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1.1 INTRODUCTION

1.1.1 This document sets out Durham Local Safeguarding Children Board (LSCB) procedures for all statutory and voluntary agencies and the public to work together to address issues of child protection within County Durham. This requires close working relationships, with child protection being a shared responsibility for all. The procedures should be read in conjunction with individual agency procedures.

1.1.2 These procedures aim to:

- ensure a rigorous co-ordinated response to all children where there are concerns and to ensure an appropriate investigation.
- endeavour that the response prevents further abuse.
- provide a common framework for all professionals ensuring clarity of understanding of roles and responsibilities within all agencies.
- ensure that services are provided to meet the needs of children and their carers.
- minimise the impact of investigations upon families and prevent multiple interviews/examinations.
- ensure that all interventions are compatible with legislation, guidance and best practice.

1.1.3 Safeguarding and promoting the welfare of children is defined for the purposes of this guidance as:

- protecting children from maltreatment.
- preventing impairment of children's health or development.
- ensuring that children are growing up in circumstances consistent with the provision of safe and effective care.
- undertaking that role so as to enable children to have optimum life chances and to enter adulthood successfully.

1.1.4 Everybody who works or has contact with children, parents, and other adults in contact with children should be able to recognise, and know how to act upon, evidence that a child's health or development is or may be being impaired and especially when they are suffering, or at risk of suffering, significant harm. Practitioners, foster carers, and managers should be mindful always of the welfare and safety of children - including unborn children, older children and children living away from home or looked after by the Local Authority - in their work.

- 1.1.5 It is also important to recognise the essential part that members of the public play in helping to protect children from abuse or neglect. Members of the public must also take responsibility and be alert to situations where children may be at risk of being harmed in any way.
- 1.1.6 Durham Local Safeguarding Children Board (LSCB) is responsible for agreeing the arrangements for professionals from all agencies in the area working with children in accordance with Government guidelines and regulations.
- 1.1.7 These guidelines apply to children and young people up to the age of 18 years including unborn babies. They apply if a child or young person is suffering or likely to suffer significant harm as a result of abuse or neglect. This includes children and young people who:
- are abused and neglected within their families, including those harmed in the context of domestic violence.
 - are abused outside their families by adults known to them.
 - are abused and neglected by professional carers within an institution or anywhere else.
 - are abused by strangers.
 - are abused by other young people.
 - abuse other young people.
 - are involved in prostitution.
 - misuse drugs and alcohol.

1.2 KEY DEFINITIONS & CONCEPTS

1.2.1 **Every Child Matters (2003)**¹ defines 5 key outcomes for children to:

- 1 Stay safe
- 2 Be healthy
- 3 Enjoy and achieve
- 4 Make a positive contribution to their community/society
- 5 Improve economic wellbeing

Children in Need of Protection

1.2.2 Some children are in need because they are suffering or likely to suffer 'significant harm'. Where local authorities believe a child is suffering, or likely to suffer, significant harm, they have a duty to make enquiries to decide whether they should take action to safeguard or promote the welfare of a child.

Children in Need

1.2.3 Children who are defined as being 'in need' under **Section 17**² of the Children Act 1989, are those whose vulnerability is such that they are unlikely to reach or maintain a satisfactory level of health or development, or their health and development will be significantly impaired, without the provision of service(s). A child with a disability is a child in need.

Children with Additional Needs

1.2.4 Children with additional needs are those children at risk of poor outcomes. Children with additional needs who require extra support from Safeguarding & Specialist Services, Health, or other services are those children where it may be of benefit to complete a Common Assessment.

Child Protection

1.2.5 Child Protection is one element of safeguarding and promoting welfare. This refers to the activity which is undertaken to protect specific children who are suffering or are at risk of suffering 'significant harm' from their parents, carers or significant others known to them or have responsibility for their care.

Significant Harm

1.2.6 The concept of significant harm is the threshold that justifies compulsory intervention into family life in the best interests of the child and gives local authorities a duty to make enquires as to whether to take action (**Section 47**³, Children Act 1989) to safeguard or promote the welfare of a child who is suffering, or likely to suffer significant harm. The Act also gives powers to the Police to take emergency action to protect a child from significant harm.

