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INFORMATION SHARING – RELEVANT LEGISLATION GUIDANCE

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Contents

1	Introduction	5
2	Purpose	5
3	Scope	5
4	Legal Framework – Protection of Personal Information	5
4.1	The Human Rights Act 1998 (HRA)	5
4.2	The Common Law Duty of Confidentiality	6
4.3	Caldicott	6
4.4	The Data Protection Act 2018	7
4.5	The Access to Health Records Act 1990	9
5	Legal Framework – Legislation Containing Express Powers, or which Imply Powers to Share Information	9
5.1	The Children Act 1989	9
5.2	The Children Act 2004	10
5.3	Education Act 2002	11
5.4	Education Act 1996	11
5.5	Learning and Skills Act 2000	12
5.6	Education (SEN) Regulations 2001	12
5.7	Children (Leaving Care) Act 2000	12
5.8	Immigration and Asylum Act 1999	12
5.9	Local Government Act 2000	12
5.10	Criminal Justice Act 2003	13
5.11	Crime and Disorder Act 1998	13
5.12	The Police Act 1996	15
5.13	National Health Service Act 1977	15
5.14	National Health Service Act 2006	15
5.15	The Adoption and Children Act 2002	15

5.16	Freedom of Information Act 2000	16
5.17	Protection of Freedoms Act.....	17
5.18	Care Act 2014.....	17
5.18	Legal Aid Sentencing and Punishment of Offenders Act 2012.....	17
5.19	Domestic Violence Crimes and Victims Act 2004.....	17
5.20	Children and Families Act 2014.....	17
6	Consent – Capacity Considerations	18
6.1	Mental Capacity Act 2005.....	18
6.2	Mental Capacity Act 2005 Code of Practice	17

1 Introduction

The purpose of this guidance is to give a basic understanding of the legal framework relating both to the protection of personal information and also that legislation which provide permissive or mandatory statutory gateways for information sharing.

The legislation detailed in this guidance document underpins the information sharing framework outlined in the associated Information Sharing - Overarching Protocol.

2 Purpose

The purpose of this guidance is to define the relevant legislation which underpins appropriate sharing of information between partner organisations and between partner organisations and other agencies. This guidance accompanies the Information Sharing – Overarching Protocol.

3 Scope

This document is directed at all staff working within Partner Organisations and other agencies with whom information is shared.

4 Legal Framework – Protection of Personal Information

4.1 The Human Rights Act 1998 (HRA)

The UK Human Rights Act 1998 gives further effect in domestic law to Articles of the European Convention on Human Rights (ECHR). The Act requires all domestic law be compatible with the Convention Articles and places a legal obligation on all public authorities to act in a manner compatible with the Convention. Should a public authority fail to act in such a manner, then legal action can be taken under Section 7 of the Act.

Article 8.1 of the Act states that:

“Everyone has the right to respect for his private and family life, his home and his correspondence.”

Article 8.2 of the Act states that:

“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 crime or disorder,*
- *protection of health and morals*
- *for the protection of rights and freedoms of others.”*

Information Sharing Considerations - HRA

Sharing confidential information may be a breach of an individual’s Article 8 right – a decision will need to be made as to whether the sharing would be justified under Article 8.2 and proportionate.

The right to a private life can be legitimately interfered with where it is in accordance with the law and it is necessary. Examples are outlined in Article 8.2 above.

There will be a need to consider the pressing social need and whether sharing the information is proportionate in response to this need and whether these considerations can override the individual's right to privacy.

If a child or young person is at risk of significant harm, or an adult is at risk of serious harm, or sharing is necessary to prevent crime or disorder, interference with the individual's right may be justified under Article 8.

4.2 The Common Law Duty of Confidentiality

Information is confidential where it:

- has the nature of confidentiality about it
- is disclosed in circumstances of confidentiality and
- is capable of adversely affecting the supplier, the recipient or some other party if disclosed.

The duty of confidence falls within common law, as opposed to statutory law and derives from cases considered by the courts. The common law provides that where there is a confidential relationship, the person receiving the confidential information is under a duty not to pass the information on to a third party; however this is not an absolute duty, as information can be shared legitimately if:-

- the information is not confidential in nature; or
- the person to whom the duty is owed has given explicit consent; or
- there is an overriding public interest in disclosure; or
- sharing is required by a court order or other legal obligation.

Guidance from the Information Commissioner states that because such decisions to disclose 'in the public interest' involves the exercise of judgment, it is important that they are taken at an appropriate level (this would be at a Data Protection Officer or Caldicott Guardian level) and that procedures are developed for taking those decisions.

