



WIGAN CHILDREN, YOUNG PEOPLE & THEIR FAMILIES STRATEGIC PARTNERSHIP & WIGAN SAFEGUARDING CHILDREN BOARD

Information Sharing Protocol

Working Document

Information Exchange between organisations in
Wigan that have, or may have,
direct contact with children, young people and their families.

“Staff who undertake the work of protecting children and supporting families on behalf of us all deserve both our understanding and our support. It is a job that carries risks, because in every judgement they make, those staff have to balance the rights of a parent with that of the protection of the child.”

(Lord Laming, Victoria Climbié Inquiry, Paragraph 1:15)

Acceptance of, and participation in, this Information Sharing Protocol

Chief Officers of the organisations of the Children, Young People and Their Families Strategic Partnership and Safeguarding Children Board for Wigan Borough agree to:

- Ensure that every member of the childrens workforce in their organisation is aware of the existence of, and their responsibilities under, this protocol.
- Support the attendance of staff at training sessions in connection with the implementation of this protocol, and future developments in inter-agency arrangements for sharing information – for example, the implementation of ContactPoint (see Appendix F).
- Actively champion and contribute to the development of a culture of trust and confidence between partner organisations; by working with, and regularly reviewing, the framework for information sharing within the delivery of integrated and co-ordinated services for children, young people and their families.
- Lawfully provide information about children, young people and their families to any other signatory organisation at no financial cost to that organisation.
- Ensure that organisations (statutory, voluntary or independent) contracted or commissioned to provide services, delivers those services in accordance with this protocol.
- Take responsibility for ensuring that any change in national guidelines, circulars and legislation about knowledge management and information sharing specific to their organisation is incorporated into future revisions of this protocol - to ensure it remains dynamic and relevant to all organisations in Wigan.

In providing effective services for children, young people and their families, it is important that front-line practitioners are not in positions where they feel unsupported or vulnerable because of having to make individual decisions about sharing information as a means of improving outcomes for a child or young person.

As signatories, Chief Officers acknowledge that the sharing of information about a child, young person or family between staff in their organisations has the potential to lead to challenges from a child, young person or their parent(s)/caregiver(s). Chief Officers accept corporate responsibility in the face of any such challenge where:

- **Information has been shared by staff within the frameworks set out in this protocol and the documents that underpin its use in practice,**
- **On the basis of their assessments and reasoned professional decisions and concerns about the health, safety, well being, avoidable impairment and/or development of a child or young person.**

Signatory Organisations

As Chief Officers of member organisations of the Children, Young People and Their Families Strategic Partnership and Safeguarding Children Board for Wigan Borough, we believe that:

- every child in Wigan Borough is entitled to: be healthy, stay safe, enjoy and achieve, make a positive contribution to our community, and enjoy economic security;
- in order for us to be effective in this core business, the staff in our organisations need to lawfully share information and use ContactPoint as the basis for providing services that help children and young people reach their potential, and help parents to help their children reach their potential; and,
- The Children Act 2004 and other legislation support the sharing of information to enable us to be effective in this our core business.

<p>Signed:</p> <p>Date:</p> <p>Clr Brian M. Wilson, Cabinet Member for Childrens Services</p>	<p>Signed:</p> <p>Date:</p> <p>Joyce Redfearn, Chief Executive, Wigan Metropolitan Borough Council</p>
<p>Signed:</p> <p>Date:</p> <p>Mr.Ged Rowney, Director of Childrens Services</p>	<p>Signed:</p> <p>Date:</p> <p>Mr.Peter Rowe, Chief Executive, Ashton, Leigh and Wigan Primary Care Trust</p>
<p>Signed:</p> <p>Date:</p> <p>Bernard Walker, Director of Adult Services</p>	<p>Signed:</p> <p>Date:</p> <p>Rodney Hill, Chief Executive, Wigan Leisure and Culture Trust</p>
<p>Signed:</p> <p>Date:</p> <p>Ashley Crumbley, Chief Executive, Wigan and Leigh Housing</p>	<p>Signed:</p> <p>Date:</p> <p>Nick Trotter, Director, Wigan and Leigh Council for Voluntary Service</p>
<p>Signed:</p> <p>Date:</p> <p>[], H.M.P. Youth Offending Institution Hindley</p>	<p>Signed:</p> <p>Date:</p> <p>Judith Holbrey, Chief Executive, 5 Boroughs Partnership N.H.S. Trust</p>
<p>Signed:</p> <p>Date:</p> <p>Sheena Cumiskey, Chief Executive, Wrightington, Wigan and Leigh NHS Trust</p>	<p>Signed:</p> <p>Date:</p> <p>Chair - Wigan Secondary Headteachers Association</p>