¹ http://www.everychildmatters.gov.uk/_files/EBE7EEAC90382663E0D5BBF24C99A7AC.pdf

² http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_4.htm#mdiv17

³ http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_7

1.2.7 Similarly, significant harm or its likelihood must be established in court before a Care or Supervision Order can be made on a child if it is satisfied that:

- the child is suffering, or likely to suffer significant harm; *and*
- the harm or likelihood of harm is attributable to a lack of adequate parental care or control (**s31⁴**, 1989 Children Act)

Under s31(9) of the Children Act 1989 as amended by the **Adoption and Children Act 2002⁵:**

'Harm' means ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another;

'Development' means physical, intellectual, emotional, social or behavioural development; 'Health' means physical or mental health; *and*

'Ill-treatment' includes sexual abuse and forms of ill-treatment which are not physical.

Under s31 (10) of the Act:

Where the question of whether harm suffered by a child is significant on the child's health and development, his health or development shall be compared with that which could reasonably be expected of a similar child.

1.2.8 There are no absolute criteria on which to rely when judging what constitutes significant harm. To understand and identify significant harm, it is necessary to consider:

- the nature of harm, in terms of maltreatment or failure to provide adequate care.
- the impact on the child's health and development.
- the child's development within the context of his/her family and wider environment.
- any special needs, such as a medical condition, communication impairment or disability that may affect the child's development and care within the family.
- the capacity of parents to adequately meet the child's needs.
- the wider and environmental family context.
- the child's reactions, perceptions, wishes and feelings according to age and understanding (**Section 53⁶**, 2004 Children Act).

⁴ http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_6

⁵ <http://www.opsi.gov.uk/acts/acts2002/20020038.htm>

⁶ <http://www.opsi.gov.uk/acts/acts2004/40031--f.htm#53>

Child Abuse and Neglect

1.2.9 'Child abuse and neglect' is a generic term encompassing all ill-treatment of children including serious physical and sexual assaults as well as cases where the standard of care does not adequately support the child's health or development. Abuse and neglect are forms of maltreatment of a child. Somebody may abuse a child by inflicting harm, or by failing to prevent harm.

1.2.10 *Working Together to Safeguard Children*⁷ (2006) (s1.29-1.33) sets out definitions of the four broad categories of abuse which are used for the purposes of making a child subject of a Child Protection Plan set out below.

(i) Physical Abuse

1.2.11 Physical abuse may involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces illness in a child.

(ii) Emotional Abuse

1.2.12 Emotional abuse is the persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child's emotional development. It may involve conveying to children that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may feature age or developmentally inappropriate expectations being imposed on children. These may include interactions that are beyond the child's developmental capability, as well as overprotection and limitation of exploration and learning, or preventing the child participating in normal social interaction. It may involve seeing or hearing the ill-treatment of another. It may involve serious bullying causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. Some level of emotional abuse is involved in all types of maltreatment of a child, though it may occur alone.

(iii) Sexual Abuse

1.2.13 Sexual abuse involves forcing or enticing a child or young person to take part in sexual activities, including prostitution, whether or not the child is aware of what is happening. The activities may involve physical contact, including penetrative (e.g. rape, buggery or oral sex) or non-penetrative acts. They may include non-contact activities, such as involving children in looking at, or in the production of, pornographic material or watching sexual activities, or encouraging children to behave in sexually inappropriate ways.

⁷ http://www.everychildmatters.gov.uk/_files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf
Durham LSCB Child Protection Procedures
Section 1 - Introduction

(iv) Neglect

1.2.14 Neglect is the persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to provide adequate food and clothing, shelter including exclusion from home or abandonment, failing to protect a child from physical and emotional harm or danger, failure to ensure adequate supervision including the use of inadequate care-takers, or the failure to ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.

Parental Responsibility

1.2.15 A person with Parental Responsibility for a child has rights and obligations for that child. Parental Responsibility is defined as "all the rights, duties, powers, responsibilities and authority, which by law a parent of a child has in relation to the child and his property" (**Section 3(1)**⁸ 1989 Children Act).

1.2.16 Parental Responsibility is acquired by:

- the mother at birth.
- the father if he is married to the mother, at the point of the birth or subsequent marriage.
- the father, if not married, by formal written agreement with the mother or through a court order. A court can grant a father Parental Responsibility despite the mother's objections.
- the father if he was registered as the child's father and if the registration took place after 1 December 2003 (amended by the 2005 Adoption and Children Act).
- adoptive parents at adoption.
- a third party, e.g. grandparents, relatives, foster carers as a result of a Residence Order (prior to the Adoption and Children Act 2005).
- a Local Authority where a Care Order or Interim Care Order is granted by the court.
- family or friend carer with a Special Guardianship Order and Parental Responsibility is shared by carer and parents.