4.3 Caldicott

Although Caldicott is not a legal requirement it has been included within this section, as it is a mandatory requirement within NHS organisations. Caldicott covers Health and Social Care related information and must be taken into consideration when proposing to share information of this type. It is important that all 6 Caldicott Principles are complied with prior to sending information. The sharing of information of this type must be approved by the Caldicott Guardian, the Caldicott Guardian is a person who has been appointed within a health and social care setting to act as the conscience of the organisation and make very often difficult decisions about the sharing primarily of patient or social care information, although in some organisations they are also involved in decisions regarding other types of personal information.

Caldicott Principles:-

- Justify the purpose before sharing information;
- Only use patient identifiable when absolutely necessary;
- Use only the minimum that is required, do not share more data than is necessary, ie do not send the whole patient record when the request only relates to a recent event;

- Access to the data should be on a strict need to know basis;
- Be aware of your responsibilities in complying with organisational policies relating to confidentiality;
- Understand the law, if uncertain speak to your line manager, your Data Protection Officer or the Information Governance Team.

A review of the Caldicott principles was carried out in 2013 and a further Caldicott principle has been introduced:

- The duty to share information can be as important as the duty to protect patient confidentiality

Where health data is concerned, Health staff and others working in partnership with them should be aware of the concept of Safe Haven.

Safe Havens will:-

- Provide a secure location restricting access to only authorised staff and will be locked outside normal hours;
- Be staffed by those individuals with authority to access confidential information and who are under contractual and statutory obligations to maintain confidentiality;
- Ensure that no confidential information will be released to parties outside the Organisation unless it is deemed appropriate. Health staff should make reference to the Caldicott Principles listed above and seek advice from the Caldicott Guardian, the Data Protection Officer or the Information Governance Team where uncertain.
- Ensure that as a minimum, a valid NHS Number is present and person identifiable data has been removed.

4.4 The Data Protection Act 2018

The Data Protection Act 2018 incorporates the EU General Data Protection Regulations (GDPR) and governs the standards for processing personal and sensitive personal information of living individuals, including the collection, use and disclosure of that information. The legislation requires that data controllers meet certain obligations. It also gives individuals or 'data subjects' certain rights with regard to their own personal data. The main standard for processing personal data is compliance with the six data protection principles summarised as follows:-

- Processed fairly, lawfully and in a transparent manner
- Collected for specified, explicit and legitimate purposes and not further processed for other purposes incompatible with the original purpose
- Adequate, relevant and limited to what is necessary in relation to the purposes
- Accurate and kept up to date
- Kept in a form that permits identification no longer than is necessary
- Processed in a way that ensures appropriate security of the personal data

The processing of personal data will only be lawful if it satisfies at least one of the following conditions:

- Consent of the data subject
- Necessary for the performance of a contract with the data subject or to take steps preparatory to such a contract
- Necessary for compliance with a legal obligation

- Necessary to protect the vital interests of a data subject or another person where the data subject is incapable of giving consent
- Necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller
- Necessary for the purposes of legitimate interests – *this condition can no longer be relied on by public authorities.*

The grounds for processing the special categories of personal data must satisfy at least one of the following conditions:

- Explicit consent of the data subject, unless reliance on consent is prohibited by law
- Necessary for the carrying out of obligations under employment, social security or social protection law, or a collective agreement
- Necessary to protect the vital interests of a data subject who is physically or legally incapable of giving consent
- Processing carried out by a not-for-profit body with a political, philosophical, religious or trade union aim provided the processing relates only to members or former members (or those who have regular contact with it in connection with those purposes) and provided there is no disclosure to a third party without consent
- Data manifestly made public by the data subject
- Necessary for the establishment, exercise or defence of legal claims or where courts are acting in their judicial capacity
- Necessary for reasons of substantial public interest on the basis of Union or Member State law which is proportionate to the aim pursued and which contains appropriate safeguarding measures
- Necessary for the purposes of preventative or occupational medicine, for assessing the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or management of health or social care systems and services on the basis of Union or Member State law or a contract with a health professional
- Necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of healthcare and of medicinal products or medical devices
- Necessary for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes in accordance with Article 89(1)

Information Sharing Considerations - DPA

The most relevant conditions in Schedule 2 are:-

- That the processing is likely to be necessary for compliance with a legal obligation, such as the Police Acts and the Local Government Act 2000.
- That the processing is likely to be necessary for the exercise of functions of a public nature exercised in the public interest
-