Signed: Date: Andy Baddeley, Superintendent Criminal Justice & Partnership Wigan	Signed: Date: Chair - Wigan Primary Headteachers Forum
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1 Background

- 1.1 Public Inquiries have identified the failure to share information by organisations as a key contributory factor in the deaths of children from Dennis O'Neal in 1945 to Victoria Climbié in 2002.
- 1.2 'Every Child Matters' (HMSO, 2003), sets out Government's a vision for services for children, young people and their families that goes beyond protecting children at risk of abuse – seeking to maximise the opportunities that enable all children and young people to attain their potential.
- 1.3 Recommendations from the Inquiry conducted by Sir Michael Bichard extend the scope for sharing information – it is not possible to effectively safeguard and protect children if agencies do not collect, monitor, assess and evaluate the actions of adults whose presence or behaviour may be dangerous or harmful for children and young people.
- 1.4 This challenging agenda can only be delivered locally through the effective sharing of information between professionals in the public, voluntary and independent sectors, about the circumstances experienced by children and young people, and the events and episodes that occur in their life.

2 Introduction

- 2.1 In order to fulfil the administration functions (statutory duties) created by Sections 10 and 11 of the Children Act 2004, senior managers, managers and practitioners in the Council and partner organisations are required to share information that will lead to improved outcomes for children and young people and safeguarding them from harm, abuse and exploitation (see 8:1:1 and 8:1:2).

Primary legislation requires senior managers, managers and practitioners to work together to promote the well-being of children and young people and safeguard them from harm.

- 2.2 This protocol sets a context for the sharing of sensitive personal and confidential information about children, young people and their families within and between signatory organisations
- 2.3 As the Council and partners build our relationship with service users, it is important that we and members of the children's workforce do not abuse the trust of children, young people and their families by sharing information lightly or breaching confidentiality.

3 Purpose

- 3.1 This protocol sets out a framework of formal principles and agreement by organisations in Wigan Borough: to share information as a means of both safeguarding children and young people from abuse, harm and exploitation; and, providing services that maximise aspects of all children and young people's well-being: physical and mental health; protection from harm and neglect; education and training; the contribution made by them to society; and, social and economic well-being.
- 3.2 The Children Act 2004 requires the childrens workforce in Council services and partners to work together to improve outcomes for children and young people.

- 3.3 This protocol must be read in conjunction with the following documents:
- 3.3.1 Wigan Area Child Protection Procedures and Guidelines.
 - 3.3.2 Wigan Crime and Disorder Reduction Partnership Procedures and Guidelines (including those of Wigan Youth Offending Team, and Positive Action Team).
- 3.4 Duties under Sections 10 and 11 of the Children Act 2004 underpin the guidance, information and training delivered to members of the childrens workforce, and any agreements that may be felt to be required in support of the delivery of high quality, child focussed services by signatory organisations (for example, the implementation of ContactPoint, and data exchange or information sharing agreements).
- 3.5 This protocol provides a framework to ensure that personal information is shared in accordance with the rights of individuals.

