

INFORMATION SHARING AGREEMENT

DOMESTIC VIOLENCE

MULTI-AGENCY RISK ASSESSMENT CONFERENCE (MARAC)

For Nottinghamshire

NOTTINGHAMSHIRE MARAC INFORMATION SHARING AGREEMENT

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Consultation:	Members of the Nottinghamshire Caldicott Forum Members of the Nottingham and Nottinghamshire MARAC Steering Committees Mills & Reeves Solicitors for Nottingham University Hospitals NHS Trust
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1. INTRODUCTION

A Domestic Violence MARAC (Multi-Agency Risk Assessment Conference) is a meeting attended by members of various agencies for the purpose of working together to provide support and protection to high-risk victims of domestic violence and to increase public safety. The success of MARAC depends upon those agencies sharing up to date information about individuals involved in domestic violence incidents (victims, children and perpetrators) to assess risks, agree actions and assign responsibility.

This document aims to clarify the process and legislative provisions of such information sharing between the partner agencies. This is not a legal document and the content should not be used as legal advice. Its aim is to provide guidance on the ethical and legal requirements that need to be taken into consideration to achieve responsible and lawful information sharing between all agencies and practitioners.

In all cases, the safety of the victims and their children must come first. If there is any doubt as to whether or not information can or should be shared, advice should be sought from the organisation's Caldicott Guardian or appropriate senior person and in some cases legal advice should also be sought.

2. BACKGROUND INFORMATION AND SCOPE

Domestic violence is defined as:

'Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality' (Home Office 2004)

The Children Act 2004 Section 10 established a duty on Local Authorities to cooperate with partner agencies under the Act (including the Police, NHS Trusts, PCTs and Probation) to improve the well being of children and, in particular to protect them from harm and neglect. "Harm" defined in the Children Act 1989 means ill treatment or the impairment of health or development¹. The Adoption and Children Act 2002 further defined the meaning of harm to include, for example, impairment suffered from seeing or hearing the ill treatment of another.²

Section 11 of the Act requires Local Authorities; SHA's; PCTs; NHS Trusts; the Police; Probation; Youth Offending Teams and Governors of Prisons to make arrangements to safeguard and promote the welfare of children in their area.

In Nottingham and Nottinghamshire the MARAC arrangements are as follows:

¹ Children Act 1989 S31 (9) "harm" means ill treatment or the impairment of health or development. "Development" means physical, intellectual, emotional, social or behavioural development, "Health" means physical and emotional health "Ill-treatment" includes sexual abuse and forms of ill-treatment, which are not physical.

² Adoption and Children Act 2002 Part 2 S120

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NOTTINGHAM CITY MARAC addresses cases where the high risk victim of domestic violence resides within Nottingham City

SOUTH NOTTINGHAMSHIRE MARAC addresses cases where high risk victim of domestic violence resides within the District of Borough of Ashfield, Broxtowe, Gedling or Rushcliffe

NORTH NOTTINGHAMSHIRE MARAC addresses cases where high risk victim of domestic violence resides within the Districts of Bassetlaw, Mansfield or Newark and Sherwood.

This Information Sharing Agreement covers all three Nottinghamshire MARACs

3. LOCAL MULTI-AGENCY PARTNERS

The following agencies are parties to this agreement and agree to share relevant information (as appropriate) to support the MARAC and associated activities:

A1 Housing
Ashfield District Council
Ashfield Homes
APAS (Alcohol Problems Advisory Service)
Bassetlaw District Council
Broxtowe Borough Council
CAFCASS (Children and Family Court Advisory and Support Service)
Nottingham Crime and Drugs Partnership
Gedling Borough Council
Gedling Homes
Mansfield District Council
Newark and Sherwood District Council
Newark and Sherwood Homes
NHS Nottingham City*
NHS Nottinghamshire County Health Partnerships*
NHS Bassetlaw
Nottingham Citycare Partnership*
Nottingham City Council
Nottingham City Homes
Nottingham University Hospitals NHS Trust*
Nottinghamshire County Council
Nottinghamshire Fire and Rescue Service
Nottinghamshire Healthcare NHS Trust*
Nottinghamshire Independent Domestic Abuse Services

* Special provisions apply to health staff sharing personal information and sensitive personal information about their patients/clients. Health professionals must take their ethical professional regulations into consideration as well as their legal obligations.

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Nottinghamshire Police**
Nottinghamshire Womens Aid
National Probation Trust Nottinghamshire
Rushcliffe Borough Council
Sherwood Forest Hospitals Trust
Spirita Housing
Victim Support Nottinghamshire
Women's Aid Integrated Services

4. PURPOSES FOR SHARING INFORMATION

The purpose for sharing information is to support the key aims of the MARAC, which are:

- To increase the safety, health and well being of victims - adults and their children
- To determine whether the perpetrator poses a significant risk to any particular individual or to the general community
- To construct jointly and implement a risk management plan that provides professional support to all those at risk and that reduces risk of harm
- To reduce repeat victimisation
- To improve agency accountability, and
- To improve support for staff involved in high- risk DV cases.

(The MARAC Manual – Implementation Guide chapter 1)³

5. THE LEGAL PROVISIONS

The key aim of MARAC is to protect high-risk victims and their children from further harm. Failure to share information or sharing information inappropriately or unlawfully can put someone at serious risk. The safety of the domestic violence victims is paramount, but it is also important that the agencies and members of MARAC know how to share information responsibly and lawfully in support of that aim.

Responsible information sharing requires an understanding of the law and how to apply it. Decisions should be made on a case-by-case basis using professional judgement and managerial or legal advice should be sought where necessary.

5.1 LAWFUL POWER

A public authority must have the lawful power to carry out its intended functions.

** Nottinghamshire Police require that all recipients of Police Information are to have a formal Information Sharing Agreement and Process in place before any disclosure of personal/sensitive data can take place.