The most relevant conditions in Schedule 3 are:-

- That the processing is necessary in order to protect the vital interests of the Data Subject
- Necessary for reasons of substantial public interest on the basis of Union or Member State law which is proportionate to the aim pursued and which contains appropriate safeguarding measures
- Necessary for the purposes of preventative or occupational medicine, for assessing the working capacity of the employee, medical diagnosis, the provision of health or social

care or treatment or management of health or social care systems and services on the basis of Union or Member State law or a contract with a health professional

- Necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of healthcare and of medicinal products or medical devices

4.5 The Access to Health Records Act 1990

The Access to Health Records Act 1990 previously gave a right of access (with certain exemptions) to the records of both deceased and living patients, however, since the Data Protection Act 1998 came into force, the element of the Act relating to living individuals has been repealed. Although generally information relating to deceased individuals is not normally considered to be confidential, the Department of Health and the General Medical Council, specified, that due to the sensitive nature of healthcare records, information relating to deceased individuals would continue to be treated as confidential in the same way as information relating to living individuals. It was therefore decided, that access to healthcare records relating to deceased patients would continue to be covered under the Access to Health Records Act 1990.

5 Legal Framework – Legislation Containing Express Powers, or which Imply Powers to Share Information

This section outlines legislation which contains express or implied powers to share information which may be helpful when making information sharing decisions. Reference to relevant guidance is also included.

Please note: legislation referred to in this section may be subject to change or may be superseded or new powers may come into force. This section should not be relied upon as the sole source of guidance on information sharing decisions and any powers considered should be viewed in the light of all the applicable circumstances (including statutory restrictions on disclosure) and taking into account the requirements of Section 2 of this guide relating to the protection of personal information. If you are in doubt contact the Information Governance Team or the Data Protection Officer for advice.

5.1 The Children Act 1989

Reasonable cause to suspect a child may be at risk of suffering significant harm

Section 47 of this Act places a duty on Local Authorities to make enquiries where they have a reasonable cause to suspect that a child in their area may be at risk of suffering significant harm. This section of the Act states that the following authorities must assist local authorities with these enquiries if requested (including providing relevant information) unless it would be unreasonable to do so in all circumstances:-

- Local authorities
- Local education authorities
- Housing Authorities
- Health Authorities
- Any person authorised by the Secretary of State

Local authority duty to provide support for children and families, particularly services for children in need in their area

Part 3 of the Act allows local authorities to provide support for children and families and also to provide services for children in need in their area. Section 27 enables local authorities to request the head of the authorities listed above, where it is felt that the authority could help in the exercise of its functions under Part 3 of the Act. Authorities are required to co-operate with a request for help as long as it is compatible with that authority's own statutory duties and does not unduly prejudice the discharge of any of their functions.

Examples could include where authorities are approached by Social Services and asked to provide:-

- Information about a child, young person or their family where there are concerns about a child's well-being, or to contribute to an assessment under Section 17 or a child protection enquiry;
- To undertake specific types of assessments as part of a core assessment or to provide a service for a child in need
- To provide a report and attend a child protection case conference.

The Act does not require information to be shared in breach of confidence, but an authority should not refuse a request without considering the relative risks of sharing information, if necessary without consent, against the potential risk to a child if information is not shared.

5.2 The Children Act 2004

Section 10 of the Act places a duty on children's services authorities to make arrangements to promote co-operation between itself and relevant partner agencies to improve the well-being of children in their area in relation to:-

- Physical and mental health and emotional well-being
- Protection from harm and neglect
- Education, training and recreation
- Making a positive contribution to society
- Social and economic well-being

The relevant partners must co-operate with local authorities to make arrangements to improve the well-being of children – relevant partners are:-

- District councils
- The Police
- The Probation Service
- Youth Offending Teams (YOTs)
- Strategic Health Authorities and Primary Care Trusts
- Connexions
- The Learning and Skills Councils

The statutory guidance for Section 10 of the Act states that good information sharing is key to successful collaborative working and arrangements under this section should ensure information is shared for strategic planning purposes and to support effective service delivery.

Section 11 of the Act places a duty on key persons and bodies to make arrangements to ensure their functions are discharged with regard to the need to safeguard and promote the welfare of children. The key people and bodies are:-

- Local authorities (including district councils)
- The Police
- The Probation Service
- Bodies within the National Health Service
- Connexions
- Youth Offending Teams
- Governors/Directors of prisons and youth offender institutions
- Directors of secure training centres
- The British Transport Police

Section 11 does not give agencies any new functions, nor does it override existing ones, however, it requires them to:-

- Carry out their existing functions in a way that takes into account the need to safeguard and promote the welfare of children
- Ensure services they contract out to others are provided having regard to this need (to safeguard and promote the welfare of children).