4 Principles

- 4.1 The safety, welfare and development of children and young people are paramount.
- 4.2 The Children Act 2004 sets out the core business (administration functions) of Council services and partners that form the CYPF strategic partnership and Safeguarding Children Board in respect of every child and young person in Wigan Borough. Section 12 of the Act requires the Council and partners to:
- Ensure children and young people in the Borough are enabled to: be healthy, stay safe, enjoy and achieve, make a positive contribution, and achieve economic well-being (summarised in the 'Outcomes Framework' at Every Child Matters: Change for Children, <http://www.everychildmatters.gov.uk/key-documents>).
- 4.3 Section 12 of the Act provides the legal framework for The Children Act 2004 Information Database (England) Regulations 2007 which require the local authority to participate in the operation of ContactPoint and require and, in some instances, permit partners to disclose information for inclusion in the database.
- 4.4 Each organisation's processes for sharing information within and between organisations must be in accordance with Sections 10 and 11 of the Children Act 2004, the European Convention of Human Rights/Human Rights Act 1998(Appendix A), the requirements and principles of the Data Protection Act 1998 (Appendices B and C) and the Freedom of Information Act 2000
- 4.5 The processes and reasons for sharing information must be transparent to staff within those organisations, and to children, young people and their families (see 4:2, above).
- 4.6 Whilst it is professional best practice that the 'informed consent' of children, young people and their families is sought before seeking or sharing sensitive personal or confidential information (except in specific circumstances – see section 9), the refusal of an individual to give consent must not be used as a reason for not sharing information that may protect a child or young person, or enhance their development.
- 4.7 Signatory organisations must ensure that staff provide explanations to children, young people and their families about why information is being sought or shared, with which organisation, and for what reason(s) (see section 6), and how to make a 'subject access request'.
- 4.8 The information shared between organisations must be adequate, relevant and not excessive for the intended purpose.
- 4.9 Collaboration between organisations in the delivery of services for children, young people and their families should, wherever possible, seek to avoid duplication¹ and unnecessary intervention into the lives of families.
- 4.10 In the light of findings from the Bichard Inquiry, signatory organisations should recognise that within their duties to effectively safeguard and protect children and young people, information

Comment [e1]: Numbering taken out

¹ In this context 'duplication' means the provision or delivery of the same service to a child, young person or their parent(s)/caregiver(s) by one or more different agencies.

must be shared with relevant agencies about adults² whose presence, actions and/or behaviour are more likely than not to be dangerous or harmful for children and young people.

- 4.11 However, the Children Act 2004 creates common duties, obligations and responsibilities on public services to co-operate in developing arrangements that safeguard and protect children and young people. Each organisation must satisfy itself, via its named senior officer (see 15) as to the appropriateness of practitioners' information sharing practices.

5 Reasons for sharing information

- 5.1 In order to be effective in providing services that help children and young people reach their potential, and help parents to help their children reach their potential, the staff of signatory organisations will use ContactPoint as a basis for lawfully sharing information to improve outcomes for children and young people:
- 5.1.1 To ensure that children and young people are provided with appropriate high quality services and opportunities relevant to every aspect of their well-being: physical and mental health; protection from harm and neglect; education and training; the contribution made by them to society; and, social and economic well-being (Children Act 2004, Section 10).
- 5.1.2 To ensure that children and young people are protected from harms, abuse and exploitation that are an outcome of action, or inaction, by their parents, caregivers or members of their household (Children Act 2004, Section 11).

6 Informed Consent

- 6.1 Members of the childrens workforce (senior managers, managers and practitioners in Council services and partner organisations) will be sensitive to the need to maintain confidentiality when discussing children, young people and their families with colleagues in other agencies. Information about an individual that is shared in such discussions represents a disclosure and processing of information.
- 6.2 Whilst members of the childrens workforce may feel a need to adhere to professional codes of conduct:
- 6.2.1 **The refusal of an individual to give consent must not be used as a reason for not sharing information that may protect a child or young person, or enhance their development (See section 4:5).**
- 6.3 Professional best practice is that a worker should seek consent from children, young people and their families before sharing sensitive personal and confidential, except in the specific circumstances described in Section 8 (below).
- 6.4 In seeking consent from children, young people and their families to pass on to, or seek further information from, another agency, the Data Protection Act makes clear that consent should be 'informed'. This means a worker should provide an explanation to the individual about:
- 6.4.1 The purpose of approaching other professionals or agencies,
- 6.4.2 The reason for the disclosure of information,
- 6.4.3 Details of the professionals or agencies being contacted
- 6.4.4 What information will be sought and shared,
- 6.4.5 Why the information is necessary/relevant, and
- 6.4.6 What outcome is intended through obtaining the information?
- 6.5 Wherever possible consent should be obtained in writing. Where this is not possible, verbal consent should be sought, and the outcome recorded by the worker/agency requesting/sharing the information.
- 6.6 Children and young people are entitled to give consent in the same way as adults as adults if they are judged by professionals working with them to have the capacity to understand their

² Whilst outside the scope of the Bichard Inquiry, this principle is also relevant in respect of children and young people whose presence, actions and/or behaviour are more likely than not to be dangerous or harmful for children and young people.

choices and the potential outcomes arising from the sharing of information (see Fraser/Gillick Competence – see Appendix E).