³ http://www.caada.org.uk/library_resources.html#10

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The following statutory gateways legally permit the disclosure of information for purposes listed in Section 3. They do not set aside the common law and data protection obligations of confidentiality, which must still be followed.

- Section 115 Crime and Disorder Act 1998 provides a legal power to share information for the prevention and detection of crime and disorder with the Police; Probation; a Local Authority; NHS Trust/PCT/SHA.
- The Children Act 1989 & Children Act 2004 establish a duty for all agencies to cooperate to improve the well-being of children, in particular to ensure their physical and mental health and emotional well-being and to protect them from harm and neglect
- The Data Protection Act 1998, section 29, provides certain exemptions when personal information is used for the prevention and detection of crime and/or the apprehension and prosecution of offenders.
- The Human Rights Act 1998, which gives force to the European Convention on Human Rights and (amongst other things) places an obligation on public authorities to protect people's Article 2 right to life and Article 3 right to be free from torture or degrading treatment

5.2 LAWFUL SHARING

“Information sharing at MARAC is strictly limited to the aims of the meeting and attendees should sign a declaration to that effect at the start of each conference. Information gained at the meeting cannot be used for any other purpose without reference to the person or agency that originally supplied it” (MARAC Manual Chapter 5)⁴

The following legislation gives protection to the rights of confidentiality when using personal information relating to living individuals, including obtaining, holding, use, disclosure and disposal (processing) of such information.

The Data Protection Act 1998 (DPA)

Personal data

The DPA protects the use of personal information⁵ held as manual or computerised records. The 8 DPA principles must be followed when processing personal data. In particular, the first principle requires personal data to be processed in accordance with other relevant laws, which, in addition to compliance with the DPA, includes the European Convention of Human Rights (as incorporated into the Human Rights Act 1998) and the common law duty of confidence.

⁴ CAADA http://www.caada.org.uk/library_resources.html#4

⁵ Personal data is information that relates to a living individual who can be identified (a) from that data or (b) from those data and other information which is in the possession of, or likely to come into the possession of the data controller (holder of the data). It includes an expression of opinion and any indication of the intention of any person in respect of the individual. Data Protection Act 1998 S 1(1)

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The first principle

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless:

(a) At least one of the conditions in Schedule 2 is met, and in the case of sensitive personal data⁶, at least one of the conditions in Schedule 3 is also met.

A Schedule 2 and a Schedule 3 condition will be met if the data subject has given their consent to the disclosure of their data (see Appendix A for further information with regard to the Act).

Notification

The expectation is that all agencies are registered with the Information Commissioner in accordance with the Act

Data Protection Act 1998 Part IV Section 29

Section 29 provides an exemption from certain sections of the fair processing conditions within the Act where sharing personal information is necessary for crime and taxation purposes, including the *prevention or detection of crime* and the *apprehension or prosecution of offenders*.

One of each of the conditions of Schedules 2 and 3 of the DPA still has to be met. For S29 to apply, there must be a substantial risk that harm would be caused to an individual(s) if information were not disclosed, or informing the data subject would be likely to prejudice the prevention or detection of a serious crime. See Appendix A

The Human Rights Act 1998 (HRA)

Article 8 of the European Convention on Human Rights (incorporated into the HRA1998) gives the right to respect for individuals' private and family life, home and correspondence.

This Article 8 right reflects the rights of the individual under the Data Protection Act and the common law duty of confidentiality. Any action by a public body that interferes with this right, e.g. by disclosing confidential information without a person's consent, must be justifiable, done only in support of a legitimate aim and be necessary in a democratic society (public interest). It must also be proportionate to the need (no more than needs to be known to fit the purpose).

Common Law

⁶ Sensitive personal data is personal data, which consists of information about the racial or ethnic origin of the data subject, political opinions, religious or other beliefs, membership of a Trade Union, physical or mental health or condition, sexual life, the commission of any offence and the associated proceedings. Data Protection Act 1998 S 1(2)

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Under common law, information provided in the expectation of confidence for one purpose should not be used or disclosed for another purpose without the knowledge and consent of the individual who provided that information. Exceptions apply where there is a legal duty to disclose information without consent, e.g. a court order, or where disclosure is held to be in the public interest.

Conclusion

In broad terms, when an agency is asked to share personal information about one of their clients, they must first establish the legal basis for sharing information described in the previous section. They must ensure that disclosure is compliant with the Human Rights Act, common law obligations and the DPA.

The key points are:

- a) The Common law, DPA and HRA will always be satisfied when information is shared with the informed consent of the individual(s) who is the subject of that data.
- b) Information must be shared where there is a legal obligation to do so i.e. a court order requiring disclosure
- c) Information should always be shared with appropriate agencies to protect children from risk of harm
- d) There must be a substantial public interest justification to consider overriding a person's rights of confidentiality and privacy (this is to be decided by the individual/organisation who will disclose the information),
- e) Decisions should be made on a case-by-case basis in consultation with others and with legal advice where appropriate,
- f) Decisions about sharing information must be recorded – a decision to share or a decision not to share and the reasons why.

The MARAC Manual – Implementation Guide, provides guidance on Information sharing (The Legal Grounds for Sharing Information – Appendix 1)

There are some statutory bars on disclosure of certain sensitive information. See Appendix B

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There are no restrictions on sharing anonymous information for monitoring and evaluation purposes.

6. CONSENT TO SHARE INFORMATION

6.1 Sharing Information with Consent

As a first requirement, the individual at risk should, at all times, be fully informed about the intention to share their personal information with others and their consent to disclosure to enable the MARAC to proceed should be obtained.

In addition to providing the lawful basis for sharing information, the benefits of keeping the victim informed and obtaining consent include:

- Allowing the victim a degree of control over decisions, the process and timing in what is often a very dangerous situation
- Increasing the chances of the victim engaging with the services and maintaining contact

- Increasing the likelihood of them accepting offers of advice, support and protection
- Giving the professionals and their organisations a strong form of protection against future legal challenges⁷

An adult over the age of 18 must always be considered to have the capacity to make their own decision to consent to disclosure unless it is demonstrated otherwise (Mental Capacity Act 2005).