In order to ensure that the welfare of children is safeguarded and promoted, arrangements should ensure that:-

- All staff in contact with children understand what to do and are aware of the most effective ways of sharing information if they believe a child and their family may require targeted or specialist services in order to achieve their optimal outcomes.
- All staff in contact with children understand what to do and when to share information if they believe that a child may be in need, including those children suffering or at risk of significant harm.

5.3 Education Act 2002

Section 175 of the Act mirrors the duty imposed by Section 11 of the Children Act 2004 to make arrangements to carry out their functions with a view to safeguarding and promoting the well-being of children and follow the guidance detailed in *Safeguarding Children in Education* (DfES 2004) which applies to the proprietors of independent schools.

Section 21 of the Act (as amended by Section 38 of the Education and Inspections Act 2006) places a duty on the governing body of a maintained school to promote the well-being of pupils at the school. The Act specifies that this duty has to be considered with regard to any relevant children and young person's plan.

The responsibility of the governing body and maintained schools is extended beyond educational achievement to all aspects of the child's life. This may require the involvement of other services in order to enable it to fulfill, this may mean that there is an implied power to work collaboratively and share information for this purpose.

5.4 Education Act 1996

Section 13 of the Act provides that, as far as their powers enable them to do so, a Local Education Authority shall contribute towards the spiritual, moral, mental and physical development of the community, by ensuring efficient primary and secondary education is available to meet the needs of the population in their area. Details of the number of children in the local authority's area and an analysis of their needs are required in order to fulfill this duty, therefore there may be an implied power to collect and use information for this purpose.

Section 408 of the Act and the Education (Pupil Information) (England) Regulations 2005 require the transfer of the pupil's common transfer file and educational record when a pupil changes school.

Section 434(4) of the Act requires Local Education Authorities to request schools to provide details of children registering at a school.

5.5 Learning and Skills Act 2000

Section 117 of the Act provides for help to a young person to enable them to take part in further education and training.

Section 119 enables Connexions Services to share information with Job Centre Plus to support young people to obtain appropriate benefits under the Social Security Contributions and Benefits Act 1992 and Social Security Administration Act 1992.

5.6 Education (SEN) Regulations 2001

Regulation 6 provides that when the Local Education Authority is considering making an assessment of a child's special educational needs, it is obliged to send copies of the notice to Social Services, Health Authorities and the Head Teacher of the School (if any) asking for the relevant information.

Regulation 18 provides that all schools must provide Connexions Services with information regarding all Year 10 children who have a statement of special educational needs.

5.7 Children (Leaving Care) Act 2000

In order to aid the smooth transition of young people from local authority care to independent living, this Act amended the Children Act 1989 to place a duty on local authorities to assess and meet the care and support needs of eligible and relevant children and young people and to assist former relevant children in particular in respect of their employment, education and training.

Sharing information with other agencies will enable the local authority to fulfill the statutory duty to provide aftercare services to young people leaving public care.

5.8 Immigration and Asylum Act 1999

Section 20 provides for a range of information sharing for the purposes of the Secretary of State:-

- To undertake the administration of immigration controls to detect or prevent criminal offences under the Immigration Act;
- To undertake the provision of support for asylum seekers and their dependents.

5.9 Local Government Act 2000

Part 1 of the Act gives local authorities powers to take any steps they consider are likely to promote the well-being of their area or the inhabitants of it.

Section 2 gives local authorities 'a power to do anything which they consider is likely to achieve any one or more of the following objectives':-

- The promotion or improvement of the economic well-being of their area;

- The promotion or improvement of the social well-being of their area;
- The promotion or improvement of the environmental well-being of their area.

Section 2(5) makes it clear that a local authority may do anything for the benefit of a person or an area outside their authority, if the local authority considers that it is likely to achieve one of the objectives in Section 2(1).

Local Authorities should always seek to share, where possible, information that would achieve the above – either within or outside the organisation; for example in the form of aggregated or anonymised data.

Section 3 is clear that local authorities are unable to do anything (including sharing information) for the purposes of the well-being of people – including children and young people – where they are restricted or prevented from doing so on the face of any relevant legislation, for example the Human Rights Act, the Data Protection Act, or by the common law duty of confidentiality.

