

## Confidentiality - Information Sharing Guidance for Clergy and Parishes

### Introduction

One of the key principles embedding best practice in relation to safeguarding is ensuring that information relating to concerns is shared with / or between relevant bodies in order to potentially protect children, young people and adults at risk (also known as 'vulnerable adults'). The Diocese needs to consider the sharing of information relating to concerns about individuals who may be at risk, and about adults working and volunteering with them, and information arising from recruitment processes including criminal records checks.

The purpose of this document is to clarify the position in relation to what information about an individual can be shared with another agency or organisation. If you have a concern it is always best to discuss it with a designated person within the diocese. This may be your Parish Safeguarding Representative, a member of the clergy or the Diocesan Safeguarding Team (DST)<sup>a</sup> who will provide support and advice. If you make a direct referral to the Police or Children's Social Care, to avoid any delay where levels of concern are high or there are felt to be immediate risks, you must always ensure that the DST are informed so that they can provide support or follow up and contribute effectively to the multi-agency response.

With regard to case information that warrants referral to, and investigation by, a statutory agency (including concerns about behaviour referred to the Local Authority Designated Officer - LADO) it is appropriate and important for the Diocese to give the statutory agency details of any other relevant organisation, diocese or parish that may need to be aware of a concern. For example if somebody is volunteering as a youth worker in a parish but is suspended following an allegation, if you are aware that they are actively volunteering with children and young people in another community setting, the statutory agency may feel that it is relevant to contact that organisation to make them aware of the allegation.

Confidentiality and the sharing of information are guided by legislation and national documents, including:

### **The Data Protection Act 2018 (encompassing the EU GDPR)**

The Data Protection Act (DPA) introduced in 2018 ratifies the European Union's GDPR (General Data Protection Regulations) into UK law with specific provisions to make the legislation appropriate to the UK context. Like the previous Data Protection Act 1998, it provides a framework to ensure that personal information is handled properly and lawfully;

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<sup>a</sup> DST - the Diocesan Safeguarding Team can be contacted via email: [safeguardingenquiry@exeter.anglican.org](mailto:safeguardingenquiry@exeter.anglican.org) / or by telephone on 01392 345909 at The Old Deanery, The Cloisters, Exeter, EX1 1HS

**it is not a barrier to sharing information.** It gives individuals the right to know what information is held about them, how it is being used, who it is being shared with, to seek correction or removal, and seek redress if processed unlawfully. Importantly, the DPA 2018 recognises Safeguarding data as a special category of data that can be processed lawfully in the interests of protecting individuals from harm without needing data subjects' consent. This includes sharing that data when it is necessary to protect children or adults at risk.

For more information on the Data Protection Act and GDPR, visit the [Information Commissioner's Office website](#)

### **Human Rights Act 1998**

The Human Rights Act 1998 strengthens the fundamental rights and freedoms contained in the European Convention on Human Rights. These rights not only impact matters of life and death, they also affect the rights you have in your everyday life: what you can say and do, your beliefs, your right to a fair trial and other similar basic entitlements. It is not, nor is it intended to be, a block to sharing information in the interests of safeguarding children or adults at risk.

### **The Freedom of Information Act 2000/2012**

The Freedom of Information Act supports the proper management and sharing of information held on individuals.

### **The Mental Capacity Act 2005**

The Mental Capacity Act can be used to protect people who are unable to make a decision or understand the information relevant to the decision.

### **Care Act 2014**

The Care Act places a duty on those involved in the care or safeguarding of an adult at risk to provide information on request to the local authority (currently through the Safeguarding Adults Board) in order for the authority to carry out its functions with regards to the care of an individual.

### **Children Acts 1989 and 2004**

Embeds the principle that the protection of children is the paramount principle and is the most important consideration where information is shared in the interests of safeguarding. As long as a person is *genuinely of the belief* that it is necessary for information to be shared in the interests of protecting a child or children (and they record this as the reason for doing so), even if their concerns subsequently are felt to be unfounded, this is absolutely legitimate and is supported by current UK law and government guidance. The following principles should always be considered:

### **Seven Golden Rules for Information Sharing**

In 2015 the government published [information sharing advice for safeguarding practitioners](#) which includes seven golden rules for information sharing:

- Remember that the Data Protection Act and human rights law are not barriers to justified information sharing, but provide a framework to ensure that personal information about living individuals is shared appropriately.

- Be open and honest with the individual (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.
- Seek advice from other practitioners if you are in any doubt about sharing the information concerned, without disclosing the identity of the individual where possible.
- Share with informed 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, there is good reason to do so, such as where safety may be at risk. You will need to base your judgement on the facts of the case. When you are sharing or requesting personal information from someone, be certain of the basis upon which you are doing so.
- Consider safety and well-being: Base your information sharing decisions on considerations of the safety and well-being of the individual or others who may be affected by their actions.
- Necessary, proportionate, relevant, adequate, 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 individuals who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.
- 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.