- 6.7 If a child/young person is not judged Fraser competent the consent of a parental should be sought to share information about a child or young person. Any one person with 'Parental Responsibility' within the meaning of Section 2(7) of the Children Act (England and Wales) 1989 can give consent – rather than secure consent from all who may have 'Parental Responsibility'.
- 6.8 Exceptions to 6:6 and 6:7 are when contact with an individual or individuals who have 'Parental Responsibility' would be more likely than not to jeopardise the safety or welfare of the child/young person; or, doing so would conflict with the wishes of the child/young person (see 6:5 and Appendix E).

7 Consent Withheld

- 7.1 An individual's permission for a professional to share information with another worker or agency is an important aspect of professional practice. However, legislation prescribes the administration functions – the duties, and responsibilities - of organisations of the Children, Young People and Their Families Strategic Partnership and Safeguarding Children Board and members of the childrens workforce in those organisations.
- 7.2 In many cases, professionals engaged in carrying out the administration functions of their organisation do not require permission from a child, young person, parent or caregiver to share information:
- 7.2.1 A withholding of their permission (consent) by an individual must not be used as a reason for failing to share information that might protect a child or young person from abuse, harm or exploitation, or that might enhance physical, social, emotional, cognitive or other aspects of their development.**
- 7.2.2 In health settings, if an outcome of a patient withholding information or refusing consent is that the most appropriate or most safe treatment or procedure cannot be offered, then a health practitioner must clearly explain the consequences of their decision to the patient – and the potential outcomes for their health and well-being.**

8 Sharing information without consent

- 8.1 The Data Protection Act allows for the disclosure of sensitive personal and confidential information without the consent of the individual to whom it relates in the following circumstances:
- 8.1.1 Where a professional has concerns about the harm (including self-harm), abuse and/or exploitation that is being, or is likely to be experienced by a child or young person, and information needs to be sought or shared to protect that individual or others in the community,
- **Note:** The Procedures of Wigan Safeguarding Children Board indicate that (except in the following circumstances) the parents of the child or young person should be involved in any referral to Social Services. Those circumstances are cases where the following have been disclosed or are suspected: sexual abuse; multiple/organised abuse; Fictitious Illness/Munchausen by Proxy; contacting parents would place the child, oneself or others at risk.
- 8.1.2 Where information would prevent crime or aid in the detection of crime,
- 8.1.3 Where an individual requires medical services necessary to save their life, and
- 8.1.4 Where a Court orders the disclosure of information under witness summons.
- 8.2 Professionals must record the reasons for any decision to disclose sensitive personal and confidential information without the individual's consent. The information shared under such circumstances must be appropriate, relevant and sufficient for purpose.

9 Obligations of Council services and partner organisations

- 9.1 Council services and partner organisation must maintain an accurate up to date Notification to the Information Commissioner.
- 9.2 Each organisation must adhere to the Eight Principles of the Data Protection Act 1998 (Appendix B).
- 9.3 The childrens workforce across Council services and partners organisations will actively use ContactPoint (see Appendix F) as a basis for improving outcomes for children and young people.
- 9.4 When processing personal information about a service user organisations must ensure that at least one condition from Schedule 2 of the Data Protection Act is met (Appendix C).
- 9.5 In order to process sensitive personal information about a service user organisations must ensure that at least one condition from both Schedule 2 and Schedule 3 of the Data Protection Act are satisfied (Appendix C).
- 9.6 Members of the childrens workforce have an obligation to safeguard confidential and sensitive personal information about the children, young people and their families with who they are in contact. Every member of staff in whichever agency should understand the consequences of deliberate breaches of confidentiality for the individual and for themselves – including breaches of security in connection with ContactPoint
- 9.7 Knowingly or recklessly obtaining or disclosing personal information without the consent of the agency in control of that information, or without lawful reason, is regulated by legislation, contacts of employment, professional codes of conduct and agency policies.
- 9.8 Managers in each of the agencies that is a signatory to this protocol have an obligation to ensure that their staff are fully aware of their obligations in respect of ContactPoint and associated practice arrangements through training and/or job induction processes.

