



London MASH Information Sharing Guidance





INTRODUCTION AND SCOPE

The goal of a MASH (Multi Agency Safeguarding Hub) is to improve safeguarding and promote the welfare of children and young people through the timely exchange of proportionate and accurate information following an enquiry by any professional or member of the public.

The MASH environment is unique in the way it enables multiple sources of information to be considered and shared in a secure and safe location.

Each decision to request and share information with individual organisations needs to be considered in terms of whether it is necessary and proportionate. The decision to request and share information should not be an assumed process; but rather a deliberate response to the issues and concerns raised.

Information sharing in these circumstances is governed by a legal framework that helps to balance the right of the individual to privacy with the need to protect children and young people at risk or who may be in need of support.

The professional holding the information must always consider relevance and proportionality before releasing information to the MASH.

All practitioners and managers who work with families and children and who need to make decisions about sharing personal and confidential information on a case-by-case basis should be guided by

- ***Information Sharing: Guidance for practitioners and managers (DfES 2008)***
- ***Information Sharing: Further guidance on legal issues (DfES 2008)***

This guide is written for practitioners and managers who are working within a MASH. It is intended to supplement the two key documents above; not replace them.

Decisions to request and share information must be considered in terms of whether they are necessary and proportionate.



THE LEGAL FRAMEWORK

The main legal framework relating to the protection of personal information and how it is exchanged in a MASH 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

There is no general power to obtain, hold or process data and there is no statutory power to share information.

However, some Acts of Parliament do give statutory public bodies express or implied statutory powers to share information. There are a number of pieces of legislation. Some of these are relevant to all members of the MASH. Others relate to specific organisations.

These include:

- The Children Act 1989
- The Children Act 2004
- Education Act 2002
- Education Act 1996
- Learning and Skills Act 2000
- Education (SEN) Regulations 2001
- Children (Leaving Care) Act 2000
- Mental Capacity Act 2005
- Mental Capacity Act Code of Practice 2005
- Immigration and Asylum Act 1999
- Local Government Act 2000
- Criminal Justice Act 2003
- Crime and Disorder Act 1998
- National Health Service Act 1977
- National Health Service Act 2006
- The Adoption and Children Act 2002
- The Localism Act 2011
- Welfare Reform Act 2012

Acts of Parliament give statutory bodies powers to share information



GOLDEN RULES OF INFORMATION SHARING

Although information sharing can appear complex and rule bound, the principles are clear and encompassed in the Seven Golden Rules for Information Sharing as defined in *Information Sharing: Guidance for practitioners and managers*.

These underpin all work but are particularly relevant to the work of a MASH. They have been nationally endorsed by the governing bodies of all MASH partner agencies.

Following are the seven golden rules as well as their relevance and application in MASH.

1

REMEMBER THAT THE DATA PROTECTION ACT IS NOT A BARRIER TO SHARING INFORMATION but provides a framework to ensure that personal information about living persons is shared appropriately.

Each MASH will have an Information Sharing Agreement that commits all partners to working within the principles of the Data Protection Act.

2

BE OPEN AND HONEST with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement unless it is unsafe or inappropriate to do so.

The MASH is most effective when it is a component of an integrated multi agency safeguarding system. The starting point in relation to sharing information is that practitioners will be open and honest with families from the onset about why, what, how and with whom information will or could be shared.

It may be necessary and desirable to deviate from the normal approach of seeking consent in cases where practitioners have

The Data Protection Act is not a barrier to sharing information



reasonable grounds for believing that asking for consent would be unsafe or inappropriate - for example if there is an emergency or if seeking consent could create or increase a risk of harm.

There has to be a proportionate reason for not seeking consent and the person making the decision must try to weigh up the important legal duty to seek consent and the damage that might be caused by the proposed information sharing on the one hand and balance that against whether any, and if so, what type and amount of harm might be caused or not prevented by seeking consent.

Consent can be 'implicit' if information sharing is integral to the agreement to a service e.g. when a parent agrees to their child's referral to a CAMHS service the referral implies that information will be shared.

Each MASH should have a means of recording whether consent has been sought and granted before opening an enquiry.



SEEK ADVICE IF IN ANY DOUBT, without disclosing the identity of the person if possible.

There are occasions where a practitioner may be in doubt about what is appropriate to share. It is the role of management to support them in these decisions. Because the legal exchange of information is one of the key functions of a MASH, it can often provide informed, accurate and expert advice.



SHARE WITH CONSENT WHERE APPROPRIATE and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent, if in your judgement, that lack of consent can be overridden if it is in the public interest. You will need to base your judgement on the facts of the case.

Even when there is a strong culture of open and honest dialogue with service users, there will be times when the MASH receives enquiries for which consent has either been refused or not sought. This would include anonymous enquiries as well as cases where the practitioner has, for whatever reason, failed to obtain consent.



Within the MASH, the question of whether to seek consent should always be considered and dynamically reviewed. However, as outlined in Rule 5, consent is not always necessary. The key factor in making the decision is whether it is proportionate in the circumstances.