### **Sharing Information where there are Concerns**

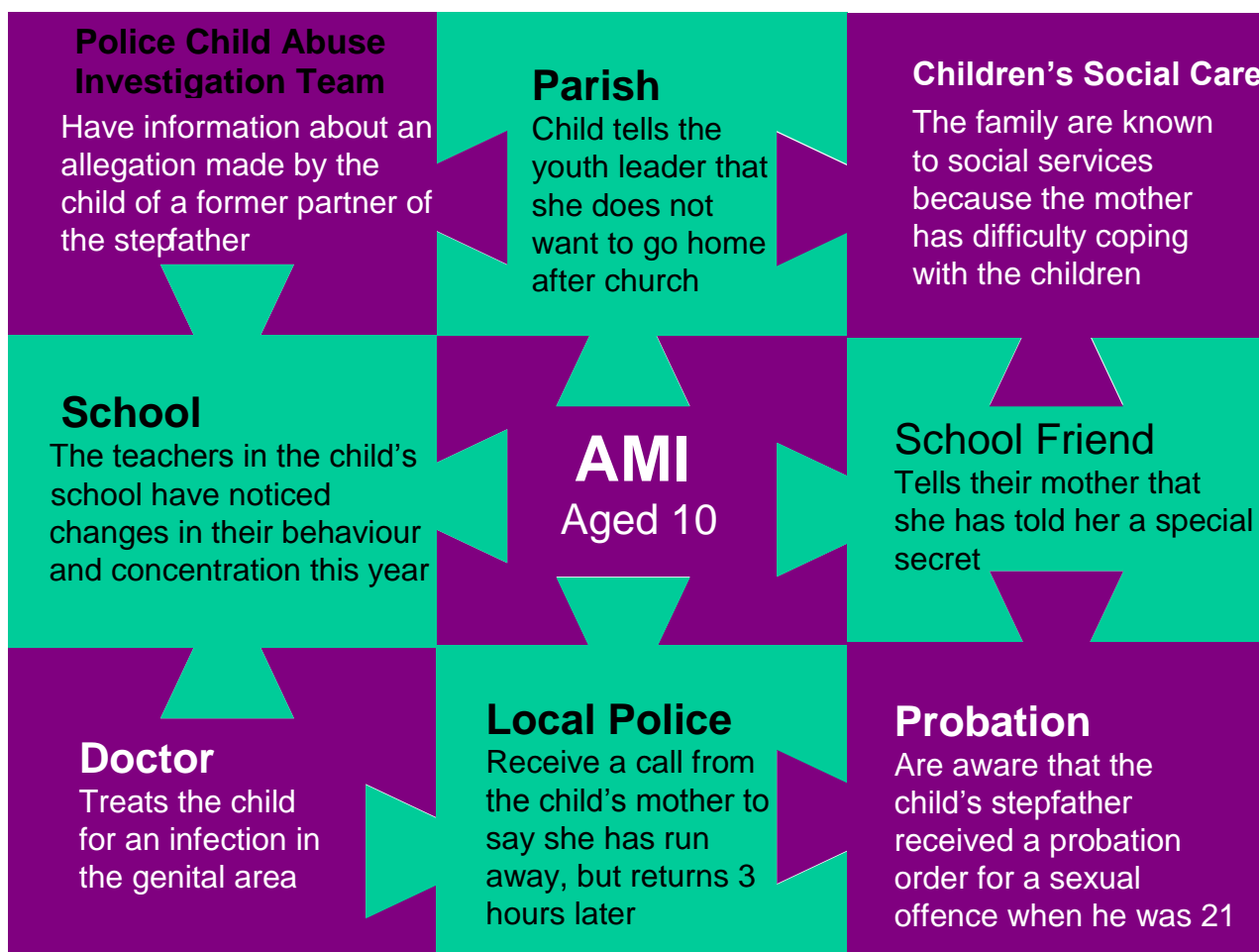
**It is important to share information arising from concerns about the welfare or safety of a child, young person, adult at risk or the behaviour of an adult or another young person who may represent a risk to them.**

In order to ensure that children and adults at risk are effectively safeguarded it is important that concerns are shared with appropriate people and agencies.

When considering with whom information should be shared, refer to the Diocesan Safeguarding Team who will support and provide advice. As this information is highly sensitive, it is important that it is not shared more broadly than this, and guidance is sought from the DST about who within the diocese needs to know these details.

In addition to the sharing of information within the parish and / or Diocese, concerns may need to be shared with external agencies. Again, it is important to apply Diocesan safeguarding procedures to guide you concerning who makes these contacts and who should be informed of this information. It is also useful to employ the principles of the seven golden rules mentioned above to inform these decisions.

