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Information Sharing Guidelines

Scanning Cornwall's Hearts

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1. Introduction

1.1. Information sharing is key to Echogenicity's goal of delivering better, more efficient Echocardiogram services that are coordinated around the needs of the individual. It is essential to enable early intervention and preventative work, for safeguarding and promoting welfare and for wider public protection. Information sharing is a vital element in improving outcomes for all.

1.2. Echogenicity understands that it is most important that people remain confident that their personal information is kept safe and secure and that practitioners maintain the privacy of the individual, whilst sharing information to deliver better services. It is therefore important that practitioners can share information appropriately as part of their day-to-day practice and do so confidently.

1.3. Practitioners recognise the importance of information sharing and there is already much good practice. However, in some situations they feel constrained from sharing information by uncertainty about when they can do so lawfully. Decisions about information sharing is done on a case-by-case basis, this document seeks to give clear practical guidance.

1.4. To feel confident about making information sharing decisions, it is important that you:

- understand and apply good practice in sharing information at an early stage as part of preventative or early intervention work;
- understand what information is and is not confidential, and the need in some circumstances to make a judgement about whether confidential information can be shared, in the public interest, without consent;
- understand what to do when you have reasonable cause to believe that a vulnerable adult may be suffering, or may be at risk of suffering, significant harm, and are clear of the circumstances when information can be shared where you judge that a vulnerable adult is at risk of significant harm;
- are supported by your employer in working through these issues.

1.5. This document sets out:

- why information sharing is important (Section 1);

- seven golden rules for information sharing (Section 2);
- further information to inform decision making (Section 3).

1.6. There is an increasing emphasis on integrated working across services with the aim of delivering more effective intervention at an earlier stage. Early intervention aims to prevent problems escalating and increase the chances of achieving positive outcomes.

1.7. Whether integrated working is through specific multi-agency structures or existing services, success for those at risk of poor outcomes depends upon effective partnership working and appropriate information sharing between services.

2. Seven golden rules for information sharing

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.
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.
3. Seek advice if you are in any doubt, without disclosing the identity of the person where possible.
4. 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 in the public interest. You will need to base your judgement on the facts of the case.
5. Consider safety and well-being: Base your information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.
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 those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.

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7. 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.

3. Further information to inform decision making

3.1. If you are asked, or wish, to share information, you must use your professional judgement to decide whether to share or not and what information it is appropriate to share, unless there is a statutory duty or a court order to share.

3.2. To inform your decision making this section sets out further information in the form of seven key questions about information sharing:

1. Is there a clear and legitimate purpose for you or your agency to share the information?

2. Does the information enable a living person to be identified?

3. Is the information confidential?

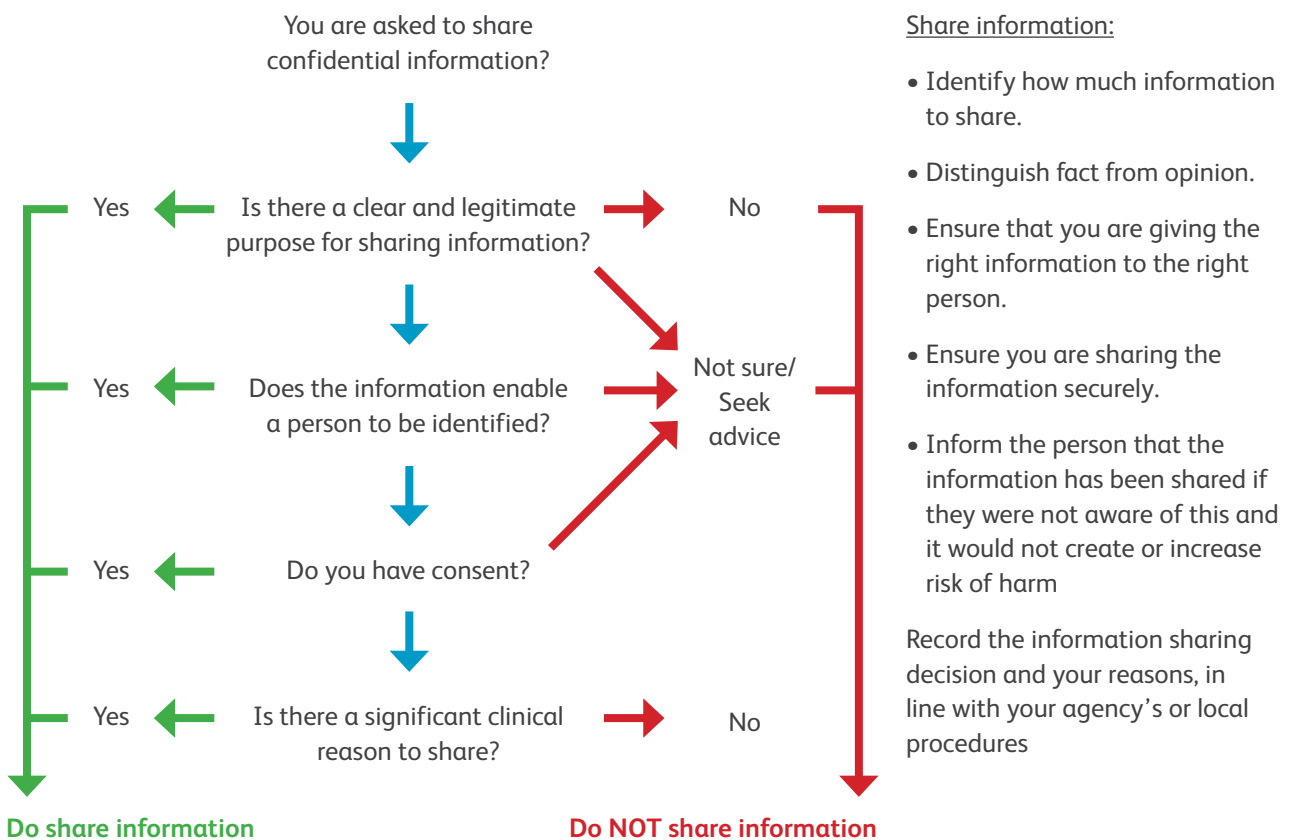
4. If the information is confidential, do you have consent to share?