Consent must be informed and freely given. The individual must fully understand the intention and purpose for sharing their information, the choices available to them, including their right to refuse and the consequences of their decision.

The agency referring the case to MARAC is responsible for obtaining consent where it is required,

Explicit consent should be obtained in writing when sharing sensitive personal data. If verbal consent is given, it should be documented.

There must be exceptional circumstances to set-aside the requirement for consent such as....

- Impede Investigation;
- Safety of person whose information is being disclosed; (or others)(see 6.4)

⁷ Safety and Justice: Sharing personal information in the context of domestic violence – Home Office **Information Sharing Agreement – NOTTINGHAMSHIRE MARACS**
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6.2 Sharing Information Without Consent

The referring agency is responsible for informing the other agencies when consent has not been obtained. They must provide a reason why it has not been obtained, or why it has been refused and must justify their decision if they wish to proceed without it and complete consent to share information without consent form for the MARAC.

Each agency must decide whether or not they can or should share information with other members at MARAC without consent. Decisions should be made on a case-by-case basis using professional judgement. Managerial or legal advice should be sought where necessary

Some of these consent issues may not be realised until the meeting is underway. If any member is unsure of their legal basis for sharing information at any stage during the conference, they should state their concerns and ask the chairperson to provide guidance (or seek further advice separately).

6.3 The referral process

The risk assessment criteria used to determine which domestic violence incidents are referred to MARAC is set at a threshold high enough to establish a substantial risk of further harm being caused to a victim or their children and that urgent action needs to be taken to ensure their safety. The disclosure of information without consent at this first stage, if consent has not previously been obtained, can be justified as follows:

- Lawful power is provided in the Crime and Disorder Act 1998 and in Section 29 DPA (where disclosure is required for the prevention and detection of crime and/or the apprehension or prosecution of offenders).
- If one condition from Schedule 2 and one condition from Schedule 3 of the DPA are satisfied, (i.e. processing of the information is necessary to protect the vital interests of the data subject, for the administration of justice or for the exercise of functions conferred on any person under an enactment).
- If it is considered that it would be in the public interest (in order to protect the victims of domestic violence) to disclose information in order to bring perpetrators to account
- If it is believed that a person's life is at [imminent] risk or that they are being subjected to torture or inhumane and degrading treatment. The interference by a public authority must be proportionate and justifiable in the public interest if the above is to apply.
- Where an interference with a person's private or family life is necessary in the interests of public safety, prevention of crime and disorder, the protection of health and morals or, the protection of the rights and freedoms of others.

Agencies will therefore assume that the legislative requirements for sharing information are met for those individuals listed on the meeting agenda and should

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search their records to identify the information they hold that is relevant to the case in preparation to share it at the meeting.

6.4 Balancing decisions to share information at MARAC without consent

There must be a very good reason for setting aside the requirement for consent. The decision should be made on a case-by-case basis having taken this guidance into consideration and sought advice. A decision to override consent must be justifiable in the terms of the law, it must be capable of standing up to scrutiny, it must be recorded and it must be communicated to other MARAC members.

If consent has been sought and refused by an informed and capable adult, then information should not be shared unless the adult's decision puts a child or another adult at risk of harm (and/or the provisions in section 5.1 above apply). The likely consequence of that decision should be fully explained to the individual concerned, but their decision is final. If it is likely that consent will be refused, then another lawful basis to justify sharing information without it should be considered first. It is not appropriate practice to seek consent then dismiss the refusal and seek to justify information sharing on other grounds.

Information can be shared without consent if a child is at risk of harm, although it may be necessary to inform the person with parental responsibility (unless that too would cause harm).

Healthcare staff must be particularly mindful of their ethical obligations and it may be necessary to seek advice on professional conduct as well as legal advice before sharing information without consent.

All agencies should be allowed access to information from the initial risk analysis completed by the referring agency, when additional information is needed to achieve a balanced decision to share information without consent.

Sharing information without consent can be considered if:

- a) The delay in stopping the MARAC process to get consent would put someone at great risk of danger, or
- b) A child is at risk (there may still be a requirement to inform), or
- c) There is a substantial chance that the process would cause harm to any individual (including the individual trying to obtain consent), or
- d) There is a substantial chance that the process would be harmful to the prevention and detection of crime and bringing a perpetrator to justice, and
- e) All other requirements of the law can still be met.

Further guidance is provided in Appendix C

7. KEY PRINCIPLES FOR INFORMATION SHARING

All partner organisations will ensure the safe storage of information by operating appropriate information security and data protection controls to protect personal information.

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Any information, which is shared, must be accurate and up to date.

Information shared will be relevant and no more than is necessary to meet the needs for disclosure.

Information should not be kept longer than is necessary for the purpose for which it was acquired.

Information no longer required should be destroyed confidentially and in accordance with organisational retention and disposal guidelines.

All information shared between participating agencies will be considered confidential and:

- Only used for fair and lawful purposes in accordance with the actions agreed at MARAC
- Be processed in accordance with the rights of the individual data subject
- Kept secure and protected from unauthorised access or accidental disclosure at all times by organisational policy and technical measures
- Be relevant and proportional (not excessive) to the purpose it is being shared for
- Not kept by agencies unnecessarily i.e. who have no part in the outcome of the MARAC risk assessment and action plan
- Not kept for longer than is necessary
- Not further used or disclosed for any purpose that has not been agreed by MARAC
- Disposed of securely and confidentially when no longer required

All partner agencies will ensure that their representative members understand their responsibilities when sharing information at MARAC.

All attendees at MARAC will sign a declaration of confidentiality (Appendix D)

Decisions not to share information, or to share information without consent must be always be justifiable and documented.

8. MANAGEMENT OF THE AGREEMENT

Approval

Approval of this agreement will be sought from the respective Chief Executive, Director or most senior manager of each agency. Approval will also be sought from the organisations Caldicott Guardian where they are in post.

