the person who has provided information on the understanding it is to be kept confidential and, in the case of medical or other records, the person to whom the information relates.
- **Has consent been given?** You do not need express consent if you have reasonable grounds to believe that the person to whom the duty is owed understands and accepts that the information will be disclosed. For example, a person who refers an allegation of abuse to a social worker would expect that information to be shared on a 'need to know' basis with those responsible for following up the allegation. Anyone who receives information, knowing it is confidential, is also subject to a duty of confidence. Whenever you give or receive information in confidence you should ensure there is a clear understanding as to how it may be used or shared.
- **Should I seek consent?** If you are in doubt as to whether a disclosure is authorised it is best to obtain express consent. But you should not do so if you think this would be contrary to a child's welfare. For example, if the information is needed urgently the delay in obtaining consent may not be justified. Seeking consent may prejudice a police investigation or may increase the risk of harm to the child.

- **What if consent is refused?** You will need to decide whether the circumstances justify the disclosure, taking into account what is being disclosed, for what purposes and to whom.

Disclosure in the absence of consent

10 The law recognises that disclosure of confidential information without consent or a court order may be justified in the public interest to prevent harm to others.

11 The key factor in deciding whether or not to disclose confidential information is **proportionality**: is the proposed disclosure a proportionate response to the need to protect the welfare of the child? The amount of confidential information disclosed, and the number of people to whom it is disclosed, should be no more than is strictly necessary to meet the public interest in protecting the health and wellbeing of a child. The more sensitive the information is, the greater the child-focused need must be to justify disclosure and the greater the need to ensure that only those professionals who have to be informed receive the material ('the need to know basis' – see overleaf).

The 'Need to Know' Basis

Relevant Factors:

- what is the purpose of the disclosure?
- what are the nature and the extent of the information to be disclosed?
- to whom is the disclosure to be made (and is the recipient under a duty to treat the material as confidential)?
- is the proposed disclosure a proportionate response to the need to protect the welfare of a child to whom the confidential information relates?

Is there a difference between disclosing information within your own organisation or to another organisation?

12 The approach to confidential information should be the same whether any proposed disclosure is internally within one organisation (e.g. within a school, or within social services) or between agencies (e.g. from a teacher to a social worker).

13 The need to disclose confidential information to others within your own organisation will arise more frequently than will be the case for inter-agency disclosure. For example, a teacher will need to discuss confidential information with the Year Head and the Head Teacher more frequently than with a social worker. Pupils and their parents would expect such discussions to take place within the school, so there will usually be implied consent. But if not (e.g. if you disclose information that a child has asked you to keep secret) you will have to decide whether the circumstances justify the disclosure.

What if the duty is to a child or young person?

14 A duty of confidence may be owed to a child or young person in their own right. A young person aged 16 or over, or a child under 16 who has the capacity to understand and make their own decisions, may give (or refuse) consent to a disclosure. Otherwise a person with parental responsibility should consent on their behalf.

THE HUMAN RIGHTS ACT 1998

15 Article 8 of the European Convention on Human Rights (which forms part of UK law under the Human Rights Act 1998) recognises a right to respect for private and family life.

8.1 *Everyone has the right to respect for his private and family life, his home and his correspondence.*

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 disorder or crime, protection of health or morals or for the protection of rights and freedom of others.*

Article 8 ECHR

16 The right is not absolute. Disclosing confidential information to protect the welfare of a child could cause considerable disruption to a person's private or family life. This may, however, be justified by Article 8(2) if it is necessary to prevent crime or to protect the health and welfare of a child. Essentially it is the same 'proportionality' test as applies to the common law duty of confidence.

17 If sharing information is justified under the common law duty of confidence and does not breach the data protection requirements or any other specific legal requirements, it should satisfy Article 8.

THE DATA PROTECTION ACT 1998

18 The Data Protection Act 1998 regulates the handling of personal data. Essentially, this is information kept about an individual on a computer or on a manual filing system. The Act lays down requirements for the processing of this information, which includes obtaining, recording, storing and disclosing it.

19 If you are making a decision to disclose personal data you must comply with the Act, which includes the eight data protection principles. These should not be an obstacle if:

- you have particular concerns about the welfare of a child;
- you disclose information to social services or to another professional; and
- the disclosure is justified under the common law duty of confidence.

20 The first and second data protection principles are the most relevant.

The First Principle

Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met and,*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is met.*

The Second Principle

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

21 'Fairness' is being open with people about how information about them is to be used and the circumstances in which it might be disclosed. Most organisations take steps to make people aware of their policy when they first obtain information from them, for example, by including it on forms or leaflets or by notices in waiting areas. There are a number of exceptions to this requirement, in particular, if the disclosure is for the prevention or detection of crime (which includes neglect or abuse of a child) or is required by a court order or a statute.

