

**community legal service**

*Support*

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# Data Protection When Dealing With Young People - Keeping Your Client's Confidence

All Quality Mark levels

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**services**  
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## **Making the best use of this briefing**

We are aware that some of our briefings are fairly lengthy documents. Please do not feel that you are obliged to read the whole briefing from cover to cover – the headings on our contents page will point you towards the major themes under discussion.

## **Further sources of support and guidance**

If you need further guidance on any of the issues covered in this briefing, please contact your network, the Legal Services Commission or the CLS Support consultancy line – see the pages at the back of this briefing for contact details.

You may come across the telephone symbol  at various points in the text which deal with what we regard to be a complex issue. The symbol is there to remind you that we are able to provide further clarification and/or guidance if you need it.

Please note that the What's New pages on ASA's website **[www.asauk.org.uk](http://www.asauk.org.uk)** provide guidance that highlights and clarifies both new and existing requirements for Quality Mark and General Civil Contract holders.

## **Disclaimer**

This briefing has been checked and agreed for accuracy by The Children's Legal Centre. It is not a substitute for reading the relevant documentation in full nor does it constitute legal advice. The Quality Mark and the General Civil Contract are still evolving, and therefore managers and staff will need to take responsibility for ensuring that they comply with the latest requirements. Each briefing reflects the position at the date it was published. Organisations should get further up-to-date advice on specific topics covered in briefings either from their LSC regional office or CLS Support.

CLS Support is run by the Advice Services Alliance. ASA is the representative body for national advice networks in the UK.

ASA is independent of the Legal Services Commission.



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# 1 Why read this briefing?

- 1.1 The Children Act 2004 could fundamentally change the nature of the relationship between advice agencies and their clients. Government and statutory agencies could use sections 10, 11 and 12 of the Act to make you share information about the children and families who use your services.
- 1.2 This is a rapidly changing area so we are putting this briefing out as an email bulletin. We intend to publish a paper briefing when some of the outstanding issues are resolved.
- 1.3 A child is defined under this Act as a person under 18 and also any person aged 18,19 or 20 who has been in care (since the age of 16) or has a learning disability.

## The Children Act 2004 came into force in November 2004

- Section 10 requires children's services authorities **to promote co-operation** between relevant partners in order to improve the well-being of children. (See sections 25, 26 and 27 for Wales.)
  - Section 11 requires children's services authorities and relevant partners **to ensure that they perform their functions** having regard to the need **to safeguard and promote the welfare of children**.
  - Section 12 allows further secondary legislation and statutory guidance to be made relating to **setting up databases that contain information about children** (not yet in force). (See section 29 for Wales.)
- 1.4 **Children's services authorities** consist of local authority education and children's social services and local government services, like **housing**, that impact on children.

### Relevant partners include:

- Connexions staff;
  - police authority and chief officer;
  - probation board;
  - youth offending team;
  - Strategic Health Authority and Primary Care Trusts;
  - Learning and Skills Council;
  - **"such other persons or bodies as the authority consider appropriate**, being persons or bodies of any nature who exercise functions or are engaged in activities in relation to children in the authority's area".
- 1.5 Much of the impetus for the Children Act 2004 came from the Laming inquiry into the abuse and death of Victoria Climbié. However, the government wants agencies to work together and for there to be sharing of personal information about all children, not just those at serious risk of harm.

## Urgent need to raise concerns about confidentiality with funders and partners

- 1.6 The Children Act 2004 does not expressly require authorities or their relevant partners to involve the voluntary sector/advice agencies in this type of information sharing. It is likely to become an increasing issue if they give you a grant or have a contract with you that relates to their statutory role in helping children, eg if your agency specialises in providing advice, assistance and support to children and families. Your chances of future funding and contracts may be affected by a

perceived reluctance to share information. So you need to justify your concerns about confidentiality if you wish them to be taken into account.

### **This briefing provides basic legal knowledge**

- 1.7 This briefing gives you the legal knowledge on data protection to enable you to preserve the confidentiality of your client and indicates how the Children Act 2004 is likely to change things.
- 1.8 **Youth Access**, the national membership organisation for young people's information, advice, counselling and support services, and an ASA member, developed this briefing with CLS Support. We wrote the briefing primarily for the members of Youth Access; however, any advice organisation that deals with young people should find it useful.

## **2 Summary of recommendations**

### **Nominate someone to keep up to date with data protection**

- 2.1 It is vital that someone at your agency takes the responsibility of keeping your agency up to date with regard to data protection so that you do not inadvertently break the law. Everyone at your agency must be aware of his or her responsibilities and obligations to respect client confidentiality.
- 2.2 The Data Protection Act 1998 does not prevent you using your common sense when dealing with personal information. It requires you to obtain the appropriate consent or to rely on a specific ground under the Act when recording, sharing or otherwise using personal information. CLS Support advises you to take into account the likelihood and degree of surprise, distress and damage that could result from what you decide to do or not to do with personal information.

### **Manage the expectations of your clients**

- 2.3 Warn clients at the first opportunity of any information sharing that could identify them.
- 2.4 Get informed consent to the sharing in writing. This ensures you have a record of obtaining consent in case it is questioned later.

### **Agree to share information only on a “need to know” basis**

- 2.5 Your aim in any negotiation with authorities or partners in an information-sharing agreement is for the sharing to reflect the severity of the issues in each client's case and so be the minimum necessary.

## **3 Responding to requests to share personal information**

### **What information can you freely share about your clients?**

- 3.1 You can share statistics and other “depersonalised” client information as long as the recipient cannot use the information to identify particular (living) clients. So telling a local authority how many people used your service, their gender, their ages, what subjects were advised on, what part of the city they come from, for example, will usually be fine. This is only if it is not possible to work out from that information who the individual clients are. In certain circumstances personal details such as the

number of children in a family and ethnicity will make it obvious who is being discussed.