10 Rights of Individuals

- 10.1 Each organisation has a duty to ensure that all individuals are aware of their rights in respect of the Data Protection Act 1998, the Human Rights Act 1998 and the Freedom of Information Act 2000 and how these may be exercised. This will include providing appropriate support, e.g. providing clients with information in alternative formats or languages or assisting them with a Subject Access Request.
- 10.2 Each organisation has a duty to ensure that all individuals are aware of the information that is being collected and recorded about them, the reasons for doing so (including any statistical/analytical purposes), with whom it may be shared and why. The most appropriate means of discharging this responsibility is for organisations to actively disseminate the corporate Privacy Statement of the Partnership and Board.
- 10.3 Council services and partner organisations will actively collaborate to ensure that children, young people and their parents/caregivers are aware of ContactPoint.
- 10.4 Service users have a right to expect that information disclosed by them, or by other parties about them, to an organisation will be treated with the appropriate degree of respect and confidence.

11 Subject Access Requests

- 11.1 Each organisation will delegate authority to an appropriate manager to make decisions about subject access requests. All such requests and any actions arising thereafter must be properly recorded within the organisations client management systems.
- 11.2 "Subject Access Requests" must be made in writing, to the relevant Data Controller, and the subsequent actions taken must be fully recorded within that organisation's systems.
 - 11.2.1 If an organisation receives a 'Subject Access Request', that organisation must check whether its records about the individual contain information that has been received from another organisation. Such information remains the property of the organisation that created supplied it – and that organisation is best placed to respond to the Subject Access Request, rather than the organisation to which the original Subject Access Request was made.

- 11.3 In accordance with Section 29 of the Data Protection Act, Greater Manchester Police must be notified about any Subject Access Request that could include information originally provided to a partner agency by GMP in case disclosure could be prejudicial to policing needs.
- 11.4 The Access to Health Records Act 1990 governs access by patients to health records. The Act contains two significant restrictions on a patient's access to their health records: i) that the subject does not have a right of access to 3rd party information without the 3rd party's consent, ii) the subject does not have right of access to specific information if, in the opinion of their consultant medical or other practitioner, it would be unduly harmful to them psychologically to see that information.
- 11.5 Subject Access Requests relating to ContactPoint should be forwarded to the appropriate local authority ContactPoint Management Team.
- 11.6 In making a Subject Access Request, the data subject must provide evidence of their identity – that they are the person about whom they are making the request.
- 11.7 Data will be received by the requester no later than 21 days from the date of receipt of request.

11.8 Children who are not deemed to be Fraser competent

- 11.8.1 A parent, guardian or caregiver may make a subject access request in respect of their child.
- 11.8.2 Access to the information by the parent, guardian or caregiver can be refused if it is decided that providing that information would be detrimental for the child.

11.9 Young people

- 11.9.1 Children and Young people deemed to be Fraser competent may make a Subject Access Request to their own right.

11.10 Parent, Guardian, Caregiver

- 11.10.1 Parents/guardians/carers of Fraser competent young people aged 12 or over have no automatic right of access to their children's data (in accordance with the Data Protection Act 1998).
- 11.10.2 It is considered good practice to ensure that the parent/guardian/carer of those under 16 is informed that the gathering, recording and possible sharing of information are taking place.
- 11.10.3 Parents/guardians/carers will normally only be able to access their children's data (if aged 12 or over and deemed to be competent) with the signed consent of their child.
- 11.10.4 All parent/guardian/carer requests to access data must be referred to the designated manager within the relevant organisation.
- 11.10.5 Access may be granted in cases where the designated manager is satisfied that a young person is not capable of representing themselves and that the parent/guardian/carer constitutes the clients legitimate representative.

12 Recording

- 12.1 Each agency is responsible for providing guidance to members of their staff in respect of keeping records about the sharing of information with other agencies about children, young people and their families.
- 12.2 Managers and staff have a responsibility to ensure they are familiar with the principles of this protocol, and the guidance and policies of their agency, about recording requests for information from, and the sharing of information with, other agencies.