22 A condition in Schedule 2 must be met. Those conditions establish whether there is a legitimate reason for sharing information. They include:

- the data subject (the person to whom the data relates) consents;
- the disclosure is necessary for compliance with a legal obligation;
- it is necessary to protect the vital interests of the data subject;

- it is necessary for the exercise of a statutory function, or other public function exercised in the public interest (e.g. for the purposes of an s17 assessment or s47 enquiry); and
- it is necessary for the purposes of legitimate interests pursued by the person sharing the information, except where it is unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

23 There is a condition to cover most situations where a practitioner shares information to safeguard a child's welfare. In particular, the last condition (legitimate interest) is relevant in all cases and involves a proportionality test very similar to that applied to breaches of confidence.

24 If the information being shared is sensitive personal data, then a condition in Schedule 3 must also be met. Sensitive personal data relates to the data subject's:

- racial or ethnic origins;
- political opinions;
- religious beliefs;
- membership of a trade union;
- physical or mental health or condition;
- sexual life;
- criminal offences.

25 The relevant conditions in Schedule 3 are:

- the data subject has explicitly consented to the disclosure;
- it is necessary to protect the vital interests of the data subject or another person where the data subject's consent cannot be given or is unreasonably withheld or cannot reasonably be expected to be obtained;
- it is necessary to establish, exercise or defend legal rights;
- it is necessary for the exercise of any statutory function; and
- it is in the substantial public interest and necessary to prevent or detect an unlawful act and obtaining express consent would prejudice those purposes.

26 'Legal rights' include a child's rights under the Human Rights Act 1998 and defending those rights could include disclosures between professionals to establish whether a child's welfare needed to be safeguarded. Exercise of a statutory function would cover sharing of information amongst social services and other agencies in connection with an s17 assessment or s47 enquiry.

27 The second data protection principle requires that the purpose for which information is disclosed is not incompatible with the purpose for which it was obtained. But it can be for a different purpose if there is no direct conflict. Disclosures for prevention or detection of crime or required by a court order or a statute are exempt from this requirement.

28 If you need advice about the data protection requirements, you should contact the data protection compliance officer in your organisation or, if you do not have one, you can contact the Information Commissioner (www.dataprotection.gov.uk).

OTHER STATUTORY PROVISIONS

29 Sections 27 and 47 of the Children Act 1989 enable local authorities to request help from specified authorities (other local authorities, education authorities, housing authorities, NHS bodies) and places an obligation on those authorities to co-operate. A request could be for information in connection with an s17 assessment or an s47 enquiry. Neither provision would require an unjustified breach of confidence. But an authority should not refuse a request without considering all the circumstances.

30 Section 115 of the Crime and Disorder Act 1998 enables any person to disclose information to a relevant authority for any purposes of the Act if they would not otherwise have the power to do so. Relevant authorities include local authorities, NHS bodies and police authorities. The purposes of the Act broadly cover the prevention and reduction of crime and the identification or apprehension of offenders.

READER INFORMATION

Work area	Policy
Document purpose	Best Practice Guidance
ROCR ref:	Gateway Ref: 1384
Title	What To Do If You're Worried A Child Is Being Abused (Summary)
Author	Department of Health COS(C)CNI
Publication date	19 May 2003
Target Audience	All staff who come into contact with children, parents & families in the course of their work.
Circulation list	PCT CEs, NHS Trusts CEs, StHAs CEs, Local Authority CEs, GPs, Voluntary Organisations. All Doctors, All Nurses/Midwives and Health Visitors
Description	This booklet has been developed to assist practitioners in safeguarding and promoting the welfare of children. It also contains an appendix to help practitioners with the legal issues affecting the sharing of information.
Cross ref	Framework for Assessment of Children in Need & their Families (2000), Working Together to Safeguard Children (1999)
Superseded docs	Child Protection – Medical responsibilities – Guidance to Doctors Working with Child Protection Agencies, Addendum to Working Together under the Children Act 1989; Child Protection: Guidance for Senior Nurses, health visitors, midwives & their managers & Appendix 5 entitled Individual cases flow chart in Working Together to Safeguard Children (p. 116)
Action required	NHS, PCT and LA CEs to distribute summary to all staff who come into contact with children, parents & families in the course of their work.
Timing	By 10 Jun 2003
Contact details	Nicola St. Clair-Newman VCI Response Team Room 123 Wellington House 133-155 Waterloo Road SE1 8UG 0207 972 1352 Nicola.St.Clair-Newman@doh.gsi.gov.uk
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