- 3.2 If an authority asks you to provide client information for monitoring the service and planning it is generally sufficient to supply them with statistical and anonymised information for these purposes.

### **Can you share information where there is a risk of serious harm to a child?**

- 3.3 Data protection rules restrict your ability to breach client confidence. However, they should not prevent you from disclosing information if you have a particular concern about the welfare of a child such as suspicions about abuse or serious neglect.
- 3.4 The Data Protection Act 1998 allows disclosure for prevention or detection of crime or if it is required by court order or a statute. You are not normally required to help prevent or detect a crime but if you decide to disclose confidential information for this purpose you are not in breach of confidentiality under data protection. In such cases you should consider whether the likely benefits of sharing information outweighs any harm caused by doing so. You should also check whether there is an urgent need to release this personal information or whether you could achieve the same ends by doing something else. So, if someone phones your advice organisation and says that he urgently needs to speak to your client you could ask him to leave their contact details. If you reveal that your client is at your organisation or share personal information then you risk committing an unjustified breach of confidentiality.

### **Can you share personal information where there is no particular concern about the welfare of a child?**

- 3.5 It is more difficult to justify disclosure in these circumstances unless you have the appropriate consent. The local authority and its partner agencies may wish you to share details so that they can ensure that a particular child is using appropriate services and getting their needs fully met (see sections 10,11 and 12 of the Children Act 2004).
- 3.6 The information requested could be:
- basic biographical details, eg name, address, gender, date of birth, name of person with parental responsibility;
  - more in-depth information, eg about the needs of the client and how they are being met and “sensitive” information, eg criminal convictions.
- 3.7 **If you have fully informed written consent** then you may share this information provided the agencies receiving the information have a genuine “need to know” and follow the rules of confidentiality themselves.
- 3.8 **If you do not have fully informed written consent** then you should be wary about sharing where there are no particular concerns about your client. Section 35(2) of the Data Protection Act 1998 allows sharing if it is necessary for the purposes of any legal proceedings, including prospective legal proceedings or obtaining legal advice, or establishing, exercising or defending a legal right. However, especially in the absence of abuse/neglect it is unlikely for authorities to need all your client’s personal information in order to promote their welfare. Whoever asks for information needs to be able to justify the benefit to the client of supplying each item of information. See paragraphs 4.11–4.13 below for a discussion on sharing on a “need to know” basis.

- 3.9 The special confidential nature of the relationship in legal advice and counselling might allow you to withhold certain information. Advice agencies currently assert that confidentiality based on legal professional privilege applies not just to solicitors but to non-solicitor advisers as well. This is a constantly changing area, so you will need to check the current situation if you intend to rely on legal professional privilege.

### **Circumstances in which caseworkers should consider whether to override client confidentiality**

- 3.10 The Specialist Quality Mark (SQM F4.1) and General Help Quality Mark (General Help F3.1) require you to have a list of the circumstances in which caseworkers should consider whether to override client confidentiality. A good starting point is the *The Guide to the Professional Conduct of Solicitors* (8th edition, 1999), which lists the relevant circumstances as those in which:

- information is used by the client to facilitate the commission of a crime or fraud;
- express consent has been given by the client (or personal representatives of a deceased client) to disclose information (including express consent to disclose files for audit (see SQM F4.2));
- it is considered necessary to reveal confidential information to prevent the client or third party from committing a crime that is likely to result in serious bodily harm;
- in exceptional cases involving children, information of a serious nature (eg sexual, mental or physical abuse) should be given to an appropriate authority;
- in proceedings under the Children Act 1989, experts' reports (for the purpose of proceedings) are not privileged;
- a court orders that material should be disclosed or where a warrant permits a police officer or other authority to seize confidential material;
- an act of terrorism could be prevented.

## **4 Data Protection Act 1998**

- 4.1 You could be committing an offence and be subject to fines if you do not comply with data protection legislation when you pass on or receive confidential information about clients. The Data Protection Act 1998 covers computer records and paper records that you intend to transfer onto computer. You must apply data protection principles to client case records that you keep on computer as long as they identify living identifiable clients. CLS Support advises you to apply the same principles to client case records that are kept in paper form; the 1998 Act covers certain manual records if they form part of a relevant filing system.

- 4.2 If you have any client information on computer, we advise you to notify the Office of the Information Commissioner at:

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Tel: 01625 545745  
[www.dataprotection.gov.uk/](http://www.dataprotection.gov.uk/)

### **What are the eight principles of data protection?**

- 4.3 If you are making a decision to disclose personal information as defined above, you must comply with the following eight data protection rules.

- (a) You must process personal information fairly and lawfully.
- (b) You must process personal information only for specified, limited purposes and not in a manner incompatible with those purposes.

The personal information shall be:

- (c) adequate, relevant and not excessive;
- (d) accurate, and where necessary up to date;
- (e) kept for no longer than is necessary (eg as long as you need it to defend legal claims);
- (f) processed in line with an individual's rights;
- (g) kept secure;
- (h) transferred outside the European Economic Area only if there is adequate protection in those countries.

4.4 You must meet one of the conditions in schedule 2 of the Data Protection Act 1998 (see Appendix A) in order to process personal data fairly and lawfully. In the case of *sensitive personal data* you must additionally meet at least one of the conditions in schedule 3 (see Appendix B).

4.5 According to the Data Protection Act 1998 only the following counts as sensitive personal information:

- racial/ethnic origin;
- political opinion;
- religious beliefs;
- trade union membership;
- physical/mental health;
- sexuality/sex life;
- offences/convictions.