13 Information Security

- 13.1 The implementation of ContactPoint will bring challenges for Council services and partner organisations. Detailed access and security arrangements will be agreed as part of local implementation arrangements.
- 13.2 Where information is received by a partner organisation ('receiving organisation'), such information remains the property/responsibility of the organisation which originally obtained it ('supplying organisation'). If a receiving organisation comes under a duty or obligation to disclose information (for example, a Subject Access Request/Freedom of Information request), the matters should be referred to the supplying organisation.
- 13.3 Personal, sensitive personal and confidential information must be held in a secure environment, where access is controlled and security measures are in place. In the context of this protocol, information includes any form of information collection or creation; for example, electronic capture and storage, manual paper records, video and audio recordings and any images – however created.
- 13.4 Each Organisation is responsible for the quality of the personal data it holds and/or subsequently shares – a practice standard would be that each piece of information must contain the date created or recorded and whether it comprises fact, opinion, hypothesis or a mixture of these together with the identity of the person recording the information.
- 13.5 Each agency that is a signatory to this protocol will have in place appropriate for the security, storage, retention and destruction of personal, sensitive personal and confidential information, in accordance with statutory guidance or other regulations issued to that organisation by Government, professional bodies, and/or non-governmental organisations.
- 13.6 Data shared between Partner Organisations under the terms of this protocol must not be used for any commercial purposes (e.g. marketing) unless: such a purpose is included within notifications to the Information Commissioner **and** such purpose has been approved by partners (and minuted) at a meeting of the Strategic Partnership.

14 Research

As a means of promoting continuous improvement within co-operative arrangements to improve outcomes for children and young people in the Borough under the Children Act 2004, agencies will use ContactPoint to openly share non-sensitive personal information and data.

In signing this protocol, partner organisations agree not to manipulate aggregated/non-personal data in such a way that an individual or family group can become identified as an individual or individuals within the data set.

Each agency should have, or will develop, an appropriate policy and procedures for the use of sensitive personal information for research purposes and the governance of research projects – including the approval for, and monitoring of, research activity.

15 Monitoring and Evaluation

Each agency will identify a Senior Officer who is accountable to their Chief Officer and the Chief Officers of the Local Strategic Partnership for the implementation of this protocol, for meeting with their peers in other agencies to monitor whether this protocol is supporting the sharing of information about children, young people and their families between agencies, and contributing to future revisions of this protocol.

16 Interfaces

- 16.1 The publication of the Green Paper 'Every Child Matters' and the Children Bill means that the sharing of information between agencies has a very high profile, and is likely to be subject to change. The aspects of practice where the sharing of information is central in maximising opportunities that enable them to fulfil their potential are:
 - 16.1.1 The development and implementation of an electronic system that supports the sharing of information between workers and agencies,

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16.1.2 The development of triggers, or indicators of vulnerability, used by all agencies in Wigan in their direct work with children, young people and their families, and

16.1.3 The development of integrated approaches in the management of casework with children, young people and their families by workers and agencies in Wigan.

17. Failure to Abide

Failure by an organisation to abide by the principles and conditions set out in this Protocol and any associated document (e.g. an Information Sharing/Data Exchange Agreement) should be referred to the CYPF Strategic Partnership – which could result in information ceasing to be shared with that organisation.

Version Control

Version	Created/Amended by	Date	Principle changes
Draft v.1	I.R.T. Task Group	2/12/03	
Draft v.2.1	I.R.T. Task Group	23/2/04	Incorporation of feedback from consultation within partner organisations, and additional advice.
Draft v.2.2	Exec.Steering Group	04/03/04	Incorporation of feedback from consultation within partner organisations.
Draft v.2.3	I.R.T. Task Group	16/03/04	Further comments and feedback incorporated into the protocol
Pre- Working Document	CYPF Strategic Partnership	01/04/04	None
Pre-working document	CYPF Core Team	August 2004	Incorporation of references to the Inquiry conducted by Sir Michael Bichard (Soham/ Huntley. Inclusion of comments by Members of Management Boards and Executive Committees.
Working Document	CYPF Core Team/ Members of the Strategic Partnership	December 2004	Sign-off by Chief Officers and members of the CYPF Strategic Partnership
Revision to take account of the implementation of the ContactPoint	David Hoyle, Barbara Colbert and Data Protection/ Information Governance staff in Council Services and partner organisations	August 2007	A revision of the 'Working Document' to take account of the implementation of ContactPoint in Wigan Borough – as an 'Early Adopter'
Final Check and Publication	Tony Dann, Barbara Colbert.	May 2008	Published on both the CYPS Quality System and the WSCB website.

Appendix A - The Human Rights Act 1998

The Human Rights Act 1998 incorporates into our domestic law certain articles of the European Convention on Human Rights (ECHR). The Act requires all domestic law to be read compatibly with the Convention Articles.