5.10 Criminal Justice Act 2003

Section 325 of this Act details the arrangements for assessing the risk posed by different offenders:

- The ‘responsible authority’ in relation to any area, means the chief officer of police, the local probation board and the Minister of the Crown exercising functions in relation to prisons, acting jointly.
- The responsible authority must establish arrangements for the purpose of assessing and managing the risks posed in that area by:
 - Relevant sexual and violent offenders; and
 - Other persons who, by reasons of offences committed by them are considered by the responsible authority to be persons who may cause serious harm to the public (this includes children)
- In establishing those arrangements, the responsible authority must act in co-operation with the persons identified below.
- Co-operation may include the exchange of information.

The following agencies have a duty to co-operate with these arrangements:

- Every youth offending team established for an area
- The Ministers of the Crown, exercising functions in relation to social security, child support, war pensions, employment and training
- Every local education authority
- Every local housing authority or social services authority
- Every registered social landlord who provides or manages residential accommodation
- Every health authority or strategic health authority
- Every primary care trust or local health board
- Every NHS trust
- Every person who is designated by the Secretary of State as a provider of electronic monitoring services.

5.11 Crime and Disorder Act 1998

Section 17 recognises that key authorities (identified below) have responsibility for the provision of a wide variety of services to and within the community. Section 17 places a duty on them to do all they can to reasonably prevent crime and disorder in their area. The key authorities are:-

- Local authority
- Joint authority
- Police authority
- National park authority
- Broads Authority
- London Fire and Emergency Planning Authority (as amended by Greater London Authority Act 1999 from July 2000)
- All fire and rescue authorities (by virtue of an amendment to the Police Reform Act 2002 from April 2003)

The purpose of Section 17 is to give the vital work of crime and disorder reduction a focus across a wide range of local services that influence and impact upon community safety and putting it at the heart of local decision making. Section 17 is a key consideration for these agencies in their work in crime and disorder reduction partnerships, drug action teams, Youth Offending Teams, children's trusts and local safeguarding children boards.

Section 37 sets out that the principal aim of the youth justice system is to prevent offending by children and young people and requires everyone carrying out youth justice functions to have regard to that aim.

Section 39(5) sets out the statutory membership of Youth Offending Teams reflecting their responsibilities both as a criminal justice agency and a children's service. The membership consists of the following:-

- At least one probation officer
- At least one police officer
- At least one person nominated by a health authority
- At least one person with experience in education
- At least one person with experience of social work in relation to children

Youth Offending Teams have a statutory duty to co-ordinate the provision of youth justice services, including advising courts, supervising community interventions and sentences, working with secure establishments in respect of young people serving custodial sentences and also in the latter category of a children's service.

As Youth Offending Teams are multi-agency teams members will also need to be aware of the need to safeguard and promote the welfare of children in their constituent agency.

Section 115 provides any person with a power, but not an obligation to disclose information to responsible public bodies (e.g. police, local and health authorities) and with co-operating bodies (e.g. domestic violence support groups, victim support groups) participating in the formulation and implementation of the local crime and disorder strategy.

The police have an important and general common law power to share information to prevent, detect and reduce crime. However, some other public organisations that collect information may not have previously had the power to share it with the police and others. Section 115 clearly sets out the power of any organisation to share information with police authorities, local authority (including parish and community councils), Probation Service and health authority (or anyone acting on their behalf) for the purposes of the Act.

This ensures that information may be shared for a range of purposes covered by the Act, for example for the functions of the crime and disorder reduction partnerships and Youth Offending

Teams, the compilation of reports on parenting orders, anti-social behaviour orders, sex offender orders and drug testing orders.

5.12 The Police Act 1996

This Act gives a Constable certain powers. Section 30(1) gives constables all the powers and privileges of a constable throughout England and Wales and Section 30(5) defines these powers as powers under any enactment whenever passed or made. These powers include the investigation and detection of crime, apprehension and prosecution of offenders, protection of life and property and maintenance of law and order. Under the Police Reform Act 2002, the Chief Constable can delegate certain powers to police staff.

In addition, the Code of Practice on the Management of Police Information 2005 defines the policing purpose as:-

- Protecting life and property;
- Preserving order;
- Preventing the commission of offences;
- Bringing offenders to justice;
- Any duty or responsibility arising from common or statute law.

The policing purpose set out in the Code does not replace or supersede any existing duty or power defined by statute or common law. In addition, this does not define every policing activity and does not mean that there is no legal basis for performing such activities. For example, roads policing, public order, counter-terrorism or protection of children or other vulnerable groups while not referred to explicitly are non-the-less legitimate policing functions.