At present age and gender do not count as sensitive personal information.

4.6 You and your agency can show fairness by being open about how you will use the information and discussing the circumstances in which it might be disclosed. You can do this with leaflets and notices in the waiting room.

4.7 You must have explicit consent from the individual concerned or rely on the exceptional grounds (set out in the regulations and Schedule 3 of the Data Protection Act 1998 if you record, store or otherwise use sensitive personal information).

### **What is “explicit” consent?**

4.8 The Data Protection Act 1998 does *not* require you to obtain *written* consent even for sensitive personal information, although good practice indicates it should be written (see paragraph 6.1 below). The Information Commissioner's view is that explicit consent must be “absolutely clear”. His legal guidance says, “In appropriate cases it should cover the specific detail of the processing, the particular type of data to be processed (or even the specific information), the purposes of the processing and any special aspects of the processing which may affect the individual, for example, disclosures which may be made of the data.” So you should make particular effort to ensure there can be no confusion over what may happen to a client's sensitive personal information (see section 6 below).

4.9 A caseworker may collect and use sensitive personal information without explicit consent where it is necessary to:

- obtain legal advice or establish, exercise or defend legal rights;
  - provide confidential counselling, advice and support;
  - process information on race, ethnic origin, disability or religion for monitoring equal opportunities.
- 4.10 CLS Support advises that it is especially important to ensure that agencies “need to know” any sensitive information you have. This is to avoid recriminations and a breakdown in trust between you and the client.

#### **“Need to know” basis**

- 4.11 Information that personally identifies clients should only be shared on a “need to know” basis.
- 4.12 The NHS Executive has laid down the Caldicott Principles, which apply to patients’ confidential personal information. However, you can use them as an example of good practice for advice and counselling organisations. The Caldicott Principles are:
- Principle 1 – Justify the purpose(s).  
 Principle 2 – Don’t use personal client information unless it is absolutely necessary.  
 Principle 3 – Use the minimum necessary personal client information.  
 Principle 4 – Access to personal client information should be on a strict “need to know” basis.  
 Principle 5 – Everyone should be aware of their responsibilities.  
 Principle 6 – Understand and comply with the law.
- 4.13 CLS Support advises you to get the person who requests information to establish precisely why the information must include information that identifies the client – ie how will providing this information change the help or services the client receives? You should give the minimum information necessary to achieve these ends.

## **5 Common law**

- 5.1 There is a common law duty of confidentiality (“common law” is case law that has developed over time). Information may be confidential because of:
- a contract;
  - a special relationship eg solicitor–client;
  - the nature of an agency or government department, such as the Inland Revenue, that collects and holds personal information for the purposes of its functions.
- 5.2 The duty not to disclose is not absolute. The law will not prevent you from sharing information with other practitioners if:
- the information is not confidential in nature (eg information is trivial or can be found from other sources);
  - it is expressly or implicitly authorised;
  - there is overriding public interest in disclosure;
  - the disclosure is required by a court order or other legal obligation.
- 5.3 The Children Act 2004 gives the government the power to set out regulations that override any rule of common law that prohibits or restricts the disclosure of information (section 12(11) Children Act 2004). This far-reaching power has not yet been used.

## 6 Consent to information sharing

### Good practice

- 6.1 It is best if the consent is written down, dated and clearly indicates restrictions (eg any particular agencies to whom the client and their details should not be referred) so that there is an auditable record. You should check whether the child (or person with parental responsibility) still gives consent, particularly if circumstances change.

### Secondary disclosure

- 6.2 If you receive information from an agency and then pass it on, this is an example of secondary disclosure. The information belongs to the person or agency that supplies it. You should therefore check that it is appropriate to pass it on to a third party, eg by getting consent. There is likely to be *implied consent* for secondary disclosure within an organisation but the need to know principle still applies.

### Should it be the child or parent who consents to information sharing?

- 6.3 It depends on the age of the child and whether the child is competent to make this decision.
- 6.4 If the child is not “competent” then a person with parental responsibility must consent to information sharing.
- 6.5 In the Gillick case (*Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402, HL), the House of Lords held that the parental right terminates “if and when the child achieves sufficient understanding and intelligence to enable him or her to understand fully what is proposed. It will be a question of fact whether a child seeking advice has sufficient understanding of what is involved to give a consent valid in law.”
- 6.6 If the child is over 16, they can consent to the use and disclosure of their personal information.
- 6.7 If the child is under 16, it is a question of fact to be judged on a case-by-case basis whether they are capable of fully understanding what they are consenting to.
- 6.8 Although there is generally no minimum age, it is not likely that anyone under the age of 13 would be deemed competent to consent to treatment or to the use and disclosure of personal information without the involvement of the parent. However, each case is judged individually according to the maturity and understanding of the child in question.
- 6.9 If the child is “competent” they can consent/object even against the wishes of the parent/carer.

### Disclosure when unable to obtain consent

- 6.10 The key factor is proportionality – ie a proportionate response to the need to protect the welfare of the child. If a child confides to you a matter of abuse or serious neglect you should assure them that it will only be disclosed to people on a “need to know” basis. If disclosure is needed urgently any delay caused in obtaining consent from the child or parent/carer may not be justified. Seeking such consent may also harm a police investigation or increase the risk of harm to the child.
- 6.11 The amount of information and the number of people to whom information is disclosed should be no more than is strictly necessary to meet the public interest in

protecting the health and well-being of the child. The more sensitive the information, the greater the child's needs must be to justify disclosure and the greater the need to ensure that only those practitioners who must be informed receive the material.