It also places a legal obligation on all Public Authorities to act in a manner compatible with the Convention. Should a Public Authority fail to do this then it may be the subject of a legal action under section 7. This is an obligation not only not to violate Convention Rights, but also a positive obligation to uphold these rights. The sharing of information between agencies has the potential to infringe a number of Convention Rights. In particular, Article 3 (Freedom from torture or inhuman or degrading treatment), Article 8 (Right to respect for private and family life) and Article 1 of Protocol 1 (Protection of property). There is a qualification of Article 8 that "there shall be no interference by a Public Authority with this Right unless it is in the interests of national security, public safety, the economic well being of the country, the prevention of disorder and crime, the protection of health and morals, or the protection of the rights and freedoms of others". In addition, all Convention Rights must be secured without discrimination on a wide variety of grounds under Article 14.

The Convention allows interference with the Convention Rights by Public Authorities under certain broadly defined circumstances known as legitimate aims. However, mere reliance on a legal power may not alone provide sufficient justification and the following principles should be considered:

- Is there a legal basis for the action being taken?
- Does it pursue a legitimate aim (as outlined in the particular Convention Article)?
- It is the action taken proportionate and the least intrusive method of achieving that aim?

Article 8.1 provides that "everyone has the right to respect for his private and family life, his home and his correspondence".

Article 8.2 provides "there shall be no interference by a public authority with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interest 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".

Appendix B - The Eight Data Protection Principles

As a signatory to this protocol, each agency, and staff in each agency, should be fully aware of the obligation to comply with the principles of the Data Protection Act. These are usually summarised as follows:

- First: Personal data shall be processed fairly and lawfully.
- Second: Personal data shall be obtained and used only for lawful and specific reasons.
- Third: Personal data shall be adequate, relevant and not excessive in relation to the purpose for which it is processed.
- Fourth: Personal data shall be accurate and, where necessary, kept up-to-date.
- Fifth: Personal data shall not be kept for any longer than is necessary.
- Sixth: Personal data shall be processed in accordance with the rights of the data subject under the Act.
- Seventh: Measures must be undertaken to ensure personal data is kept securely.
- Eighth: Personal data will not be transferred to another country outside the European Economic Area unless that country can ensure adequate protection for the rights of data subjects.

Appendix C – Data Protection Act, Schedule 2 and Schedule 3 Conditions

A condition for processing personal data is that one condition in Schedule 2 should be met.

Conditions for processing sensitive personal data is one condition in Schedule 2 and a condition in Schedule 3 should also be met.

Schedule 2: Personal Data	Schedule 3: Sensitive Personal Data
The data subject has given consent, or	The data subject has given explicit consent, or
The processing is necessary for: <ul style="list-style-type: none"> • A contract • Legal obligation • Protection of the vital interests of the data subject • Public function • In the public interest • A statutory obligation • Legitimate interests of the Data Controller 	The processing is necessary for: <ul style="list-style-type: none"> • Employment related purposes • The purpose of, or in connection with legal proceedings • Protection of vital interests of the individual (where consent cannot be obtained) • Made public by the data subject • Substantial public interest • Prevention or detection of an unlawful act • Legitimate interests of a non-profit making organisation • Medical purposes

Appendix D - The Caldicott Guidance

The principles set out in the Caldicott Report underpin the exchange of patient-identifiable information in health services (N.H.S bodies), and between N.H.S. bodies and the Social Services Departments of local authorities.

In some parts of England and Wales, the Caldicott principles have been adopted as the basis for good practice in the development of information sharing protocols and information sharing arrangements between different departments of the local authority.

The principles are:

1. Justify the purpose for which the data is sought.
2. Only use patient identifiable information where it is absolutely necessary.
3. Use the minimum necessary patient identifiable information.
4. Access to patient identifiable information should be on a strict 'need to know' basis.
5. Ensure that everyone with access to patient identifiable information is aware of his or her responsibilities in relation to that information.
6. Users of patient identifiable information must understand and comply with the law.