Remember, you may only have one part of a jigsaw of concerns – information that you hold may help to inform statutory agencies (Children or Adult Social Care / Police) to enable them to keep that child or vulnerable adult safe from harm. In isolation no one piece of information may raise significant concerns, but the full picture may be very different and help to effectively safeguard a child, young person or adult at risk. This is illustrated in the following diagram.



**Sharing information arising from recruitment processes**

In order to ensure the protection of children and adults at risk it is recognised that information relating to the background of someone involved in a position of trust or responsibility with children / adults at risk must be considered when recruiting or appointing.

There are clear guidelines about limitations to the amount of information that can be shared between organisations. ***The contents of a criminal records disclosure should not be shared by the DST with the parish (beyond the Parish Safeguarding Rep who may need to review the certificate upon receipt), but any decision or recommendation arising from the risk assessment of this information will be shared and must be acted upon for the role in question and any other role that is known to be relevant which brings the applicant into contact with vulnerable groups.*** In order to safeguard children it may, however, be appropriate for the DST to contact another organisation following a recruitment process and, though not sharing a Disclosure Certificate's contents, they would use the following wording to communicate concerns:

*“This person has applied to undertake a role within the Diocese of Exeter that would involve contact with and responsibility for children / adults at risk. As a result of our selection / recruitment process, which includes formal safeguarding checks, s/he has been deemed unsuitable for this role / position. The Diocese strongly suggests that your organisation undertakes relevant safeguarding checks immediately.”*

## **Sharing Information about Adults at Risk**

Adults have a right to self determination and to be consulted before any action is taken concerning them or on their behalf. Therefore informed consent for the sharing of information should be obtained, either in writing or verbally, whenever possible. Full details of the consent should be recorded, i.e. date consent is given, what information can be shared and with whom.

If the adult at risk does not have capacity to consent to the sharing of information, decisions must be taken on a best interest basis and Mental Capacity Act 2005 guidance should be followed.

If an adult at risk withholds consent to the sharing of information regarding safeguarding concerns, wherever possible their views and wishes should be respected. However, if there is an overriding public interest (affecting the safety of the individual or others) or vital interest (risk to life) or if gaining consent would put the adult at further risk, the duty of care overrides the individual's refusal and a referral for support should be made. The need to protect the individual or the wider public outweighs their rights to confidentiality. This would include situations where:

- other people or children could be at risk from the person causing harm
- it is necessary to prevent or investigate a crime
- where there is a high risk to the health and safety of the adult at risk
- the person lacks capacity to consent

If the adult at risk has capacity and does not consent to a referral and there are no public or vital interest considerations, they should be given information about where to get help if they change their mind or, if the abuse or neglect continues, they subsequently want support to promote their safety. The referrer must assure themselves that the decision to withhold consent is not made under undue influence, coercion or intimidation.

A safeguarding record must be made of the concern, the adult at risk's decision and of the decision not to refer, with reasons. A record should also be made of what information they were given.

## **Sacramental Confession**

It is important to distinguish between what is heard in formal sacramental confession, which is made for the quieting of conscience and intended to lead to absolution, and disclosures made in pastoral situations. For this reason, it is helpful if sacramental confessions are normally heard at advertised times, and are part of liturgy or in some way differentiated from a general pastoral conversation or a meeting for spiritual direction.

It is possible that relevant information which indicates abuse or risk of abuse may be disclosed in the particular context of sacramental confession. Canon Law constrains a priest from disclosing details of any crime or offence which is revealed in the course of formal sacramental confession. There is some doubt, however, as to whether this absolute privilege is consistent with the civil law and it is not consistent with the principles in legislation that the protection of children and adults at risk must be paramount over other considerations<sup>b</sup>. If a penitent discloses information about his or her own criminal or abusive behaviour, the priest should not only tell the person that they must report it to the Police themselves, but also judge it necessary to withhold absolution until this evidence of repentance has been