- 6.12 There is no legislation making it compulsory for agencies to disclose such confidential information to social services or other relevant agencies even where a child appears in need of immediate protection. Furthermore, there is no general duty in criminal law to disclose that a crime has been committed against the child. See paragraph 3.10 above for possible reasons to breach confidentiality. In practice, most advisers would consider that they were justified in breaching confidentiality where the client or other children were at risk of significant harm (or where the life of the client or a third party is at risk).

## **7 Index**

### **What is an index?**

- 7.1 The government has decided to establish an information-sharing computer database called an index. It will be a central index with the data partitioned into 150 parts – each relating to one of the 150 local authorities in England. Authorities will take the lead in maintaining the accuracy of the records for children living in their area. It should be fully operational for all areas of England by the end of 2008.
- 7.2 The government will bring into force, at a date yet to be specified, section 12 of the Children Act 2004, which provides for the establishment of the index, and begin work on the necessary regulations. It will also provide statutory guidance and develop a detailed implementation plan in close collaboration with local authorities.
- 7.3 The government says, “Voluntary sector providers delivering statutory services will be expected to enter information on the index and their professionals will have access to it. It will be possible for other voluntary sector providers to enter information or have access but this will be determined on a case-by-case basis” (see the Every Child Matters website for more information at: <http://www.everychildmatters.gov.uk/deliveringservices/index/>).

### **What is the purpose of the index?**

- 7.4 The purpose of the index is to:
- enable practitioners (ie professionals working with children) to accurately identify the child or young person;
  - identify which other practitioners are also involved with the child or young person;
  - indicate to other practitioners that they have a concern about a child;
  - aid communication and closer working between different practitioners.

### **What basic information will be stored on the index?**

- 7.5 The index will confirm who is in contact with the child and whether that child is getting access to the “universal services”, ie basic services that they should be receiving (education, primary health care). Basic information will consist of name, age, date of birth, gender, unique identifying number, name and contact details of person with parental responsibility or care of the child, name and contact details of school or other educational setting, and names and contact details of the relevant GP practice and of any health visitor.

- 7.6 The government consulted relevant bodies and agencies on how to record practitioner details when a child uses a “sensitive” service and how to record concerns about a child. For the full response see: <http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1280>.
- 7.7 The government concluded that:
- The majority of practitioners would be able to add their details without having to seek consent.
  - Practitioners for sensitive services would have to seek informed, explicit consent from the child (or person with parental responsibility). The government will work with the Department of Health to define sensitive services but say they are likely to include Child and Adolescent Mental Health Service, services related to substance misuse, non-A&E hospital care, abortion, family planning, sexual health and HIV.
  - Lack of consent to place practitioner details on the index could be over-ridden “but only in carefully specified circumstances, such as where there are genuine child protection concerns”. The government intends to do work on refining these circumstances.
  - Only “essential staff” with higher authorisation levels within the system will have access to the details of use of the sensitive services. Essential staff could include social workers, the lead professional, the index manager or other senior relevant staff. The government proposes to include an indicator to show practitioners with lower levels of access that further information exists that is only accessible through essential staff.
  - The practitioner should record a “concern” on the index when they have important information to share, are taking action or have undertaken an assessment. The content of the assessment would not be on the index.
- 7.8 The government will provide national benchmarks for information sharing within and between agencies. Cross-government guidance on information sharing in respect of children and young people was under consultation until 15 November 2005. See: <http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1366>.
- Should the index have personal information about all children in order to protect a minority of them?**
- 7.9 The government wants 11 million children to be on the index. This means all children up to age 18, not just those about whom concerns have been expressed. It argues that:
- (a) All children have the right to the universal services of education and health. The index would make it easier to identify children who do not receive these services and facilitate access to them.
  - (b) It is not possible to predict which of these children (estimated at 3 to 4 million) will need additional services at some time.
- 7.10 If authorities collect and disclose confidential information in this way, the government could be interfering with a family’s privacy in breach of Article 8 of the European Convention on Human Rights (ECHR), which has been incorporated into UK law with the Human Rights Act 1998.
- 7.11 Article 8.1 of the ECHR says, “Everyone has the right to respect for his private and family life, his home and his correspondence.”
- 7.12 Article 8.2 says, “There shall be no interference by a public authority with exercise of this right except such as is in accordance with the law and is necessary in a

democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, protection of health or morals or for the protection of rights and freedom of others.”

- 7.13 However, the government believes Article 8 (2) of the ECHR allows interference with this right where it is necessary to prevent crime or protect the health and welfare of the child. Many practitioners argue, however, that it is disproportionate to infringe privacy like this unless abuse/serious neglect is an issue. For example, the Joint Committee on Human Rights, a UK Parliamentary Select Committee, has raised concerns that if authorities justify information sharing as always proportionate because it is to identify children who need welfare services, there is no meaningful content left to privacy and confidentiality under Article 8.

### **Could the index damage lives?**

- 7.14 The Information Commissioner is responsible for maintaining the public register of Data Controllers and enforcing the Data Protection Act 1998. He has expressed his concern that having all children on the information-sharing databases is disproportionate and dangerous. He has previous experience of a local multi-agency child protection database that became clogged with inaccurate and out-of-date information. The entries were often based on mere suspicion and were not corrected/deleted when the matter was resolved. This had a detrimental effect on the privacy of the child and wider family. The child protection professionals soon came to distrust the entire database and so genuine concerns were ignored. If practitioners put indicators of concern on the databases as a defensive measure where there is no real concern, this can lead to superfluous work and undue interference in a child's life with quite damaging consequences.
- 7.15 The Information Commissioner was informed of a case where a child made a totally innocent comment, which school staff overheard and misconstrued. A suspicion of abuse claim was placed against the father on the official records. An investigation found that the concerns were totally unfounded but the records were not corrected. Therefore one danger is that staff will be prompt to record concerns but see little importance in maintaining the accuracy of the database.