You will need to balance what might happen if you share with what might happen if you don't.

There may be times when consent is sought and refused. This does not mean that information cannot be shared. The refusal of consent should be considered in conjunction with other concerns and if it is considered justifiable then information can and **MUST** be shared.

5

CONSIDER SAFETY AND WELL-BEING; base information sharing decisions on considerations of the safety and well-being of the person and others who might be affected by their actions.

In most cases it is appropriate to seek consent. However, there are some cases where it is not. Consent should not be sought if doing so would:

- place a person (the individual, family member, worker or a third party) at increased risk of significant harm (if a child) or serious harm (if an adult)
- prejudice the prevention, detection or prosecution of a serious crime - this is likely to cover most criminal offences relating to children
- lead to an unjustified delay in making enquiries about allegations of significant harm (to a child) or serious harm (to an adult)

When a decision to share without consent is made, the decision **MUST** be recorded along with the justification for it.

6

NECESSARY, PROPORTIONATE, RELEVANT, ACCURATE, TIMELY AND SECURE: Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with the people who need to have it, is accurate and up to date, is shared in a timely fashion and is shared securely.

Even with consent, it may not be appropriate to share all information that is available. Based upon the type and level of concern, practitioners must make a decision about what is necessary, proportionate and relevant to share to ensure a balanced response to risk and need.



You will need to balance what might happen if you share with what might happen if you don't.

As part of that balanced response within the MASH, there may be times when it is appropriate to share information that has not been verified or is possibly hearsay or conjecture. Where this occurs it must be clearly noted in the record to ensure information that is not known to be factual is not shared inappropriately.

When making a decision, the key question should always be “How will providing the information help further enquiries and how will failing to provide it hinder them?”

Information sharing within the MASH is dynamic. Agencies retain the right to redact information before it leaves the fire walled environment when they determine that it is not relevant to any agreed response or that it is too sensitive.

Examples of being too sensitive may be if a person’s life would be put at risk if certain information became more widely known or if an individual is HIV positive. This ensures that the principles of security, proportionality and relevance are maintained.



KEEP A RECORD OF YOUR DECISION AND THE REASONS FOR IT - whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

Each MASH should provide a confidential system that records what has been shared as well as what has been retained after a decision is made.

Best practice is that the MASH system should record:

- the date and time the enquiry is received
- all information both sensitive and non sensitive shared by all partners
- all decisions and the reason for them

Each MASH should provide a confidential system that records what has been shared as well as what has been retained after a decision is made.



CALDICOTT PRINCIPLES

The original Caldicott Review was published in 1997. It included six principles governing the sharing of information.

- 1 Justify the purpose for needing the information
- 2 Do not use person identifiable information unless it is absolutely necessary
- 3 Use the minimum amount necessary of person identifiable information
- 4 Access to person identifiable information should be on a strictly need to know basis
- 5 Everyone should be aware of their responsibilities
- 6 Everyone should understand and comply with the law

For a MASH to be lawful it must comply with ALL the Caldicott principles.



The government commissioned Dame Fiona Caldicott to conduct a further review in 2013. This review reinforced the six original principles and made one addition:

- 7 The duty to share information can be as important as the duty to protect patient confidentiality.

For a MASH to be lawful it must comply with ALL the Caldicott principles.



“Fears about sharing information can not be allowed to stand in the way of the need to promote the welfare and protect the safety of children”

Working Together to Safeguard
Children 2013

FREQUENTLY ASKED QUESTIONS

This guide has attempted to explain the principles that underpin the effective and legal sharing of information in MASH.

However, the subject is nuanced and complex and practitioners may have specific questions. Following are some of the most common.

When there is any doubt, practitioners should always consult their line manager or Caldicott Guardian.

Do the rules that apply to ‘medical confidentiality’ prevent me from sharing information without consent?

No. The NHS is bound by the Caldicott Principles, the Data Protection Act and primary safeguarding children legislation - as for any other professional.

Can I share information without consent if a poster is put on the wall of the clinic stating that information may be shared with other agencies to safeguard a child?

No, implied consent of this nature is not sufficient. Consent, if obtained, should be informed consent. The reasons for sharing information without consent must be carefully articulated and justified on a case by case basis.

Should NHS professionals apply the Gillick Competency rule to determine whether to share or not share safeguarding information about a young person?

No. A Gillick Competency assessment determines the child's capacity to consent to treatment; not their capacity to consent for information to be shared.

Do I need to seek consent before checking to see if a child who is the subject of a Police Merlin report is known to services?

Police Merlin reports concern children who have come to the notice of the police and who, in the view of the police, may be at risk of not achieving one of the five outcomes. The Police Merlin report is their way of bringing these concerns to the attention of the Local Authority.

Much of the police information that will be shared will not have been obtained under a duty of confidence as it can be legitimately assumed that the data subjects will understand that the police act appropriately with regard to the information for the purposes of preventing harm or promoting the welfare of children.

While every case should be decided upon its own merits, it would not normally be necessary to seek consent to determine if a child who is the subject of a Merlin report is known to any Local Authority services.