1.2.17 Consideration must be given to the involvement of parents with or without Parental Responsibility. Legal advice should be sought as to the involvement.

1.2.18 Whilst a parent who does not have Parental Responsibility does not have the same rights and responsibilities as a parent with Parental Responsibility, legal advice should be sought from the Local Authority solicitor where clarification is required.

⁸ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_2.htm#mdiv3
Durham LSCB Child Protection Procedures
Section 1 - Introduction

- 1.2.19 When a child is accommodated by the Local Authority under **Section 20⁹** of the 1989 Children Act, the Local Authority holds no Parental Responsibility for that child. Parental Responsibility is retained by the person who held Parental Responsibility prior to the child being accommodated.
- 1.2.20 When a child is ‘in the care’ of the Local Authority by virtue of a Care Order, including an Interim Care Order, then Parental Responsibility is shared between the Local Authority and the person(s) who held Parental Responsibility immediately before the Order was made.
- 1.2.21 Where there is no Parental Responsibility, advice should be sought from the Local Authority solicitor. For out of hours, this can be sought via the Emergency Duty Team.

⁹ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_4.htm#mdiv20
Durham LSCB Child Protection Procedures
Section 1 - Introduction

1.3 VALUES & PRINCIPLES UNDERPINNING WORK TO SAFEGUARD AND PROMOTE THE WELFARE OF CHILDREN

1.3.1 The following principles underpin work with children and their families in safeguarding and promoting the welfare of children (see also [Working Together to Safeguard Children 2006](#)¹⁰ paragraph 2.18 in the Guidance issued under [S11](#)¹¹ of the Children Act 2004). The principles will be relevant to varying degrees to different personnel but have general relevance to all services provided to children.

1.3.2 Work to safeguard and promote the welfare of children are:

- child centred.
- rooted in child development.
- focused on outcomes for children.
- holistic in approach.
- ensuring equality of opportunity.
- involving of children and families.
- building on strengths as well as identifying difficulties.
- multi/inter-agency in approach.
- a continuing process not an event.
- providing and reviewing services.
- informed by evidence.

¹⁰ http://www.everychildmatters.gov.uk/_files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf

¹¹ <http://www.opsi.gov.uk/acts/acts2004/40031--c.htm#11>

1.4 THE LEGISLATIVE FRAMEWORK (SEE APPENDIX 1¹²)

1.4.1 The procedures and guidance are based on [Working Together to Safeguard Children¹³](#) (2006) and this guidance replaces the previous document Working Together to Safeguard Children (1999). The supplementary guidance documents: [Safeguarding Children & Young People from Sexual Exploitation¹⁴](#) (2009) and [Safeguarding Children in whom Illness is Fabricated or Induced¹⁵](#) (2008) remain in force and are supplements to these procedures. Guidance is also given in the document "[What to do if you are worried that a child is being abused?¹⁶](#)"

1.4.2 These procedures have been developed in the context of:

- the [1989 Children Act¹⁷](#), in particular Sections, 37, 47, 47(8), Sch 2 Para 4;
- the Children Act Guidance and Regulations Volume 1 Court Orders;
- [Working Together to Safeguard Children¹⁸](#) (Department of Health 2006);
- [The Framework for Assessment of Children in Need and their Families¹⁹](#) (2000);
- Achieving Best evidence in Criminal Proceedings: Guidance for Vulnerable or Intimidated Witnesses;
- [What to do if you are Worried about a Child²⁰](#);
- [The Data Protection Act 1998²¹](#);
- [The Children \(Care Leavers\) Act 2000²²](#);
- [The Laming Report 2003²³](#);
- [The Children Act 2004²⁴](#);
- [The Education Act 2002²⁵](#);
- [The Homelessness Act 2002²⁶](#).

1.4.3 and reflect the values and principles that underpin these:

1.4.4 [The 1989 United Nations Convention on the Rights of the Child](#) - in particular Article 19 which states that all children have the right to be protected from abuse and neglect is reflected in the procedures.