## **8 What is the Common Assessment Framework?**

- 8.1 The Children Act 2004 also introduces the idea of a Common Assessment Framework (CAF). It is a nationally standardised approach to conducting an assessment of the needs of a child or young person and deciding how those needs should be met. Although the CAF is being brought into the statutory sector first, the voluntary sector may find itself having to adopt it as the information-sharing agenda becomes more embedded.
- 8.2 Authorities should be working towards CAF implementation from April 2005 and all authorities should be using the CAF across services for all children from April 2006. The idea is that the agencies involved do an initial assessment, which contains core information that should follow the child between different agencies and services. It is part of promoting a new culture of information sharing and should reduce the number of assessments that any child has to undergo as well as making it easier to make referrals. The government believes this should help to reinforce a multi-agency approach and break down professional boundaries.

## 9 Prepare for the implementation of the Children Act 2004

- 9.1 Local authorities and other funders could make the sharing of information a condition of voluntary sector funding in order to implement sections 10,11 and 12 of the Children Act 2004.
- 9.2 We advise youth agencies in particular to get involved in the development of information-sharing agreements particularly with Connexions partnerships and Children's Trusts, which will become the sole commissioning body for all young people's services in a local authority area – education, social care, health services, etc. You should aim to ensure that any sharing of personal information reflects the seriousness of the issues in each case and is the minimum necessary to meet the client's needs. See Appendix C for links that give examples of what should/shouldn't be shared, how to explain confidentiality to clients and examples of client consent forms.
- 9.3 *Benefits* of being part of an information-sharing protocol could include:
- better access to services for the client;
  - grounds for asking for more funds in order to take part;
  - less need for the client to go over the same information with a number of agencies.
- 9.4 *Reasons for not joining* an information-sharing agreement at this stage might include:
- ambiguity and confusion over the legal basis for information sharing;
  - lack of funding and resources for this new regime;
  - need for more training, support, information technology (IT), time;
  - extra paperwork;
  - seeking consent for this information sharing may put off clients;
  - unauthorised access or hackers could do great damage;
  - IT problems;
  - danger of data falling rapidly out of date or becoming otherwise inaccurate;
  - stigma and prejudice. If someone seeks support/advice from an agency dealing with drugs/alcohol/sexual health/immigration/criminal justice matters, the sharing of information about the use of these services could be prejudicial to the client and family members.
- 9.5 You may want to alert your clients about their rights on information sharing before you refer them to an agency that takes part in this. Damaging and possibly inaccurate information about children and the rest of the family might be held as part of their child's record and be passed around from one agency to the next without the parent's knowledge or consent.
- 9.6 You need to consider the following questions:
- What (if any) involvement your agency should have with information-sharing protocols in your area?
  - Do you just want to share basic biographical details or do you want to share more detailed information?
  - Can/should the whole of your agency sign up or just individual sections/departments?
  - Would your information and advice section have different concerns than the rest of your organisation?

- If you choose not to get involved, could this mean a worse service for your clients – eg, could your agency be excluded from giving and receiving referrals?
- Would the direct interest of the child be seen as less important than the overall needs of the community in this information-sharing regime? Some agencies may not have the individual child's best interests at heart, eg agencies in the criminal justice system or Job Centre Plus.
- Will the person advising the child discuss the pros and cons of consenting to the sharing information on a database in a neutral and independent fashion when there is a big push for information sharing?

## 10 Do you need to apply for Criminal Records Bureau checks?

10.1 Where you offer services to children you should consider the Protection of Children Act 1999 (POCA). There is a statutory duty for Criminal Records Bureau (CRB) checks and checks of other appropriate lists, if you are a childcare organisation or have:

- substantial unsupervised access on a sustained and regular basis to children under age of 18;
- unsupervised one-to-one contact with children under age 18 in certain circumstances.

10.2 Youth Access members and other organisations that provide designated services for children and young people must have CRB checks because of the one-to-one nature of advice, counselling and outreach work. It is good practice for advice organisations to have CRB checks even where they do not specialise in this client group.

10.3 You can contact the Criminal Records Bureau Information Line 0870 90 90 811 or the Disclosure website for more details: <http://www.disclosure.gov.uk/>.

## 11 Conclusion

11.1 The Children Act 2004 strengthens the position of the statutory sector on operational, commissioning and funding matters and so allows it to put further demands on the voluntary sector. This could lead to an erosion of the different approaches of the voluntary and statutory sectors. Some clients are presently more comfortable disclosing information to a voluntary rather than a statutory agency. We advise you to be clear and up front with clients about the limits of confidentiality and explain how you will pass information on a “need to know” basis only. This is vital if you wish to retain client trust.

## 12 Useful information

### Websites

Department of Education and Skills: [www.dfes.gov.uk/](http://www.dfes.gov.uk/)

Every Child Matters: [www.everychildmatters.gov.uk/](http://www.everychildmatters.gov.uk/)

Information Commissioner's Office for general data protection issues: [www.informationcommissioner.gov.uk/](http://www.informationcommissioner.gov.uk/)

Information about child protection issues: [www.teachernet.gov.uk/childprotection](http://www.teachernet.gov.uk/childprotection)

The website of National Council for Voluntary Youth Services, the independent voice of the voluntary youth sector in England: <http://www.ncvys.org.uk/>

The Royal Holloway, University of London has produced a toolkit that provides a list of features that are considered “best practice” for multi-agency information on consent for children/young people and their families. This is available at: <http://www.clever.uk.com/isa/pages/consent.htm>.