5.13 National Health Service Act 1977

This Act provides for a comprehensive health service for England and Wales to improve the physical and mental health of the population and to prevent, diagnose and treat illness.

Section 2 of the Act provides for the sharing of personal identifiable information with other NHS professionals and practitioners from other agencies carrying out health service functions that would otherwise be carried out by the NHS.

5.14 National Health Service Act 2006

Section 82 of the Act places a duty on NHS bodies and local authorities to co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.

NHS bodies and local authorities should seek to share and analyse information, appropriately anonymised, to improve understanding and inform policy decisions.

5.15 The Adoption and Children Act 2002

The Act and associated Regulations make provision for obtaining, recording and keeping confidential information about adopted children and/or their relatives. The Act and Regulations give limited express powers to share information, in prescribed circumstances as laid out in the legislation. Information about pre-2002 Act adoptions remains governed by the provisions of the Adoption Agencies Regulations 1983. Legal advice should be sought before any disclosure from adoption records.

5.16 Freedom of Information Act 2000

Information held by or on behalf of a public authority may be disclosed to a party requesting it, except where a statutory exemption applies. For example, personal data is normally exempt under the Act (but may be disclosable under the Data Protection Act 1998) as is information provided under a duty of confidence. If any request for recorded information is made you must consult with the Information Governance Team or the Data Protection Officer.

5.17 Protection of Freedoms Act 2012

The Act makes various provisions including on biometric data, surveillance and criminal record disclosures for those working with vulnerable people. The Act also updates the Freedom of Information Act, notably on publication of datasets, and clarifies the meaning of “publicly-owned company” to which the Freedom of Information Act applies.

5.18 Care Act 2014

The Act requires a range of different care and support services to be available to people to be planned by organisations dealing with adult care services. Specifically, the Act requires services including local authorities, health and housing to co-operate in order to give good care and support. Also, care services for people in prison or on probation will need to be provided by working with the appropriate services.

The Act also requires local authorities to make reasonable enquiries concerning need for the care and safeguarding of adults who are unable to protect themselves as a result of those needs. Safeguarding Adults Boards must be set up in order to achieve this.

5.19 Legal Aid Sentencing and Punishment of Offenders Act 2012

This Act updates the Rehabilitation of Offenders Act 1974. The main changes are increasing the length of a maximum sentence that can be spent, starting rehabilitation periods from the end of community or custodial sentences, reducing most rehabilitation periods though increasing others, and exempting immigration and nationality decisions by the UK Border Agency from the Rehabilitation of Offenders Act.

5.20 Domestic Violence, Crimes and Victims Act 2004

The Act gives provision for sharing information for domestic violence homicide reviews.

5.20 Children and Families Act 2014

The Children and Families Act requires Clinical Commissioning Groups (CCGs) and local authorities to work together to commission services for children and young people with disabilities and special educational needs. Information may need to be shared to support Education Health and Care Plans. The Act also updates some provisions regarding contact in the area of adoption of children.

6 Consent – Capacity Considerations

6.1 Mental Capacity Act 2005

The Act and the associated Code of Practice contain guidance concerning a person's capacity or lack of capacity to give consent to information sharing.

Section 1 of the Act sets out 5 statutory principles on capacity:-

- A person must be assumed to have capacity unless it is established that they lack capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- An act carried out or a decision made, under this Act for, or on behalf of a person who lacks capacity, must be done in his best interests.
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less than restrictive on the person's rights and freedom of action.

6.2 Mental Capacity Act 2005 Code of Practice

Chapter 4 of the Code of Practice provides guidance on how to assess whether someone has the capacity to make a decision. Throughout the Code, the person's capacity (or lack of capacity) refers specifically to their capacity to make a particular decision at the time it needs to be made.

Assessing Capacity:

- Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (It doesn't matter whether the impairment or disturbance is temporary or permanent).
- If so, does the impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?

Assessing ability to make a decision:

- Does the person have a general understanding of what decision they need to make and why they need to make it?
- Does the person have a general understanding of the likely consequences of making, or not making, this decision?
- Is the person able to understand, retain, use and weigh up the information relevant to this decision?
- Can the person communicate their decision (by talking, using sign language or any other means)? Would the services of a professional (such as a speech and language therapist) be helpful?

Assessing capacity to make more complex or serious decisions:

- Is there a need for a more thorough assessment (perhaps by involving a doctor or other professional expert)?