Dissemination and training

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Arrangements will be made by each representative agency to disseminate this agreement to their respective staff and to ensure they understand and abide by its terms. Where necessary appropriate training should be arranged.

Advice and Guidance

Each agency should ensure that their representatives attending the MARAC meetings have access to advice and guidance they may need to support their information sharing decisions.

Monitoring and reviewing the agreement

This agreement will be reviewed every two years in March / April

Complaints about the operation of the agreement or any breach should be referred to the senior person signing the agreement or their nominated representative.

Breaches of the agreement

Each agency is responsible for ensuring they have adequate disciplinary and grievance procedures in place to ensure any allegation of a breach of this agreement is investigated and appropriately managed. The Chairperson of MARAC must be informed.

9. FURTHER GUIDANCE

Confidentiality: NHS Code of Practice

<http://www.connectingforhealth.nhs.uk/systemsandservices/infogov/codes>

General Medical Council

http://www.gmc-uk.org/guidance/current/library/confidentiality_faq.asp#q18

Information Commissioner

<http://www.ico.gov.uk/>

Ministry of Justice (formerly Department of Constitutional Affairs) Human Rights

<http://www.justice.gov.uk/guidance.htm>

Co-ordinated Action Against Domestic Abuse (CAADA)

<http://www.caada.org.uk/>

Working Together to Safeguard Children – Every Child Matters

<http://www.everychildmatters.gov.uk/workingtogether/>

The Human Rights Act 1998

http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_1

Data Protection Act 1998

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http://www.opsi.gov.uk/acts/acts1998/ukpga_19980029_en_1

Children Act 1989

http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_1

Children Act 2004

http://www.opsi.gov.uk/acts/acts2004/ukpga_20040031_en_1

Adoption & Children Act 2002

http://www.opsi.gov.uk/acts/acts2002/ukpga_20020038_en_1

Crime & Disorder Act 1998

http://www.opsi.gov.uk/acts/acts1998/ukpga_19980037_en_1

Home Office – Safety and Justice Sharing Personal Information in the context of domestic violence

<http://www.homeoffice.gov.uk/rds/pdfs04/dpr30.pdf>

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10. FORMAL APPROVAL OF THE AGREEMENT

As representatives **of the signatory organisations**, we undertake to:

- Facilitate the sharing of information in accordance with this Agreement
- Ensure that staff are fully aware of the process for information sharing and will comply with all legal requirements
- Ensure information held by the agency is kept secure at all times

Any partner may withdraw from this agreement upon giving written notice to the other signatories. Any information obtained whilst a partner shall be subject to the terms of this agreement.

This document is endorsed by the members of the Nottinghamshire Caldicott Guardian Forum and is based on their opinion of how the ethical and legal requirements of information sharing should be applied.

The specific purpose of this agreement is to clarify that understanding and to provide guidance.

This is not a legally binding document and the content should not be used as legal advice.

Where necessary, further advice on information sharing issues should be sought from the relevant organisation's Caldicott Guardian or other nominated person and professional legal advice must be sought where appropriate.

On behalf of:	Name	Signature	Date
Nottinghamshire Caldicott Guardian Forum	Rory King – Chairman		

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Organisation	Name & Position	Contact	Signature	Date
APAS – Alcohol Problem Advisory Service	Nick Tegerdine	nick@apas.org.uk		
Children and Family Court Advisory Support Service (CAFCASS)	Neville Hall	Neville.Hall@CAFCASS.GOV.UK		
Nottingham Crime and Drugs Partnership	Peter Moyes Director	peter.moyes@nottinghamcity.gov.uk		
Nottingham Citycare Partnership	Lynn Bacon Chief Executive	Lynn.bacon@nottinghamcitycare.nhs.uk		
Nottingham City Council	Jane Todd Chief Executive	Jane.todd@nottinghamcity.gov.uk		
Nottingham City Homes	Chris Langstaff Chief Executive	Chris.langstaff@nottinghamcityhomes.org.uk		
NHS Nottingham City	Andrew Kenworthy Chief Executive	Andrew.kenworthy@nottinghamcity.nhs.uk		
Nottingham University Hospitals NHS Trust	Dr Peter Homa Chief Executive	peter.homa@nuh.nhs.uk		
Nottinghamshire Fire and Rescue Service	Vic Mcmillen Divisional Commander Nottingham City	vic.mcmillen@notts-fire.gov.uk		
Nottinghamshire Healthcare NHS Trust	Peter Miller	peter.miller@nottshc.nhs.uk		
Nottinghamshire Police	Julia Hodson Chief Constable	Julia.hodson@nottinghamshire.pnn.police.uk		
National Probation Trust Nottinghamshire	Jane Geraghty Chief Officer	jane.geraghty@nottinghamshire.probaton.gsi.gov.uk		
Spirita Housing	Director of Housing Services	Steve.richards@spirita.org.uk		

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Victim Support	Olwen Edwards Director	Olwen.Edwards@victimsupport.org.uk		
Women's Aid Integrated Services	Chris Cutland Executive Director	chris@wais.org.uk		

A1 Housing Bassetlaw	Bernard Coleman		
Ashfield District Council	Philip Marshall		
Ashfield Homes			
Bassetlaw District Council	David Hunter		
Broxtowe Borough Council	Ruth Hyde		
Gedling Borough Council	John Robinson		
Gedling Homes			
Mansfield District Council	Ruth Marlowe		
Newark and Sherwood District Council	Andrew Muter		
Newark and Sherwood Homes	R Rance		
NHS Bassetlaw	Louise Newcombe		
Nottinghamshire Independent Domestic Abuse Services	Karen Walker		
NHS Nottinghamshire County Health Partnerships	Lisa Green		
Nottinghamshire County Council	Mick Burrows		

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Nottinghamshire Womens Aid	Mandy Green		
Rushcliffe Borough Council	Allen Graham		
Sherwood Forest Hospitals Trusts	Sue Bowler		

