

CELG(4)-05-11 : Paper 3a : Paper to Note

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Communities, Equalities and Local Government

Legal Advice Note

Purpose and Background

This paper is a précis of the attached paper, which is concerned with multi-agency data sharing, and how it impacts upon wider issues affecting child abuse, disability hate crime and vulnerable children at risk of homelessness within the framework of both general and specific legislation governing data sharing. The paper also considers data sharing in a single organisation and uses a local authority by way of example. It is intended that this précis be read in conjunction with the attached paper which provides greater detail.

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Purpose and Background

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1. Purpose and Background

Multi agency data sharing: -Evidence heard by the Committee that there are failings in the efficacy of the Information Sharing Protocols ("ISP's").

Data sharing within a sole organisation: -the rules governing when data can and cannot be shared.

Consideration of the general and more specific legislative background in relation to data sharing, including a critique and examination of any weaknesses of any power and/or obligations.

2. The Legal and Statutory framework

The Data Protection Act 1998

The Human Rights Act

The Common Law of tort of the Breach of Confidence

The Law that governs the action of public bodies:-Administrative Law.

The Freedom of Information Act 2000

The Caldicott Principles (where the sharing of information relates to health and social organisations' use of patients identifiable information.

3. The differences between the DPA and the Freedom of Information Act 2000

("FOIA"):-The Information Sharing Protocols ("ISP's") are principally concerned with the sharing of personal data, in which case if an applicant is requesting personal information about himself or herself or another person then there is no right to know under the FOIA. Requests concerning personal information would be treated as requests under the DPA

4. Disclosure under the DPA; HRA and the Common Law tort of the Breach of Confidence: -

Information may be disclosed without consent where there is an overriding public interest to disclose. There is an enhanced threshold for disclosure of sensitive personal information. Consent is not always required for the disclosure of information if conditions are met in schedule 2 and 3 of the DPA, personal and sensitive information respectfully. Article 8 (right to respect for privacy, home and correspondence) of the European Convention on Human

Rights (“ECHR”) is qualified and can be interfered with by the state, but must be proportionate.

The duty of confidence can be overridden in limited circumstances including where matters of public interest override the benefit of non-disclosure and confidence to the individual.

5. Information Sharing Protocols (“ISP’s):-

Non-legal status so it is doubtful if provisions can be enforced effectively. ISP’s only as effective as the provisions within each Protocol. The efficacy of an ISP is also dependant on the specific legislative framework governing the exchange of information between the Parties under the Protocol.

6. Information sharing in a single organisation:-

The Law that governs the action of public bodies: -Administrative Law: - Considered in the context of sole agency data sharing. Preferable to have express statutory authority to authorise the sharing of data but sharing of data may be possible under LGA 1972 and 2000.

7. Specific Legislative Provisions providing a power or a duty to share or exchange information in specific circumstances: -

- Section 115 Crime and Disorder Act 1998 (“CDA”): -Power to share information between relevant authorities for fulfilling the duties within the CDA.
- Section 17A CDA: -Imposes a duty on a relevant authority to disclose to all other relevant authorities prescribed information which concerns the reduction of crime and disorder and anti-social behaviour. Relates to depersonalised information only.
- The Police and Justice Act 2006 (“PJA”) and the Crime and Disorder (Overview and Scrutiny) Regulations 2009 incorporates a duty that relates to information sharing. Duty mainly relates to depersonalised information.
- The Criminal Justice and Court Service Act 2000 (“CJCSA”) re-enacted by the Criminal Justice Act 2003 (“CJA”) provides for a specific duty for the Police and Probation to share information in order to make joint arrangements for the assessment and management of the risks posed by offenders who may cause serious harm to the public.
- Section 69 CJCSA placed a statutory duty on the Probation Service to offer victims of violent and sexual offences, the opportunity to make representations about the conditions of the release of the offender and to be kept informed of these:-now been repealed.

8. Disability Hate Crime:- Prosecutions under section 146 CJA which deal with hostility and hatred may be circumvented by prosecutors. There is no Protocol in force for Disability Hate Crimes, and little guidance for prosecutors.

9. Child Abuse Cases: -

- Professionals can only work together effectively to protect children if there is an exchange of relevant information between them.
- There are no specific mandatory laws in the UK that require professionals to report any suspicions they may have of child abuse to the authorities.
- LA social services files are no longer a “class” of material to which “Public Interest Immunity” applies.
- Special Procedure Material under Police and Criminal Evidence Act 1984 (“PACE”) goes against the ethos and spirit of the Parties exchanging and sharing information where it is necessary to protect children.
- Section 47 of the Children Act 1989 (“CA”): -Relevant persons have a duty to assist social services with their enquiries by providing relevant information and advice.

10. Vulnerable children at risk of homelessness

- Section 213A of the Housing Act (“HA”): -ensures that a housing authority contacts social services (with consent) when a family with children is ineligible or intentionally homeless.
- Section 25 of the Children Act 2004 (“CA”) places a duty on LA’s in Wales to make arrangements to promote co-operation with a view to improving the well-being of children in their area.
- Section 28 CA:-All staff in contact with children shares information if they believe that a child and family may require additional services.
- Section 29 CA gives the Assembly (now the Welsh Ministers) power to establish or to require LA’s to establish a database of specific information on all children in the authority’s area or to participate in its operation.

11. The Wales Accord on the Sharing of Personal Information (“WASPI”) :-
The Welsh Government (“WG”) has issued the WASPI, which provides the public sector, third sector and private service providers, with a framework for development of protocols to govern the sharing of personal information for particular purposes.

The WG together with the Secretary of State has issued Guidance: -
Safeguarding Children-Working Together Under the Children Act 2004.

12. Conclusion

The tightening up and greater clarity of the specific legislative framework in some cases would be beneficial. Welsh Ministers would be advised to use existing regulatory powers to set up databases and transfer information with the consent of Secretary of State. It is advisable that there are clear ISP’s in force for disability related hate crimes. It would be advantageous if the CPS could clarify terminology where there is a lack of definitive statutory definitions and consider re-examining thresholds in relation to disability hate crime if this would aid prosecutions.

Legal Services, National Assembly for Wales, October 2011