1.4.5 [The Human Rights Act 2000²⁷](#) - which incorporates the European Convention on Human Rights. This requires professionals involved to have clarity about why there is an intervention into a child's life and the planning and implementing of that action.

1.4.6 Safeguarding & Specialist Services will carry out any necessary work with the least level of intervention.

¹² Hyperlink to Appendix 1 of the LSCB Child Protection Procedures

¹³ http://www.everychildmatters.gov.uk/_files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf

¹⁴ <http://www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/safeguardingchildren/safeguarding/>

¹⁵ <http://www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/safeguardingchildren/safeguarding/>

¹⁶ <http://www.dcsf.gov.uk/everychildmatters/resources-and-practice/IG00182/>

¹⁷ http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm

¹⁸ http://www.everychildmatters.gov.uk/_files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf

¹⁹ http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4003256

²⁰ <http://www.everychildmatters.gov.uk/resources-and-practice/IG00182/>

²¹ <http://www.opsi.gov.uk/ACTS/acts1998/19980029.htm>

²² <http://www.opsi.gov.uk/acts/acts2000/20000035.htm>

²³ <http://www.victoria-climbe-inquiry.org.uk/finreport/finreport.htm>

²⁴ <http://www.opsi.gov.uk/acts/acts2004/20040031.htm>

²⁵ <http://www.opsi.gov.uk/ACTS/acts2002/20020032.htm>

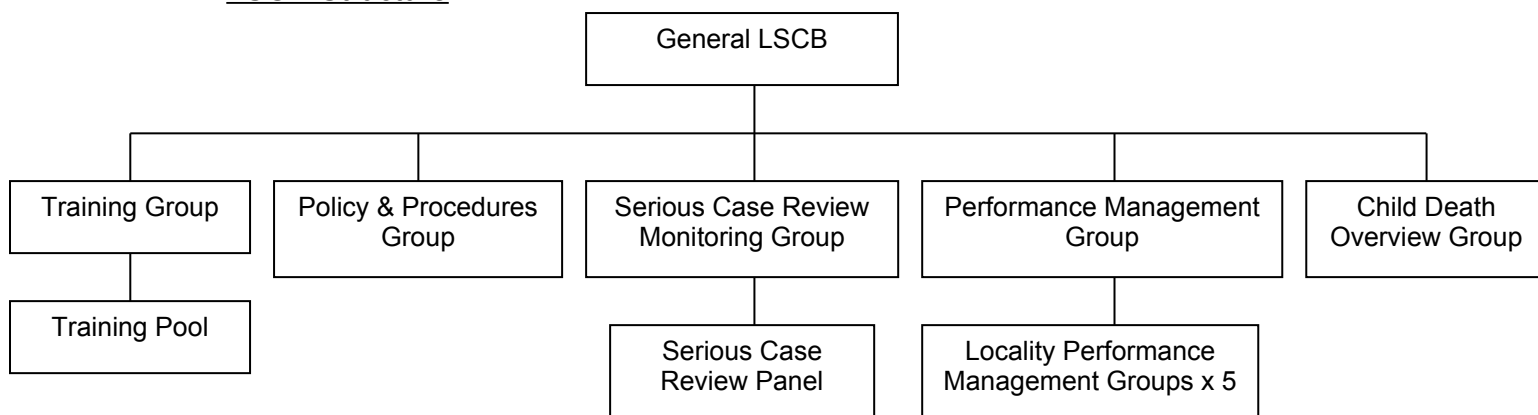
²⁶ <http://www.opsi.gov.uk/acts/acts2002/20020007.htm>

²⁷ <http://www.opsi.gov.uk/si/si2000/20001851.htm>

1.5 DURHAM LOCAL SAFEGUARDING CHILDREN BOARD (LSCB)

1.5.1 The detailed functions of the LSCB are outlined in **Working Together to Safeguard Children** (2006) Chapter 3.

LSCB Structure



Agencies represented on the LSCB

Durham County Council²⁸

- Safeguarding & Specialist Services
- Children & Young People's Service – Access & Inclusion
- Co Durham Youth Offending Service
- **Connexions²⁹**
- Adult & Community Services

Health

- North East Strategic Health Authority
- **County Durham Primary Care Trust³⁰**
- **County Durham & Darlington NHS Foundation Trust³¹**
- **Tees, Esk & Wear Valley NHS Foundation Trust³²**
- **Co Durham Drug & Alcohol Action Team³³**