THE DATA PROTECTION ACT 1998	
The Data Protection Act 1998 – Eight Principles	
1 st Principle	Personal data shall be processed fairly and lawfully and shall not be processed unless at least one of the conditions in Schedule 2 is met and for “sensitive personal data” at least one of the conditions in Schedule 3 is also met
2 nd Principle	Personal data shall be obtained for specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose/purposes
3 rd Principle	Personal data shall be adequate, relevant and not excessive in relation to the purpose/purposes for which they are processed
4 th Principle	Personal data must be accurate and kept up to date. Data must be checked for accuracy and be corrected, archived or erased as necessary
5 th Principle	Personal data shall not be kept for longer than is necessary for that purpose/purposes
6 th Principle	Personal data shall be processed in accordance with the rights of the data subject under this act
7 th Principle	Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss, destruction or damage to personal data
8 th Principle	Personal data shall not be transferred to a country or territory outside the EEA without an adequate level of protection for the rights and freedoms of the data subject in relation to the processing of personal data

Definitions

“Personal data” means any information relating to a living individual who can be personally identified or potentially identified from that information.

“Processing,” means any use of personal information from obtaining it, using, holding, disclosing and its eventual disposal.

“Sensitive personal data” is personal information relating to the racial or ethnic origin of the individual, their political opinion, religious beliefs or beliefs of a similar nature, membership of a trade union, physical or mental condition, their sexual life, alleged or actual criminal offences and proceedings.

“Data subject” is the individual who is the subject to the information

The rights of the data subject include rights of access to information about them and in certain circumstances a right to have that information blocked, erased or destroyed and to compensation arising from any damage or distress caused by a violation of the Act.

A copy of the Act is available on the [Information Commissioner’s](#) website.

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Schedule 2 and Schedule 3 conditions

One condition in Schedule 2 should be met to process personal data.

One condition in Schedule 2 and one condition in Schedule 3 should be met when processing sensitive personal data.

Schedule 2: Personal Data	Schedule 3: Sensitive Personal Data
The data subject has given consent, or	(1) The data subject has given their “ <i>explicit</i> ” ⁸ consent, or
<p>The processing is necessary for:</p> <ul style="list-style-type: none"> • A contract • Compliance with a legal obligation which the data controller is subject to • In order to protect the vital interests of the data subject • The processing is necessary for <ul style="list-style-type: none"> (a) the administration of justice (b) for the exercise of a function conferred on a person by or under any enactment (c) exercise of any functions of the Crown, Minister of the Crown or government department, or (d) interest for the exercise of any other functions of a public nature exercised in the public interest • Purposes of legitimate interests pursued by the data controller, except where the processing prejudices the rights and freedoms of the data subject • Other circumstances specified by the Secretary of State 	<p>The processing is necessary for:</p> <ul style="list-style-type: none"> • A data controller to exercise a legal duty for employment related purposes • In connection with legal proceedings • Protection of vital interests (where consent cannot be obtained) • Legitimate interests by any not for profit organisation • The information has been made public by the data subject • In connection with legal advice and/or proceedings • The processing is necessary for <ul style="list-style-type: none"> (a) the administration of justice (b) exercise of a function conferred on any person or under any enactment (c) in order to exercise of any functions of the Crown, Minister of the Crown or government department • Medical purposes carried out by a health professional⁹ • Equal opportunity monitoring purposes • Circumstances specified in an order made by the Secretary of State. (See SI 2000 No 417 below)

⁸ “Explicit” consent as per Schedule 3 is not defined in the Act but is generally considered to require evidence that consent has been provided e.g. a persons signature or a record of the agreement

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Schedule 3 (1) Circumstances specified by an order made by the Secretary of State - The Data Protection Processing of Personal Data Order 2000 (SI 2000 No 417)

In this order the Secretary of State has specified certain circumstances in which sensitive personal data may be processed. These include crime prevention, policing and regulatory functions (subject to a public interest test), counselling (subject to a public interest test) and others.

Sensitive personal data means personal information consisting of information as to:

- The racial and ethnic origin of the data subject
- Their political opinions
- Religious beliefs
- Membership of a Trade Union
- Physical or mental health or condition
- Sexual life
- Commission, or alleged commission of an offence
- Any proceedings for any offence committed or alleged to have been committed, the disposal of such proceedings including the sentence of a court in such proceedings.

Section 1 of the order permits processing of sensitive personal data in circumstances specified above if it is:

- (a) In the public interest
- (b) Necessary for the purposes of the prevention and detection of any unlawful act (or failure to act)
- (c) Necessary to be carried out without the explicit consent of the data subject being sought so as not to prejudice those crime prevention and detection purposes

⁹ Medical purposes include the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services'

Legal restrictions on disclosure

Legal restrictions prevent the disclosure of information concerning HIV and AIDS, Sexually Transmitted Diseases and Human Fertilisation and Embryology for any purpose not in connection with the provision of treatment.

- AIDS (Control) Act 1987
- NHS (Venereal Diseases) Regulations 1974
- NHS Trusts and Primary Care Trusts (Sexually Transmitted Diseases) Directions 2000
- The Human Fertilisation and Embryology Act 1990, as amended by the Human Fertilisation and Embryology (Disclosure of Information) Act 1992

The only circumstances under which this type of information can be shared for the purposes specified in this agreement are

- (a) if it is justifiably essential to the case
- (b) only provided to those who clearly need to know in order to perform their (healthcare) duties
- (c) proportionate, and
- (d) With the explicit consent of the individual concerned.

CONSENT GUIDANCE, INCLUDING ADVICE PROVIDED BY PROFESSIONAL BODIES

Sharing information about children without consent

If a child is at risk of harm, the public interest lies in safeguarding the child and overrides the need to obtain consent to share information from the parent/carer where consent cannot reasonably be obtained e.g. disproportionate in time and effort to obtain it, delaying action would cause further risk to the child, attempts to obtain consent would cause harm to the child or to another person or allow a perpetrator to avoid detection or apprehension.