5. If consent is refused, or there are good reasons not to seek consent to share confidential information, is there a sufficient public interest to share the information?

6. If the decision is to share, are you sharing information appropriately and securely?

7. Have you properly recorded your information sharing decision? These questions are illustrated in the flowchart on the following page. Further information on each of the questions can be found in the remainder of this section.

Flowchart of key questions for information sharing



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ANNEX A**Key sources of further guidance**

General information sharing guidance

Information Sharing: Guidance for practitioners and managers (HMG, 2008) and case examples, training materials and further information about powers/ legislation. Available at www.ecm.gov.uk/informationsharing

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

HM Government Information sharing vision statement (HMG, 2006) Available at www.justice.gov.uk/publications/informationsharingvision.htm

NHS Information Governance (DH, 2007) Available at www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_079616

Confidentiality: NHS Code of Practice (DH, 2003) Available at www.dh.gov.uk/assetRoot/04/06/92/54/04069254.pdf

Confidentiality: protecting and providing information (GMC, 2004) Available at www.gmc-uk.org/guidance/current/library/confidentiality.asp

Confidentiality and Disclosure of Health Information Toolkit (BMA, 2008) Available at www.bma.org.uk/ap.nsf/Content/ConfToolKit08

The NMC Code of Professional Conduct: Standards for Conduct, Performance and Ethics (NMC, 2004). Available at www.nmc-uk.org

Data Protection Act 1998 – Guidance for Social Services www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_4010391

Mental Capacity Act: 2005 Code of Practice (DCA, 2007) Available at www.justice.gov.uk/guidance/mca-code-of-practice.htm

MAPPA (Multi Agency Public Protection Arrangements) guidance (2007) Available at www.probation.homeoffice.gov.uk/output/page30.asp

MARAC (Multi-Agency Risk Assessment Conference) toolkits Available at www.caada.org.uk/index.html

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ANNEX B**Glossary**

For the purpose of this document, the following definitions have been used. Wherever possible, definitions have been taken from legislation or existing guidance and the source referenced.

Anonymised information is information from which a person cannot be identified by the recipient.

Caldicott Guardian (NHS) is a senior person responsible for protecting the confidentiality of patient and service-user information and enabling appropriate information sharing. The Guardian plays a key role in ensuring that the NHS, Councils with Social Services responsibilities, and partner organisations satisfy the highest practicable standards for handling patient identifiable information. (DH website, April 2008).

Child means a person under the age of eighteen (Children Act 1989, section 105). Confidential information is information that is not normally in the public domain or readily available from another source, it should have a degree of sensitivity and value and be subject to a duty of confidence. A duty of confidence arises when one person provides information to another in circumstances where it is reasonable to expect that the information will be held in confidence. Consent is agreement freely given to an action based on knowledge and understanding of what is involved and its likely consequences. See also separate entries for explicit consent, implied consent and informed consent. Explicit consent is consent given orally or in writing detailing exactly what the consent is for and in what circumstances it will apply. Failing to thrive denotes poor weight gain and physical growth failure over an extended period of time in infancy.

