



## Consent

[The Care and Support Statutory Guidance](#) advises that the first priority in safeguarding should always be to ensure the safety and wellbeing of the adult. [Making Safeguarding Personal](#) is a person-centred approach which means that adults are encouraged to make their own decisions and are provided with support and information to empower them to do so. This approach recognises that adults have a general right to independence, choice and self-determination including control over information about themselves. Staff should strive to deliver effective safeguarding consistently with both above principles.

### **Do you need consent to report a safeguarding concern?**

No - you do not always need consent to report a safeguarding concern. Sharing information for the purpose of safeguarding adults is different to for example, seeking consent when a service will be provided. Sometimes you have to raise a safeguarding concern without consent, for example if someone else may be at risk, a crime may have been committed, to prevent harm, or the person does not have capacity to make that decision.

You must apply the Data Protection Act 2018 which includes 'safeguarding of children and individuals at risk' as a condition that allows practitioners to share information without consent. Where possible and if it will not cause further harm, keep the adult informed of your actions. This fits with the Making Safeguarding Personal approach. Always record your decisions and the reasons for them about sharing or not sharing information.

### **Giving Consent**

Adults may not give their consent to the sharing of safeguarding information for a number of reasons. For example, they may be unduly influenced, coerced or intimidated by another person, they may be frightened of reprisals, they may fear losing control, they may not trust social services or other partners or they may fear that their relationship with the abuser will be damaged. Reassurance and appropriate support may help to change their view on whether it is best to share information. Staff should be curious and consider the following actions:

- Explore the reasons for the adult's objections – what are they worried about?
- Explain the concern and why you think it is important to share the information.
- Tell the adult with whom you may be sharing the information with and why.
- Have you considered any previous trauma which impact on them and their ability to trust others?
- Explain the benefits, to them or others, of sharing information – could they access better help and support?
- Discuss the consequences of not sharing the information – could someone come to harm?
- Reassure them that the information will not be shared with anyone who does not need to know.
- Reassure them that they are not alone and that support is available to them.

*'There is a common assumption that enquiries under section 42 of the Care Act 2014 require the consent of the adult. This is false and relies on a misunderstanding of the law' [Community Care 2024](#)*

### **Overriding Refusal to give Consent**

If, after the steps above have been taken and the adult refuses intervention to support them with a safeguarding concern, or requests that information about them is not shared with other safeguarding partners, in general, their wishes should be respected. However, there are a number of circumstances where staff can reasonably override such a decision, including:

- The person is unable to understand relevant information; retain the information; make a decision based on the information given.
- Unable to communicate a choice on the matter because he / she is unconscious.

- Emergency or life-threatening situations may warrant the sharing of relevant information with the emergency services without consent.
- Other people are, or may be, at risk, including children and there is a wider public interest.
- Sharing the information could prevent a serious crime or a serious crime has been committed.
- The risk is unreasonably high and meets the criteria for a multi-agency risk assessment conference referral.
- There is a court order or other legal authority for taking action without consent.

If the person cannot be persuaded to give their consent then, unless it is considered dangerous to do so, it should be explained to them that the information will be shared without consent. The reasons should be given and recorded. The safeguarding principle of proportionality should underpin decisions about sharing information without consent, and decisions should be on a case-by-case basis.

If it is not clear that information should be shared outside the organisation, a conversation can be had with safeguarding partners in the police or local authority without disclosing the identity of the person in the first instance. They can then advise on whether full disclosure is necessary without the consent of the person concerned.

In such circumstances, it is important to keep a careful record of the decision-making process (evidencing defensible decision making). Staff should seek advice from managers in line with their organisation's policy before overriding the adult's decision, except in emergency situations. Managers should make decisions based on whether there is an overriding reason which makes it necessary to take action without consent and whether doing so is proportionate because there is no less intrusive way of ensuring safety. Legal advice should be sought where appropriate. If the decision is to take action without the adult's consent, then unless it is unsafe to do so, the adult should be informed that this is being done and of the reasons why.

### **Considering Risk**

It is important that the risk of sharing information is also considered. In some cases, such as domestic abuse or hate crime, it is possible that sharing information could increase the risk to the adult. Safeguarding partners need to work jointly to provide advice, support and protection to the adult in order to minimise the possibility of heightening the risk posed from the perpetrator.

Some frontline staff and managers can be over-cautious about sharing personal information, particularly if it is against the wishes of the individual concerned. They may also be mistaken about needing hard evidence or consent to share information. The risk of sharing information is often perceived as higher than it actually is.

***It is important that staff consider the risks of not sharing safeguarding information when making decisions.***

### **Supporting the Adult**

If none of the above apply and the decision is not to share safeguarding information with other safeguarding partners, or not to intervene to safeguard the adult, then the following should be considered:

- Support the adult to weigh up the risks and benefits of different options.
- Ensure they are aware of the level of risk and possible outcomes.
- Offer to arrange for them to have an advocate or peer supporter.
- Offer support for them to build confidence and self-esteem if necessary.
- Agree on and record the level of risk the adult is taking.
- Record the reasons for not intervening or sharing information.
- Regularly review the situation.
- Try to build trust to enable the adult to better protect themselves.

### **Consent and Mental Capacity**

Correctly applying the [Mental Capacity Act 2005 \(MCA\)](#) is pivotal in safeguarding work when an adult lacks mental capacity. Good practice maximises an adult's ability to understand and participate in the decision-making process. If

the adult is assessed as lacking mental capacity, best interest decisions should be made on their behalf. You can find further information here [NICE Guidance](#).

**Learning from Adult Safeguarding Reviews-** A key finding from Safeguarding Adult Reviews which have undertaken by WSAB has highlighted the need for better information sharing and for practitioners to be professionally curious. This is key in identifying different types of abuse and not taking things at face value, you can find further information [here](#).

**Who to contact**

Wigan Council Duty Team 01942 828777

**Useful Links**

[Scie Sharing Information](#)