However, good practice dictates that decisions to share information should be made on a case-by-case basis and,

- a) Consent should be obtained (if there is no good reason why it should not be)
- b) Even if consent is not a requirement, then the parent/carer should still be informed of the intention to share information unless that also would be harmful to do so.

Sharing information without consent

The public interest lies in public safety, the prevention of disorder or crime, the protection of health or morals or for the protection of the rights and freedoms of others. The public interest also lies in the provision of confidential services and upholding an individual's right to privacy. The public interest in public safety etc. would have to be very significant and high enough to outweigh an individual's Article 8 right of privacy to justify overriding it and sharing confidential and personal information without consent. The type of circumstances where this could be considered would be:

- The delay in stopping the MARAC process to get consent would put someone at further risk of danger, or
- A child is at risk (NB there may still be a requirement to inform), or
- There is a substantial chance that harm would be caused to any individual through the actions of informing, or
- There is a substantial chance that informing would be harmful to the prevention and detection of crime and bringing the perpetrator to justice (tipping someone off would allow them to avoid detection etc.), and
- All other requirements of the law can still be met, namely
 - Do you have the legal power to share?
 - Can you justify the decision under Article 8 HRA?
 - Can you still comply with DPA and meet a Schedule 2 condition for personal data and a Schedule 3 condition for sensitive personal data?
 - Can you justify a common law exemption from consent under the public interest test?

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In cases where information is disclosed without consent, there is still a requirement to inform the individual concerned, unless

- b) It is not safe to do so because it would put someone at risk of serious harm, or
- c) It would adversely affect the purpose for sharing information in the first place e.g. a “tip-off” would allow a perpetrator to avoid detection or apprehension or cause a public safety concern.

Sharing information where consent has been or is likely to be refused

Adults must always be assumed to be competent unless demonstrated otherwise.¹⁰ They are free to make their own choices and their decisions should be respected, even if they are deemed to be the wrong ones. If a competent adult refuses consent to allow their information to be shared, a professional cannot dismiss that decision and proceed to share information without further consideration of the lawful basis for doing so. This applies even if it is clearly the better decision and in their better interests.

The above situation is a difficult one. The professional is personally compromised, risking either:

- A complaint or disciplinary sanction for breaching confidentiality if they do disclose, or
- Civil or criminal action for not taking adequate protection steps by not disclosing, where someone is harmed as a result.

Their professional relationship with their client may also be irrevocably damaged through a breach of trust.

The decision can justifiably be overruled if an individual's dissent would put another person or child in danger.

If it is obviously essential that information will have to be shared regardless of an individual's decision and it is possible that if asked, they would refuse, then the better option would be to set aside the need for consent and consider another lawful justification for sharing information without consent. There are adequate provisions for sharing information without consent under public interest tests when someone is in danger. However, clinical professional conduct and ethical obligations of confidentiality under common law are not so clear and the responsibility for making the decision rests with the health professional themselves. Also, the reliance on these public interest justifications in light of the new Mental Capacity Act 2005 is an area of law that has not been tested through the courts therefore there is a risk of making “best interest” decisions in the absence of legal precedent.

Advice must always be sought. It may be justifiable to share information if a person is at such a high risk of harm that inaction would contravene a public authority's

¹⁰ Mental Capacity Act 2005

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obligation to protect other Human Rights i.e. right to life and free from torture or inhumane or degrading treatment.

Also, public expectation would be that in the event of a tragedy, if somebody in authority had known about the risk and they could have taken steps to prevent it from happening, then they should have taken that action [?]

Each decision must be made on a case-by-case basis. The final decision, including the rationale to support it must be recorded.

Sharing information about adults who lack capacity

The provisions of the Mental Capacity Act 2005 must be followed.

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Digital Information Policy
Digital & Health Information Policy Directorate
NHS Connecting for Health
Tel: 0113 3974498

Public Interest Disclosures - A 10 Step Methodology

1. What are the relevant facts?

- What information is requested/required?
- What are the purposes that the disclosure will support?
- Who is the disclosure to?
- Will there be further disclosures of the information?
- Is there a statutory basis for disclosure?
- Are there any statutory barriers to disclosure?

2. What are the relevant arguments?

- Why is the consent of data subjects not being sought?
- If identifiable data is requested, why won't anonymised data suffice?

3. How robust are the arguments?

- Are the arguments valid?
- Do the arguments hold for all the information and all the data subjects?
- Are there any key terms the meaning of which needs to be agreed e.g. 'best interest'?

4. What would constitute an appropriate decision-making process?

- Who is to be accountable?
- When does the decision have to be made?
- Who should be involved?

5. What are the options? e.g.

- Not to disclose any information
- To disclose some information, but not all that requested/required
- To only disclose anonymised/pseudonymised information
- To disclose the information requested/required in full

6. What are the morally significant features of each option e.g.

- What is the public good that may result?
- What is the public harm that may be prevented?
- Is there risk of detriment to data subjects?
- Is there risk of detriment to any other individual or organisation?

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- Have all necessary ethics approvals been given?
- Is it likely that some/all data subjects would object to the disclosure?
- Are all of the data subjects competent?
- If data subjects are not competent, what is in their 'best interests'?

7. What guidance/advice is available?

- What do the professional bodies say?
- How does this case compare with other cases?
- Are there colleagues with relevant experience who can be consulted?
- Is legal advice available/appropriate?

8. Which option performs most strongly against the following criteria?

- Is the option in accordance with the law?
- Is the option in accordance with guidance and 'case law'?
- If the option involves disclosure, is it proportionate?
- The 'Public Good' – what are the benefits to society?
- Is the risk of detriment to any individual or body acceptable in the context of the 'public good' that will result?