Durham Constabulary³⁴

Prison Service

Hassockfield Secure Training Centre³⁵

National Probation Service - Co Durham³⁶

²⁸ <http://www.durham.gov.uk/Pages/default.aspx>

²⁹ <http://www.connexions-durham.org/>

³⁰ <http://www.countydurham.nhs.uk/>

³¹ <http://www.cddft.nhs.uk/>

³² <http://www.tewv.nhs.uk/>

³³ <http://www.codurhamdat.org.uk/>

³⁴ <http://www.durham.police.uk/>

³⁵ <http://www.serco.com/markets/homeaffairs/offendermanagement/juvenilecustody/hassockfield/index.asp>

³⁶ <http://www.durhamprobation.org.uk/>

CAFCASS³⁷

Durham Diocese³⁸

Voluntary Sector Academy

NSPCC³⁹

- 1.5.2 Legal advice to the LSCB is provided by Durham County Council Corporate & Legal Services.
- 1.5.3 Durham Local Safeguarding Children Board (LSCB) is the key statutory mechanism for agreeing how the relevant agencies in County Durham will co-operate to safeguard and promote the welfare of children in Durham and for ensuring the effectiveness of what they do. Durham LSCB ensures that the duty to safeguard and promote the welfare of children is carried out in such a way as to improve the outcomes for children.
- 1.5.4 Whilst the work of the LSCB contributes to the wider goals of improving the wellbeing of children, it has a particular focus on the 'staying safe' outcome.
- 1.5.5 The LSCB is not accountable for the operational work of individual agencies. Each Board partner retains their own existing lines of accountability for safeguarding and promoting the welfare of children by their services. The LSCB does not have the power to direct other agencies.

Durham LSCB Mission Statement

- To safeguard and promote the welfare of children
- To promote public confidence in the work that we do
- To understand the nature of abuse
- To foster strategies that reduces the incidence of abuse.

Core Objectives

- 1.5.6 Durham LSCB has a responsibility for co-ordinating and ensuring the effectiveness of what their member agencies do individually and together. They contribute to delivery and commissioning through the **Children and Young People's Plan**⁴⁰ and their objectives are:
- to co-ordinate what is done by each person or body represented on the Board for the purpose of safeguarding and promoting the welfare of children.
 - to ensure the effectiveness of what is done by such person or body for that purpose.

³⁷ <http://www.cafcass.gov.uk/>

³⁸ <http://www.durham.anglican.org/>

³⁹ <http://www.durham.anglican.org/>

⁴⁰ http://www.opsi.gov.uk/si/si2007/uksi_20070057_en_1

LSCB Role

1.5.7 Durham LSCB focus on safeguarding and promoting the welfare of children in three broad areas of activity:

- 1 Identification and prevention of maltreatment or impairment of health or development.
- 2 Pro-active work to target particular vulnerable children.
- 3 Responsive work to protect children who are suffering, or at risk of suffering significant harm.

LSCB Functions

- Policies and Procedures
- Communicating and Raising Awareness
- Monitoring and Evaluation
- Planning and Commissioning
- Function relating to Child Deaths
- Serious Case Reviews

LSCB Governance and Operational Arrangements

1.5.8 Governance and operational arrangements are detailed in the Durham LSCB publications, “*Memorandum of Understanding*”⁴¹ and “*Governance Arrangements*”⁴².

Role of Individual Members

1.5.9 The individual members of Durham LSCB have a duty as members to contribute to the effective work of the LSCB and in recommending or deciding on the necessary steps to continually improve safeguarding services for children and young people in Durham. To be effective this needs to take precedence, if necessary, over their role as representative of their agency.

LSCB Officers

- Business Manager
- Quality & Performance Manager
- Training Co-ordinator
- Development Worker
- Admin Co-ordinator
- Administrator

Participation of Children & Young People

1.5.10 Durham LSCB is committed to seeking the views of children and their families in order to develop and continually improve the services to safeguard and promote the welfare. Our commitment is evidenced by our consultation and evaluation arrangements.