I thought that consent was not required because the MASH was a closed environment?

This is not correct. There is an obligation to consider on all occasions and on a case by case basis whether information will be shared with or without consent. The determination must always be based on what is reasonable, necessary and proportionate.

The MASH is a relatively closed and controlled environment and this is one factor a practitioner can consider when determining what is proportionate to share with or without consent.

However, it is not and cannot be, a single overriding reason in the determination of consent.



The NHS is bound by the same legislation as all other professionals.

Each practitioner within the MASH will need to make a balanced judgement on a case by case basis.



Doesn't the Haringey judgement say that we can't share information without consent in a MASH?

No. Judicial Review: R (AB and CD) v Haringey London Borough Council (2013) EWHC 416 was a judgement that applied to a particular incident in Haringey before the MASH was established.

The judgment reiterated the importance of considering when and whether consent is required and documenting those decisions appropriately but did not state that consent was always required.

I've been told that I can only share information without consent if the concern reaches the threshold for a Section 47 enquiry. Is that correct?

No. As stated in Rule 5, it is not appropriate to seek consent if to do so would prejudice the place a person at increased risk of harm, prejudice the prevention, detection or prosecution of a serious crime or lead to an unjustified delay in making enquiries about allegations of harm.

These conditions will almost certainly apply when there is a Section 47 enquiry; however, they can apply in other circumstances as well and in some cases these concerns will fall below the threshold of Section 17 and Section 47 of the Children Act 1989.

Each practitioner within the MASH will need to make a balanced judgement on a case by case basis.

What do I do if I'm not sure whether and how much to share?

Practitioners should take all available information into consideration.

Experience, professional judgement and other available information will help with the decision making process as will anonymised discussions about the case. When in doubt, you should consult your line manager or Caldicott Guardian. 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.



RESOURCES

Detailed guidance relating to Information Sharing is available from a range of sources. Some of the ones which may be most useful to support decision making in a MASH include:

- **Information Sharing: Guidance for practitioners and managers (DfES 2008)**
<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eOrderingDownload/00807-2008BKT-EN-March09.pdf>
- **Information Sharing: Further guidance on legal issues (DfES 2008)**
http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eOrderingDownload/Info-Sharing_legal-issues.pdf
- **Information Sharing: Case Examples (DfES 2008)**
<http://webarchive.nationalarchives.gov.uk/20100202100434/http://www.dcsf.gov.uk/everychildmatters/download/?id=5224>
- **London Child Protection Procedures, Version 4 (2011)**
<http://www.londonscb.gov.uk/procedures/>
- **Working Together To Safeguard Children (2013)**
<http://media.education.gov.uk/assets/files/pdf/w/working%20together.pdf>
- **Data Sharing Code of Practice (Information Commissioner's Office, 2011)**
http://www.ico.org.uk/for_organisations/data_protection/topic_guides/data_sharing

- **Information: To Share or not to Share, Government Response to the Caldicott Review (DoH, 2013)**
<https://www.gov.uk/government/publications/caldicott-information-governance-review-department-of-health-response>
- **A Guide to Confidentiality in Health and Social Care (HSCIC, 2013)**
<http://www.hscic.gov.uk/media/12822/Guide-to-confidentiality-in-health-and-social-care/pdf/HSCIC-guide-to-confidentiality.pdf>
- **Confidentiality: reporting gunshot and knife wounds (GMC Explanatory Guidance, 2013)**
http://www.gmc-uk.org/Confidentiality_reporting_gunshot_Revised_2013.pdf_52091323.pdf
- **Confidentiality: Guidance for Doctors (GMC, 2009)**
http://www.gmc-uk.org/static/documents/content/Confidentiality_0910.pdf
- **Protecting Children and Young People - The Responsibility of all Doctors (GMC, 2012)**
http://www.gmc-uk.org/Child_protection_guidance.pdf_52579216.pdf
- **Sharing Personal and Sensitive Information on Children and Young People at Risk of Offending (Youth Justice Board, 2005)**
<http://www.yjb.gov.uk/publications/Resources/Downloads/Sharing%20Personal%20and%20Sensitive%20Personal%20Information%20on%20Children%20and%20Young%20People%20at%20Risk%20of%20Offending.pdf>
- **When to share information: Best practice guidance for everyone working in the youth justice system (DoH, 2008)**
http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_084705.pdf

In addition, the London MASH Project Board has developed a range of tools to support local authorities to implement MASH. These are available at: <http://www.londonscb.gov.uk/mash/>



- **The Core Elements of a MASH**
- **Purpose Specific Information Sharing Agreement**
- **MASH Process Graphic**
- **MASH Police Process Chart**
- **MASH Non Police Process Chart**
- **London Continuum of Need**
- **RAG Ratings**
- **Job Descriptions**
- **MASH FAQs**
- **MASH Governance Framework**
- **MASH Police Risk Assessment and Research Toolkit (Incorporating CSE Triggers)**

**LONDON MASH PROJECT
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