## **Books**

*Working with young people – legal responsibility and liability*, The Children's Legal Centre, 6<sup>th</sup> edition

Paul Ticher, *Data Protection for Voluntary Organisations*, 2<sup>nd</sup> edition, Directory of Social Change, 2002

## **Documents**

CLS Support Quality Mark Briefing no. 9, “Data Protection – Is your handling of client information breaking the law?”

*What to do if you are worried a child is being abused*, Department of Health, 19<sup>th</sup> May 2003

*Safeguarding Children: Guidance issued about Child Protection arrangements for the Education Service*, DfES, 12<sup>th</sup> January 2004

Government’s inter-agency guidance, *Working Together Under the Children Act*, Department of Health, 1999

*Safe from harm*, a code of practice safeguarding the welfare of children in the voluntary sector, Home Office, 1993

Protection of Children Act 1999 *Code of Practice*

## Appendix A: Data Protection Act 1998 Schedule 2

### Conditions Relevant for Purposes of the First Principle:

#### Processing of *any* Personal Data

1. The data subject has given his consent to the processing.
2. The processing is necessary –
  - (a) for the performance of a contract to which the data subject is a party, or
  - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary –
  - (a) for the administration of justice,
  - (b) for the exercise of any functions conferred on any person by or under any enactment,
  - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
  - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. – (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.  
  
(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

## Appendix B: Data Protection Act 1998 Schedule 3

### Conditions Relevant for Purposes of the First Principle:

#### Processing of any *Sensitive Personal Data*

1. The data subject has given his explicit consent to the processing of the personal data.
2. – (1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.  
(2) The Secretary of State may by order –
  - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
  - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.
3. The processing is necessary –
  - (a) in order to protect the vital interests of the data subject or another person, in a case where –
    - (i) consent cannot be given by or on behalf of the data subject, or
    - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
  - (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.
4. The processing –
  - (a) is carried out in the course of its legitimate activities by any body or association which –
    - (i) is not established or conducted for profit, and
    - (ii) exists for political, philosophical, religious or trade-union purposes,
  - (b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,
  - (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and
  - (d) does not involve disclosure of the personal data to a third party without the consent of the data subject.
5. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.
6. The processing –
  - (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
  - (b) is necessary for the purpose of obtaining legal advice, or
  - (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.
7. – (1) The processing is necessary –
  - (a) for the administration of justice,

(b) for the exercise of any functions conferred on any person by or under an enactment, or  
(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

(2) The Secretary of State may by order –  
(a) exclude the application of sub-paragraph (1) in such cases as may be specified, or  
(b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

8. – (1) The processing is necessary for medical purposes and is undertaken by –  
(a) a health professional, or  
(b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph “medical purposes” includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

9. – (1) The processing –  
(a) is of sensitive personal data consisting of information as to racial or ethnic origin,  
(b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and  
(c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

(2) The Secretary of State may by order specify circumstances in which processing falling within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

10. The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.

## **Appendix C: How to broach issues of sharing information and breaching confidence with children and young people**

Below are links to all the documents from local authorities that have been highlighted in the Royal Holloway toolkit mentioned above. Please note that not all aspects of every document may be considered as examples of “best practice”.

### **Multi-agency, child-friendly privacy statements**

Surrey Children’s Service, “Information Sharing in Surrey”:  
<http://www.clever.uk.com/isa/docs/p/p1.htm>

Herefordshire ACPC, “Safeguarding Your Information”:  
<http://www.clever.uk.com/isa/docs/p/p2.htm>

Bournemouth, Dorset and Poole CYPSP, “ISA: Why is personal information kept by agencies? Information for Young People and their Families”:  
<http://www.clever.uk.com/isa/docs/p/p3.htm>

Northamptonshire County Council, “Your Personal Records”:  
<http://www.clever.uk.com/isa/docs/p/p6.htm>

Harrow Council, London “Your Rights and Your Records (2)”  
<http://www.clever.uk.com/isa/docs/p/p7.htm>

London Borough of Richmond upon Thames, “Your Information, What You Need to Know”:  
<http://www.clever.uk.com/isa/docs/p/p8.htm>

### **Multi-agency consent (to share information) forms**

Portsmouth Children's Trust, "Information Sharing Consent Form":  
<http://www.clever.uk.com/isa/docs/c/c2.htm>

Stockton-on-Tees Borough Council, “Collecting and Sharing of Information – Consent Form”:  
<http://www.clever.uk.com/isa/docs/c/c4.htm>

Derby ISA, “Consent To Share Personal Information”:  
<http://www.clever.uk.com/isa/docs/c/c5.htm>

Birmingham City Council, “Consent Given Form”:  
<http://www.clever.uk.com/isa/docs/c/c8.htm>

Sefton, “Your Personal Information”:  
<http://www.clever.uk.com/isa/docs/c/c9.htm>

Bradford CYPSP, “Consent Form”:  
<http://www.clever.uk.com/isa/docs/c/c10.htm>

### **Multi-agency information on consent for children/young people and their families**

Bedfordshire & Luton Information Sharing Strategy, “Sharing information to provide better services for children and their families”:  
<http://www.clever.uk.com/isa/docs/i/i1.htm>

Cambridgeshire CYPSP, "Sharing information to support children & young people – Information for parents & carers / Information for young people": <http://www.cleaver.uk.com/isa/docs/i/i2.htm>

Hammersmith & Fulham, "You and your information":  
<http://www.cleaver.uk.com/isa/docs/i/i3.htm>

Swindon CYPSP, "Why do we need to share information?":  
<http://www.cleaver.uk.com/isa/docs/i/i4.htm>