Appendix E - The Fraser Ruling/Gillick Competence

1. In 1985 Lord Fraser said in his judgement in the case of *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 (HL), that a doctor can give contraceptive advice or treatment to a person under 16 without parental consent providing the doctor is satisfied that:
 - The young person will understand the advice,
 - The young person cannot be persuaded to tell their parents, or allow the doctor to tell them that they are seeking contraceptive advice,
 - The young person is likely to begin, or continue having unprotected sex with, or without contraceptive treatment,
 - The young person's physical or mental health is likely to suffer unless they receive contraceptive advice or treatment, and
 - It is in the young person's best interests to give contraceptive advice or treatment.
2. The principles of Fraser Ruling entered primary legislation through Section 3(a) of the Children Act (England and Wales) 1989, which states that in any proceedings, the Court must have regard to the ascertainable wishes and feelings of the child (in the light of his (sic) age and understanding).
3. The judgement by Lord Fraser became known amongst professionals as the Gillick Test, in deciding whether a child or young person could be deemed "Gillick Competent". Mrs Victoria Gillick recently challenged the use of her name in this context through an action in the High Court. The outcome was that Mrs Gillick's challenge was successful, and the Court held that in future the judgement should be referred to as "The Fraser Ruling", or that a child or young person could be deemed "Fraser Competent".
4. The information in this Appendix may be summarised as follows:
 - A child or young person may be deemed to be "Fraser competent" where a professional decides that he or she is of sufficient understanding and intelligence to be capable of making up his/her own mind, and has the capacity to understand the consequences of the decisions and choices they make.
 - c – e.g. the decision of the Court of Appeal in *Re R* [1992] 1FLR 190.

Appendix F – ContactPoint

ContactPoint will be a secure electronic tool to enable authorised practitioners working with the same child or young person to find one another quickly and easily - so they can provide more effective support to them and their families.

The purpose of ContactPoint is to improve services to children with a strong emphasis on early intervention. ContactPoint is a key element of the *Every Child Matters* programme and will support children's services agencies in their duties as set out in Sections 10 & 11 of the Children Act 2004.

Benefits of ContactPoint

Local authority 'Trailblazers' have been piloting local data integration approaches. Their experience has demonstrated that this type of tool produces important benefits:

- faster, more effective, holistic intervention;
- improved service experience for children, young people and their families;
- less unproductive time spent trying to find out who else is working with a child;
- quicker assessment of whether a child is receiving universal services (education, primary health care).

The experience of local authority Trailblazers and extensive consultations with a range of stakeholders concluded that a national approach is essential as many children access services in different local authority areas or move across local authority boundaries. ContactPoint will be operational by the end of 2008, and Wigan is an 'Early Adopter' (implementation scheduled for October 2008). There will be 150 'partitions', one relating to each local authority in England. Local authorities will be responsible for the records of children resident in their area.

Information held on ContactPoint

ContactPoint will contain the following basic information:

- name, address, gender and date of birth of all children in England (aged up to 18); and
- name and contact details for their:
 - parents or carers
 - educational setting (e.g. school)
 - primary medical practitioner (e.g. GP practice)
 - practitioners providing other services; and
 - lead professional (if appointed)
- Practitioners will also be able to indicate if they have completed an assessment under the Common Assessment Framework.
- The consent of the young person or the child's parent/carer will be required to record details of practitioners providing sensitive services (sexual and mental health, and substance abuse) and access to this information would be restricted.
- ContactPoint will **NOT** contain case notes or details of any assessments, medical data, exam results or any other personal information about a child or their family.

Who will have access to ContactPoint?

Access will be restricted to authorised users in children's services who need it as part of their work. This will include those working in education, health, social care, youth offending and some voluntary organisations. Everyone with access to ContactPoint will be subject to stringent security checks, including regular enhanced Criminal Records Bureau (CRB) clearance. All users will be trained in the safe and secure use of ContactPoint, information sharing practice and the importance of compliance with the Data Protection Act and Human Rights Act. Users will need a user name, a PIN, a personal security token and a password. Authorised users will be able to access ContactPoint through a secure web link, through their existing case management systems or through another authorised user.

Security

Security is of paramount importance. The design and implementation of ContactPoint will be reviewed by independent security experts throughout its development and audited during operation. Strong user authentication procedures will be in place. Every access to a child's record will be detailed in the audit trail, which will be reviewed regularly. Reports will be provided to managers so that system misuse/unusual activity may be detected and acted upon.

Legislation

Section 12 of the Children Act 2004 provides the legal basis for establishing ContactPoint. Regulations under Section 12 have been laid before Parliament, and Statutory Guidance has been issued (<http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1482>)