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Fraser guidelines. The term arises from the Victoria Gillick case in the early 1980s. Gillick mounted a legal challenge attempting to set a legal precedent which would have meant that medical practitioners could not give young people under the age of 16 treatment or contraceptive services without parental permission. The challenge was successful in the Court of Appeal but then the House of Lords ruled that young people who are under 16 are competent to give valid consent to a particular intervention if they have sufficient understanding and intelligence to enable them to understand fully what is proposed and are capable of expressing their own wishes. Lord Fraser of Tullybelton gave the leading judgement in the House of Lords, hence the reference to the Fraser guidelines. The Fraser guidelines stress that:

- the young person must understand the advice being given and must indicate that they cannot be persuaded to involve their parents;
- the young person would be likely to continue to have sexual intercourse with or without advice or treatment;

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- the professional must be satisfied that if the young person does not receive contraceptive advice or treatment their physical or mental health, or both, will suffer; and
- the young person's best interests require the professional to give the contraceptive advice or treatment, or both, without parental consent. Implicit consent is where the person has been informed about the information to be shared, the purpose for sharing and that they have the right to object, and their agreement to sharing has been signalled by their behaviour rather than orally or in writing. Implicit consent can also be inferred from earlier explicit consent providing there is no change in the relationship with the organisation and the use of the information. Informed consent is where the person giving the consent understands why particular information needs to be shared, what information might be shared, who will use it and how, and what might happen as a result of sharing or not sharing the information. Integrated services are joined up services centred on the needs of service users and are often

co-located. This includes consideration of how services are planned, commissioned and delivered. Integrated services move away from the traditional structuring of services around professional disciplines. Integrated working is where services work together effectively to put the person or family at the centre, meet their needs and improve their lives.

Poor outcomes for adults means failing to achieve social care outcomes as laid out in the White Paper *Our Health, Our Care, Our Say* (DH, 2006). These outcomes are: improved health and emotional well-being; improved quality of life; making a positive contribution; exercise choice and control; freedom from discrimination or harassment; economic well-being; and personal dignity and respect. Personal data (or personal information) means data which relate to a living individual who can be identified:

- (a) from those data; or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (DPA, 1998).

Practitioner is the generic term used in this guidance to cover anyone who works with children, young people and/or adults.

Proportionality is one of the key factors in deciding whether or not to share confidential information without consent. The principle of proportionality implies that the means should not exceed the ends. In order words, is the information you wish, or have been asked, to share, a balanced response to the need to safeguard a person, or to prevent or detect a serious crime?

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Public bodies are any public service, for example, a local authority, health services or schools. Public interest is the interests of the community as a whole, or a group within the community or individuals. The "public interest" is an amorphous concept which is typically not defined in legislation. The examples given in the definition of the public interest test below are currently accepted common law categories of the public interest.

Public interest test in this context is the process a practitioner uses to decide whether to share confidential information without consent. It requires

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them to consider the competing public interests – for example, the public interest in protecting individuals, promoting their welfare or preventing crime and disorder, and the public interest in maintaining public confidence in the confidentiality of public services, and to balance the risks of not sharing against the risk of sharing. Safeguarding and promoting welfare is the process of protecting children, young people or vulnerable adults from abuse or neglect, preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care which will enable them to have optimum life chances and enter adulthood successfully.

Sensitive information means personal data consisting of information about: (a) the racial or ethnic origin of the data subject; (b) his political opinions; (c) his religious beliefs or other beliefs of a similar nature; (d) whether he is a member of a trade union; (e) his physical or mental health or condition; (f) his sexual life; (g) the commission or alleged commission by him of any offence; or (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings. (DPA, 1998). Serious crime for the purposes of this guidance means any crime which causes or is likely to cause significant harm to a child or serious harm to an adult. Serious harm is defined as death or serious injury to a person's physical or mental health (DH, 2008).

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Vulnerable adult: The broad definition of a 'vulnerable adult' is a person who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation. (No secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse. DH, 2000).

Well-being: For children and young people, well-being is the term used in the Children Act 2004 relating to the five Every Child Matters outcomes, i.e. being healthy; staying safe; enjoying and achieving; making a positive contribution; and achieving economic well-being.

ANNEX C

Example 1

A patient attends clinic for an echocardiogram.

Whilst the echocardiographer is checking the patients data; name, DOB, etc, they ask whether the patient has any outstanding appointments. The patient has an appointment at the local DGH with a consultant Cardiologist.

The echocardiographer asks the patient whether they are happy for the results to be forwarded to the cardiologist whom they have an appointment with. As the cardiologist will need the echo results to assess the patient fully. (Clinical need – direct affect to patient care)

A note is made on the clinic list – Whom the patient is seeing, where and when. Our secretary then sends an extra copy of the report and consultant letter to the specialist via NHS email or royal mail. The Clinic list is then stored in Echogenicity's head office as a record.

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