Worcestershire County Council, "Sharing Personal Information in Worcestershire – Information Leaflet":  
<http://www.cleaver.uk.com/isa/docs/i/i5.htm>

### **Multi-agency guidance for practitioners on how and when to gather and document consent**

Somerset Information Sharing Project, "Information for Practitioners":  
<http://www.cleaver.uk.com/isa/docs/g/g1.htm>

Suffolk, "Information Sharing to Improve Services for Children":  
<http://www.cleaver.uk.com/isa/docs/g/g3.htm>

Hammersmith & Fulham, "A Guide for Staff Working with Children and Families on Obtaining and Documenting Consent":  
<http://www.cleaver.uk.com/isa/docs/g/g5.htm>

Torbay, "Consent to Share Personal Information: A Guide for Practitioners": <http://www.cleaver.uk.com/isa/docs/g/g8.htm>

## Getting further help

### Network contacts

Management Helpline

#### **DIAL UK**

St Catherine's Hospital  
Tickhill Road, Balby  
Doncaster DN4 8QN  
Tel: 01302 310123

James Kenrick

#### **Youth Access**

1a Taylor's Yard  
Alderbrook Road  
London SW12 8AD  
Tel: 020 8772 9900

Lynn Evans

#### **Law Centres Federation**

18-19 Warren Street  
London WC1P 5DB  
Tel: 020 7387 8570

Development Team Consultancy Line

#### **advice<sup>uk</sup> London Region**

12<sup>th</sup> Floor  
New London Bridge House  
25 London Bridge Street  
London SE1 9ST  
Tel: 020 7407 6622

Phil Jew and Chilli Reid

#### **advice<sup>uk</sup> national**

12<sup>th</sup> Floor  
New London Bridge House  
25 London Bridge Street  
London SE1 9ST  
Tel: 20 7407 4070

JJ Costello

#### **Shelter Cymru**

25 Walter Road  
Swansea SA1 5NN  
Tel: 01792 469400

#### **Citizens Advice**

Myddleton House  
115-123 Pentonville Road  
London N1 9LZ  
Bureau Management Consultancy Line  
Tel: 0845 120 2035  
CLS Consultancy Line  
Tel: 020 7833 7046/7134 or 01873 810101

Contracts Manager

#### **Shelter**

88 Old Street  
London EC1V 9HU  
Clssupport@shelter.org.uk

John Edwards

#### **Age Concern England**

Astral House  
1268 London Road  
London SW16 4ER  
Tel: 020 8765 7468

### Legal Services Commission Regional Office contacts

You can also contact your regional LSC office. If you aren't sure which area you are in, any regional office should be able to direct you to the one for your area. For queries about the Quality Mark only you can email the LSC at [sdg.issues@legalservices.gov.uk](mailto:sdg.issues@legalservices.gov.uk).

#### **London**

29-37 Red Lion St  
London EC1R 4PP  
Tel: 020 7759 1966

#### **North Western**

2<sup>nd</sup> Floor, Lee House  
90 Great Bridgewater Street  
Manchester M1 5JW  
Tel: 0161 244 5000

#### **South Western**

33-35 Queens Square  
Bristol BS1 4LU  
Tel: 0117 302 3000

#### **South Eastern (Brighton)**

3<sup>rd</sup> and 4<sup>th</sup> Floors, Invicta House  
Trafalgar Place, Cheapside  
Brighton BN1 4FR  
Tel: 01273 878800

#### **North Eastern**

Eagle Star House  
Fenkle Street  
Newcastle NE1 5RU  
Tel: 0191 244 5800

#### **East Midlands**

2<sup>nd</sup> Floor, Fothergill House  
16 King Street  
Nottingham NG1 2AS  
Tel: 0115 908 4200

#### **Yorkshire & Humberside**

Harcourt House, Chancellor Court  
21 The Calls  
Leeds LS2 7EH  
Tel: 0113 390 7300

#### **South Eastern (Reading)**

80 Kings Road  
Reading RG1 4LT  
Tel: 0118 955 8600

#### **Wales**

Marland House  
Central Square  
Cardiff CF1 1PF  
Tel: 029 2064 7100

#### **Eastern**

62-68 Hills Road  
Cambridge CB2 1LA  
Tel: 01223 417800

#### **West Midlands**

City-Centre Podium  
5 Hill Street  
Birmingham B5 4UD  
Tel: 0121 665 4700

#### **Merseyside**

Cavern Walks  
8 Mathew Street  
Liverpool L2 6RE  
Tel: 0151 242 5200

### Office of Immigration Services Commissioner (OISC)

The Office of the Immigration Services Commissioner, 5th Floor, Counting House, 53 Tooley Street, London, SE1 2QN Tel: 020 7211 1500 Fax: 020 7211 1553 [www.oisc.gov.uk/](http://www.oisc.gov.uk/)

### The Office of the Information Commissioner

Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
Tel: 01625 545 745 Fax: 01625 524 510 [www.dataprotection.gov.uk/](http://www.dataprotection.gov.uk/)



CLS Support Director: Michael Eddowes  
Senior Project Adviser: Kem Herbert  
Project Consultant: Audrey MacDonald  
Project Consultant: Patrick Torsney

## Consultancy service

CLS Support operates a telephone and e-mail consultancy service, providing help on the Quality Mark, the Legal Aid contract and other aspects of the Community Legal Service.

The telephone consultancy service is available to subscribers on **0870 7700 447** and is open **1.00 pm - 4.00 pm, Monday to Friday**.

We try to tailor our support as closely as possible to the needs of individual organisations. We answer enquiries at first contact wherever possible. If we need to carry out further research in order to answer your enquiry, we will tell you when we can get back to you and will contact you at that time even if a full response is not yet possible. If we need to send you written information, we will normally do so within five working days.