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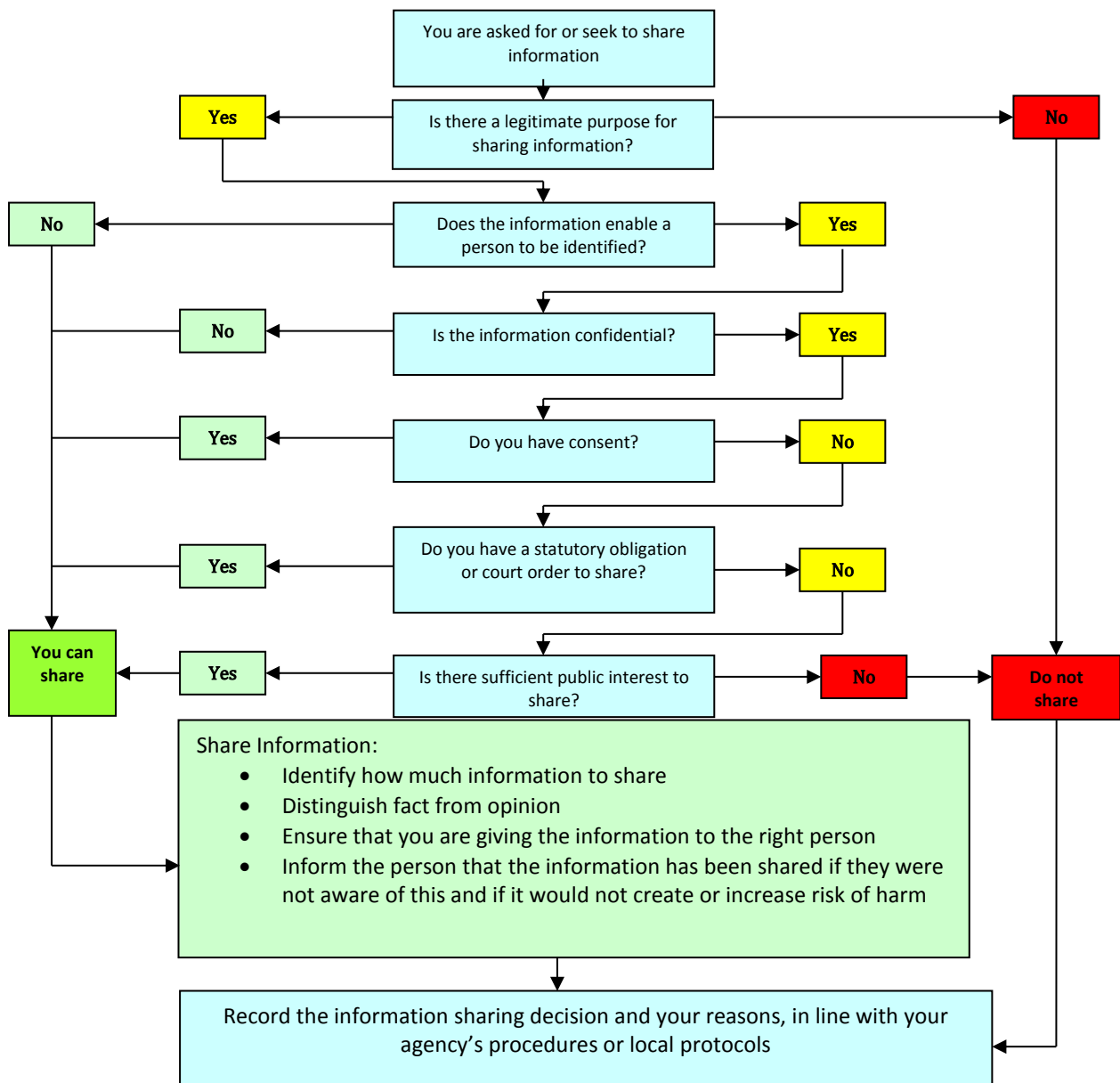
<sup>b</sup> Children Acts 1989 and 2004, Care Act 2014

demonstrated. It is the priest's duty to hold the welfare of each person sacred alongside their own powers to guide right action. A priest may provide guidance and offer support to an individual through the formal processes of reporting their abusive behaviour as a step towards demonstrating and achieving resolution.

Canon law should not be open to misuse as a mechanism for individuals who disclose abusive behaviour to avoid action being taken which protects those at risk. Members of the clergy should be alert to their own potential vulnerability, that of members of their congregation and the organisational risk of a decision not to share information which indicates that an individual may present a safeguarding risk. Priests must in these circumstances assess risk and be able to evidence that they have taken action to reduce any risks identified. Should an individual who has disclosed relevant information to a priest subsequently be found to have harmed or abused children or vulnerable adults, that priest by not acting may be compromised. Under the Safeguarding & Clergy Discipline Measure 2016, clergy and all those holding the Bishop's licence, permission or commission are required to pay due regard to the safeguarding guidance laid down by the House of Bishops. Failure to do so would be regarded as an act or omission constituting misconduct. Disclosures made during pastoral conversations which indicate abuse or risk of abuse should be reported to the Police without delay and support sought from the DST.

## Flowchart of key principles for information sharing

Always seek advice from the Diocesan Safeguarding Team if you are not sure what to do at any stage and ensure that the outcome of the discussion is recorded



## **Revision History**

<b>Revision No.</b>	<b>Revision Date</b>	<b>Summary of Changes</b>	<b>Author</b>
1.0	31/05/2018	Initial version.	Phill Parker