9. Make a decision and document both the decision and the reasoning.

10. Review this decision in the light of what actually happens, and learn from it.

GMC Confidentiality: Protecting and Providing Information (2004)

Disclosures to protect the patient or others

27. Disclosure of personal information without consent may be justified in the public interest where failure to do so may expose the patient or others to risk of death or serious harm. Where the patient or others are exposed to a risk so serious that it outweighs the patient's privacy interest, you should seek consent to disclosure where practicable. If it is not practicable to seek consent, you should disclose information promptly to an appropriate person or authority. You should generally inform the patient before disclosing the information. If you seek consent and the patient withholds it you should consider the reasons for this, if any are provided by the patient. If you remain of the view that disclosure is necessary to protect a third party from death or serious harm, you should disclose information promptly to an appropriate person or authority. Such situations arise, for example, where a disclosure may assist in the prevention, detection or prosecution of a serious crime, especially crimes against the person, such as abuse of children.

10th July 2007

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Information Commissioner

Case Reference Number ENQ0167224

Dear Ms Terry

Thank you for your email enquiry of 20 June 2007 in relation to information sharing matters for the Multi-Agency Risk Assessment Conference (MARAC).

I note your comments and the circumstances you describe, and shall attempt to answer your questions in turn.

1) 'Do we require the consent of that person to share information in these circumstances?'

Consent is not necessarily required, as long as another Schedule 2 condition for processing (and a Schedule 3 condition in the case of sensitive personal data) can be satisfied.

2) 'What are our obligations if that competent adult has previously told us not to share the information?'

You may wish to consider whether you can rely on section 29 of the Act, which provides exemptions from disclosure and from providing fair processing information, where sufficient prejudice can be shown.

3) 'Does the situation change between statutory and non-statutory bodies?'

No, the situation does not change between statutory and non-statutory bodies. As data controllers in common, each organisation must ensure that they are complying with the provisions of the Act in terms of processing personal data.

I hope I have addressed the points you have raised and that you find this information useful. Please feel free to contact our Customer Service Team on 01625 545 745 should you require any further advice.

Yours sincerely

Casework & Advice Officer

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Responding to domestic abuse
Department of Health Dec 2005

Section 3.6 Confidentiality and Information Sharing

Confidentiality

Extreme care should be taken to protect the safety of victims of violence and no information should be disclosed which might breach their safety i.e. a third party trying to use the whereabouts of children to trace a mother. This would apply even if the inquirer was a professional, partner, or family member who worked in the system. (How does this sit with necessity to multi agency work/liaise)?

It needs to be made clear that there are limits to the extent of confidentiality and that in cases where children are living in a violent household, information may be passed to other agencies in line with Child Protection Procedures and similarly for adults in line with Vulnerable Adults Guidelines

In the case of serious assault, it would be helpful to have the persons consent to share information with another agency but, as with Child Protection and Vulnerable Adults, the welfare of the victim is paramount. If there was considered to be a serious risk to life or safety, then information needs to be disclosed without consent.

Safe information sharing

- **There will also be occasions when information about a domestic abuse case should be made available** (see *Safety and justice: sharing personal information in the context of domestic violence* www.homeoffice.gov.uk/rds/pdfs04/dpr30.pdf) – either because it is required by law (if records are being used as evidence in a court case, for example) or to help support agencies tailor services to meet a family's needs (for advocacy or carrying out a risk assessment, for example).
- **You will need to make an informed decision** about whether you need to share information in a given situation. It's not always easy to balance confidentiality against the interests of disclosure. Never make a decision on your own.
- **Be particularly wary of situations in which confidentiality could accidentally be broken.** For example, if a child who is staying at a refuge spends time in hospital and the father visits the child, you should take care that records that are on display do not include a contact address or any other information that could help a perpetrator track down people he has previously abused. (A handbook for health professionals 79)
- **In some instances, failure to share information can be as dangerous as breaking confidentiality inappropriately.** In 1999, Mark Goddard was convicted of the murder of his wife, Patricia. In the five months before Patricia's death, her employer and six different agencies (including health, housing and police services) were aware of her problems and abuse. None of the agencies informed anyone else about their concerns. We don't know that information sharing could have saved Patricia's life, but it would have at least enabled a comprehensive risk assessment to be carried out.

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- **Your Trust or Health Authority should have information sharing policies in place** to help inform health professionals in their decisions about sharing information.
- **Only ever consider giving information to reputable agencies** – never to individuals making enquiries about a woman’s circumstances.
- **The only acceptable reason for sharing information is to increase a woman’s safety and that of her children.** Even then, only share information that is relevant.
- **Always follow local multi-agency guidelines** for sharing information about domestic abuse.

Can you share information without permission?

- *Always seek a woman’s permission to share information.*
- *But given current legislation (section 115 of the Crime and Disorder Act 1998) it is permissible to pass information to another agency in situations where:*
 - *the courts request information about a specific case; or*
 - *there is significant risk of harm to the woman, her children, or somebody else if information isn’t passed on.*
- *If you do pass on information without permission, you should be completely sure that your decision doesn’t place somebody at risk of greater violence.*
- *You will need to be able to justify your decision. See guidance in the Home Office’s Safety and justice: sharing personal information in the context of domestic violence, which is available online at*
www.homeoffice.gov.uk/rds/pdfs04/dpr30.pdf

MARAC CONFIDENTIALITY DECLARATION

Multi-Agency Risk Assessment Conference

Date:

THE CHAIR OF THE MEETING REMINDS ALL CONCERNED OF THE PROTOCOLS WITHIN THE AGREED DOMESTIC ABUSE SHARING OF INFORMATION DOCUMENT

INFORMATION DISCUSSED BY THE AGENCY REPRESENTATIVE, WITHIN THE AMBIT OF THIS MEETING IS STRICTLY CONFIDENTIAL AND MUST NOT BE DISCLOSED TO THIRD PARTIES WHO HAVE NOT SIGNED UP TO THE 'DOMESTIC ABUSE INFORMATION SHARING PROTOCOL', WITHOUT THE AGREEMENT OF THE PARTNERS OF THE MEETING. IT SHOULD FOCUS ON DOMESTIC VIOLENCE AND CHILD PROTECTION CONCERNS AND A CLEAR DISTINCTION SHOULD BE MADE BETWEEN FACT AND OPINION.