Alternatively, if you are a subscriber you can email us on **cls.support@asauk.org.uk** with your enquiry. Please include a contact telephone number so that we can call you back to discuss the details of your enquiry. We aim to respond to e-mail enquiries within five working days.

For information on how to subscribe go to the CLS Support pages of our website **www.asauk.org.uk**.

## Training

We run an annual national training programme, presently focusing on organisations with the CLS Specialist Quality Mark and/or a Legal Aid contract. Training is offered at various locations across the country. Our website contains details of our current programme, course prices and how to book places. Subject to demand, we may run further events to those advertised in the programme.

Subject to project resources and agreement over price, we will on request put on training courses organised on a block-booking basis. Please contact the consultancy service if you wish to arrange a block booking of any of our current courses or if you want to suggest an alternative course that you would like us to provide.

Note that organisations requesting a block-booking course are responsible for practical arrangements, eg booking a venue, publicising the course, taking bookings.

## Seminars and workshops

Subject to project resources and agreement over price, we will on request put on seminars and workshops. For further information, please either contact the consultancy service or log on to the CLS Support training page of our website.

## Briefings

We publish two series of briefings. Our **Quality Mark** briefings deal with CLS Quality Mark requirements and procedures at all levels. Our **Contracting** briefings provide practical guidance on the Legal Aid contract to help organisations interpret and apply contract rules.

You can see some sample briefings on our website. Set out below is a full list of briefings available to subscribers that are still substantially correct. Titles in italics are currently in preparation.

## Series 1: The Quality Mark

- 1 Introduction to the Quality Mark
- 2 Client Feedback
- 3 Independent File Review
- 4 Conflict of Interest
- 5 Service Planning
- 6 People Management – Sample Procedures
- 7 Signposting and referral
- 8 Case Management and Client Care
- 9 Data protection - is your handling of client information breaking the law?
- 10 The Specialist Quality Mark - Getting the most out of it
- 11 The Quality Mark and other quality standards - for agencies working with young people
- 12 The CLS Quality Mark: Getting the Most Out of General Help
- 13 *Changing from the General Help to the Specialist Quality Mark – upsides and downsides*

## Series 2: The General Civil Contract

- 2 *Contract reporting arrangements – SPAN (2<sup>nd</sup> edition)*
- 4 Disbursements
- 5 Employing a solicitor for the first time
- 6 Controlled Work and Contract Compliance
- 7 Sufficient Benefit Test: Principles & Practice
- 8 The General Civil Contract: the Framework - The Access to Justice Act 1999
- 9 Eligibility: Principles and Practice
- 10 Performance against contract: the rules and your rights
- 11 *An overview of legal aid contracts for trustee board members*
- 12 *Who is my client? – Issues of capacity and conflicts*
- 13 *The General Civil Contract: the Framework - Funding Code Levels of Service (2<sup>nd</sup> edition)*

## Email Bulletins

Our Email Bulletin service provides regular updates on issues relating to the CLS Quality Mark and the Legal Aid contract. The service is an invaluable supplement to our written briefings, and offers subscribers:

- Up-to-date information on changes to or clarification of LSC requirements;
- Guidance and examples of best practice;
- Information on forthcoming policy developments;
- Updates on the work of ASA and CLS Support;
- Opportunities to provide feedback on issues of interest or concern.

There are two series of Bulletin, on the Quality Mark and the Legal Aid contract respectively. Bulletins are emailed to subscribers on our database as an attachment to an email message. The subject bar of the email contains the words 'CLS Support Email Bulletin' and a brief description of the content, to help you decide whether it is relevant to you and worth reading.

From time to time, copies of Bulletins are put on ASA's website, but if you want to receive them as soon as they are published, you should subscribe to the Bulletin service. Go to the CLS Support pages of our website for further information ([www.asauk.org.uk](http://www.asauk.org.uk)).

If you think that there are any aspects of the Quality Mark or the Legal Aid Contract on which future Email Bulletins would be useful, please email us at [bulletin@asauk.org.uk](mailto:bulletin@asauk.org.uk) with your suggestions.

**Briefing Feedback Sheet**  
**CLS Support Quality Mark Briefing no. 13**



Please let us have your views on this briefing and whether there are other aspects of the Quality Mark, General Civil Contracts or the Community Legal Service on which you would like more briefings. Feedback from your organisation will help us make future briefings as relevant and easy to follow as possible.

Did you find this briefing helpful?.....  
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Do you have suggestions for any changes that might have made it more useful to you?  
If yes, please specify:  
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Were there issues that you expected to be covered in this briefing and about which you want to know more? If yes, please say what these are:  
.....  
.....  
.....  
.....

Are there other aspects of the Quality Mark, General Civil Contracts or the Community Legal Service on which future briefings would be useful?  
If yes, please list below in order of importance:  
.....  
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Your name: ..... Tel: .....

Email: .....

Name/address of your agency: .....  
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Please return to: Advice Services Alliance, CLS Support, 12<sup>th</sup> Floor New London Bridge House, 25 London Bridge Street, London SE1 9ST or email **cls.support@asauk.org.uk** and type in the subject bar " Quality Mark Briefing no. 13 Feedback"

Price: £10

This briefing is a resource for your whole organisation. Please ensure that every member of staff involved in Legal Aid or Quality Marked work has access to it.

12th Floor, New London Bridge House,  
25 London Bridge Street, London SE1 9ST  
Tel: 020 7378 6428 Fax: 020 7407 6822  
[www.asauk.org.uk](http://www.asauk.org.uk)

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