⁴¹ <http://www.durham-lscb.gov.uk/documents/Procedures-referrals/Memorandum%20of%20Understanding.pdf>

⁴² <http://www.durham-lscb.gov.uk/documents/Procedures-referrals/Governance%20Arrangements.pdf>

Financing & Staffing

1.5.11 LSCB partner agencies contribute to the LSCB providing sufficient resources to carry out its functions and work effectively. The details of contributions and financial arrangements can be found in the LSCB Annual Report and Action Plan.

Performance Management

1.5.12 The LSCB's monitoring and evaluation function:

- Promote high standards of safeguarding work.
- Foster a culture of continuous improvement.
- Identify and act on weaknesses in services.

1.5.13 There will be instances where a local agency is not performing effectively in safeguarding and promoting the welfare of children and the LSCB is not convinced that any planned action to improve performance will be adequate. Where this occurs, the Chair of the LSCB or designated person, will explain these concerns to the individual agency in order that they can take action, e.g.:

- The most senior individuals in the agency;
- The relevant inspectorate and, if necessary, to the relevant Government department;

1.5.14 Ofsted monitor and evaluate the effectiveness of the LSCB itself.

1.6 INFORMATION SHARING, CONFIDENTIALITY AND CONSENT

1.6.1 Refer to the Information Sharing Arrangement for **County Durham Children's Trust (Information Sharing & Assessment of Children and Young People)**⁴³ (2009) and "HM Government information sharing guidance"⁴⁴ DCSF, 2008.

Justification for Sharing

1.6.2 Research and experience has demonstrated that to keep children safe from harm it is essential that professionals maximise the potential for safe partnership with parents and share relevant information across geographical and professional boundaries.

1.6.3 Information relevant to child protection will be about:

- health and development of a child and his/her exposure to possible harm;
- a parent/carer who is unable to care adequately for a child;
- other individuals who may present a risk of harm to a child.

1.6.4 The consent of a person under the age of 18 is as significant as that of an adult where he/she is the subject of information, provided he/she has sufficient understanding to provide it. If a member of staff is in doubt about a child's competence he/she should seek legal advice.

1.6.5 Where a child does not have capacity to consent, it should be sought, if it does not place him/her at additional risk, from a person with Parental Responsibility for that child.

1.6.6 It is the duty of professionals, whether they are providing services to adults or children, to place the needs of the child first.

1.6.7 Each case will depend on its own facts and legal advice should always be sought from agencies' own legal advisers where the professional is concerned about the legality of sharing information.

Relevant Law

1.6.8 The main sources of relevant law with respect to information sharing and confidentiality in child protection are the:

- Common Law Duty of Confidence.
- European Convention on Human Rights (via its introduction into English law in the Human Rights Act 1998).
- **Data Protection Act 1998**⁴⁵.
- **Crime and Disorder Act 1998**⁴⁶.
- **Children Act 1989**⁴⁷.

⁴³ <http://www.durham-lscb.gov.uk/documents/Procedures-referrals/CIN012assessment.pdf>

⁴⁴ <http://www.dcsf.gov.uk/everychildmatters/resources-and-practice/IG00340/>

⁴⁵ http://www.opsi.gov.uk/acts/acts1998/ukpga_19980029_en_1

⁴⁶ http://www.opsi.gov.uk/acts/acts1998/ukpga_19980037_en_1

⁴⁷ http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_1.htm

- **Adoption and Children Act 2002**⁴⁸.
- **Children Act 2004**⁴⁹.
- **Education Act 2002**⁵⁰.
- Caldicott Standards (applicable to Health and Children and Young People's Service).

Common Law

- 1.6.9 The 'Common Law Duty of Confidence' arises when a person shares information with another in circumstances where it is reasonable to expect that the information will be kept confidential, e.g. a contact or a patient-doctor relationship.
- 1.6.10 **Working Together to Safeguard Children**⁵¹ confirms that personal information about children and families kept by professionals and agencies should not **generally** be disclosed without the consent of the subject.
- 1.6.11 The duty of confidence is **not** absolute and disclosure **can** be justified if:
- the information is not confidential in nature, e.g. it is trivial or readily available elsewhere (DoH guidance offers the example of a social worker seeking confirmation from a school of a child's attendance that day);
 - the person to whom the duty of confidence is owed has 'expressly' authorised disclosure (orally or in writing) or 'implicitly' authorised it (if a referrer of an allegation of abuse to Safeguarding & 'Specialist Services would expect the information to be shared on a 'need to know' basis).
- 1.6.12 The key factor in deciding whether or not to disclose confidential information is **proportionality**, i.e. is the proposed disclosure a proportionate response to the need to protect the child's welfare. The amount of confidential information disclosed and the number of people to whom it is disclosed should be no more than is necessary to meet the public interest in protecting the health and wellbeing of the child.
- 1.6.13 The approach to confidential information should be the same whether any proposed disclosure is internally within an organisation, e.g. within a school or Safeguarding & Specialist Services or between agencies, e.g. teacher to a social worker.