ALL AGENCIES SHOULD ENSURE THAT THE MINUTES ARE RETAINED IN A CONFIDENTIAL AND APPROPRIATELY RESTRICTED MANNER. THESE MINUTES WILL AIM TO REFLECT THAT ALL INDIVIDUALS WHO ARE DISCUSSED AT THESE MEETINGS SHOULD BE TREATED FAIRLY, WITH RESPECT AND WITHOUT IMPROPER DISCRIMINATION. ALL WORK UNDERTAKEN AT THE MEETINGS WILL BE INFORMED BY A COMMITMENT TO EQUAL OPPORTUNITIES AND EFFECTIVE PRACTICE ISSUES IN RELATION TO RACE, GENDER, SEXUALITY AND DISABILITY.

THE PURPOSE OF THE MEETING IS AS FOLLOWS:

1. To share information to increase the health, safety and well-being of victims – adults and children;
2. To determine whether the perpetrator poses a significant risk to any particular individual or to the general community;
3. To construct jointly and implement a risk management plan that provides professional support to all those at risk, that reduces the risk of harm;
4. To reduce repeat victimisation;
5. To improve agency accountability;
6. Improve support for staff involved in high-risk DV cases.
7. The responsibility to take appropriate action rests with individual agencies; it is not transferred to MARAC. The role of MARAC is to facilitate, monitor and evaluate effective information sharing to enable appropriate actions to be taken to increase public safety.

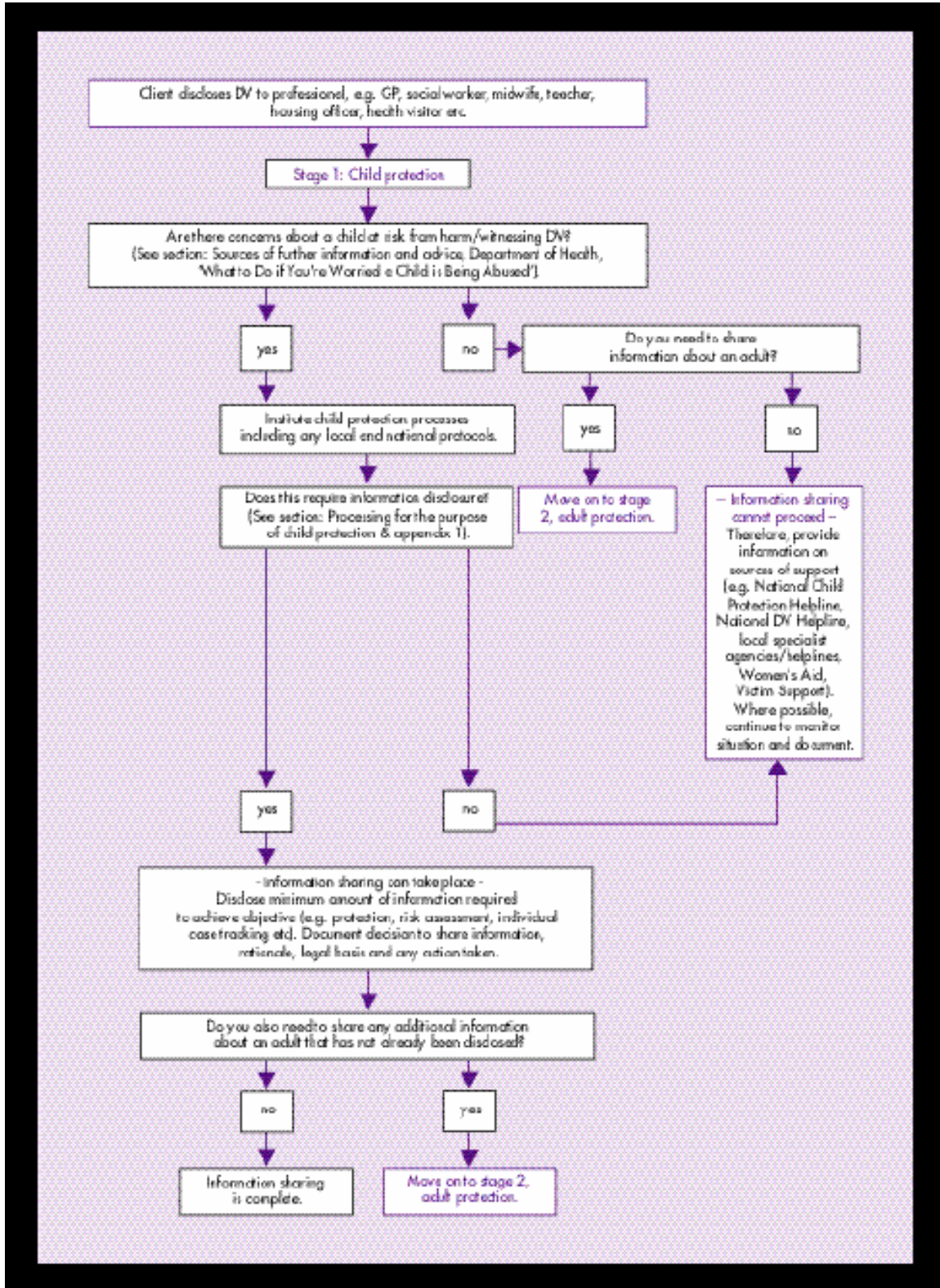
BY SIGNING THIS AGREEMENT, WE AGREE TO ABIDE TO THESE PRINCIPLES.

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**NOTTINGHAMSHIRE MARAC INFORMATION SHARING AGREEMENT
APPENDIX E**

Information Sharing flowcharts (Home Office)

Safety and Justice Sharing Personal Information in the context of domestic violence
<http://www.homeoffice.gov.uk/rds/pdfs04/dpr30.pdf>



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