⁴⁸ http://www.opsi.gov.uk/acts/acts2002/ukpga_20020038_en_1

⁴⁹ http://www.opsi.gov.uk/acts/acts2004/ukpga_20040031_en_1

⁵⁰ http://www.opsi.gov.uk/acts/acts2002/ukpga_20020032_en_1

⁵¹ http://www.everychildmatters.gov.uk/_files/AE53C8F9D7AEB1B23E403514A6C1B17D.pdf

European Convention on Human Rights

1.6.14 Article 8 of the above Convention states that:

- everyone has the right to respect for his/her private and family life, home and correspondence;
- there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder and crime, protection of health or morals or for the protection of rights and freedom of others;
- it is necessary for the purposes of legitimate interests pursued by the person sharing the information (except where it is unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject).

1.6.15 Many of the above conditions, especially the latter one offer a justification for sharing information (mindful of the proportionality principle).

1.6.16 If the information being shared is 'sensitive personal data', e.g. racial or ethnic origin, religious beliefs or political opinions, trade union membership, sexual life, criminal offences, one of the following additional conditions of Schedule 3 must be met:

- The subject has explicitly consented;
- It is necessary to protect his/her vital interests or those of another person where the subject's consent cannot be given or is unreasonably withheld or cannot reasonably be expected to be obtained;
- It is necessary to establish, exercise or defend legal rights;
- It is necessary for the exercise of any statutory function; *and*
- It is in the substantial public interest and necessary to prevent or detect an unlawful act and obtaining express consent would prejudice those purposes.

1.6.17 Defence of a child's 'legal rights' under the Human Rights Act 1998 or exercise of a statutory function in connection with s17 assessment or a s47 enquiry may offer justification for information sharing.

1.6.18 For more detailed information see <http://www.ico.gov.uk>⁵².

⁵² <http://www.ico.gov.uk/>
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The Caldicott Standards

- 1.6.19 For NHS and Councils with social services responsibilities, the Caldicott principles and processes provide a framework of quality standards for the management of confidentiality and access to personal information under the leadership of a Caldicott Guardian.
- 1.6.20 This includes ‘Safe Haven’ principles on the secure storage and transfer of confidential information.
- 1.6.21 These standards have applied to NHS organisations for a number of years and have now been extended into Councils with social services responsibilities in order to provide an effective framework to operationalise the Data Protection Act 1998 and underpin appropriate information sharing.
- 1.6.22 Health and Children & Young People’s Service must ensure that their information sharing arrangements are compliant with their own local procedures based on the Caldicott Standards (see *Health Service Circular/LAC circular HSC 2002/2003/LAC (2002) 2 ‘Implementing the Caldicott Standard into Social Care’*).
- 1.6.23 Health and Children & Young People’s Service have their own Caldicott Guardian who is able to provide advice and guidance as required.

Overall Legal Position

- 1.6.24 In general, the law does not prevent individual sharing information with other practitioners if:
- those likely to be affected consent;
 - the public interest in safeguarding the child’s welfare overrides the need to keep information confidential;
 - disclosure is required under a court order or other legal obligation.

1.7 RECORDING

- 1.7.1 All professionals must be aware of the importance of record keeping and confidentiality issues. All professionals who are involved in any aspect of a child protection enquiry and any subsequent action should ensure that information is recorded in full immediately. This recording should include details of the alleged/suspected abuse, circumstances of the abuse, actions and decisions taken, interviews and discussions, and any other relevant information. Information must be recorded with dates, times, names, designations and signatures. A distinction must be made between fact and opinion.
- 1.7.2 The records may subsequently be required to inform a s47 investigation or child protection conference, in addition to any family or criminal proceedings.
- 1.7.3 Agencies should refer to their own professional codes with regards to recording.