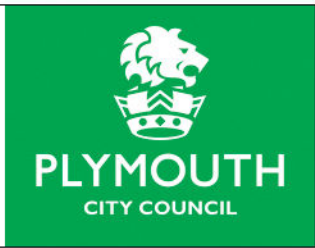


APPENDIX D - PRACTICE GUIDANCE

Record keeping information sharing & confidentiality



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RECORD KEEPING GUIDANCE

All professionals should refer to their own professional guidance on record keeping.

All Records should be:

- Timely

As soon as possible

- Accurate

If mistakes in information have been recorded they are unlikely to be questioned by a new worker.

The inaccurate information will be perpetuated inadvertently. At times information may be gathered in a stressful situation. However, every effort must be made to ensure accuracy. It may be advisable to check the information recorded at a later date.

- Factual

It is essential to record the nature and the source of the information.

What is said and by whom.

What was observed and by whom.

Hearsay and third party information must be clearly recorded as such.

- Ethical

All records should be non-judgmental and non-discriminatory. It may be a useful guide to record information with an assumption that the person you are writing about will read it.

Record Keeping

“Good record keeping is essential for Local Authorities so that when they are challenged – as is increasingly likely – they are able to demonstrate that decisions were not taken unlawfully or with maladministration...Defensive record keeping can easily become poor record keeping...This renders decision making opaque and difficult to defend against challenge.”

(Mandelstam, M., 1998, page 163)

The importance of good record keeping is essential for all agencies and not just Local Authorities.

From a legal perspective, the Human Rights Act 1998, which came into effect 1 October 2000, brings into English law a distinct and different approach to thinking about rights, responsibilities and remedies. Additionally, courts appear increasingly willing to hold Local Authorities, and individual practitioners, to legal account. In the light of this it is important to keep detailed records.

Record keeping is an integral part of the professional practice and should assist the process. It is not separate from the process and not an optional extra to be fitted in if time and circumstances allow.

Practitioners must be aware of the Human Rights articles and if they feel that they are possibly contravening any Human Rights article they must refer to this in written records, including a justification.

For more information regarding the Human Rights Act, and other legislation, refer to Legal Framework sections.

Record Keeping – The Procedure

Whenever a complaint or allegation of abuse is made all agencies should keep clear and accurate records and each agency should identify procedures for incorporating all relevant agency and Adult's at risks' records into a file to record all actions taken. In the case of providers of services these should be available to the commissioners of services and to the CQC

When should Information be Recorded?

- Records must be kept from the time that a concern, allegation or disclosure is made
- Each entry must be dated and timed
- The name of the person recording the information must be written in full. **Do not use initials**

What to Record

- All entries must provide factual information, e.g. times, dates, names of people contacted
- Avoid expressions of opinion (remember that the person you are writing about may have the right to read what you have said)
- All contact with the Adult at risk and alleged perpetrator must be recorded
- Record the exact words the Adult at risk and alleged perpetrator used
- Use body maps to illustrate any physical injuries
- All consultation with a Manager and / or Senior Manager must be recorded
- When contacting other agencies the questions asked and information received must be recorded
- If a decision is made not to contact the Police, the details of why this decision was made and on whose authority it was made must be recorded
- All telephone calls, those received and made in relation to the abuse, must be recorded even if there was no reply to outgoing calls
- Those who attend Strategy Meetings must be named
- The decisions taken at all meetings must be recorded
- It is essential to demonstrate how an assessment of risk, responsibility, rights, autonomy and protection of the Adult at risk was undertaken
- If no investigation is to take place, the reasons why and on whose authority this decision was taken must be recorded

How to Record Information

- All records should be typed
- If this is not possible they must be written in black ink
- Any alteration to records must be made by drawing a single line through the word(s)
- Correction fluid must not be used.
- Information about the disclosure and subsequent action should be documented on a separate report. This report must be kept in a confidential section of the file in a sealed envelope. Specific details of the safeguarding concerns should not be documented in daily

records this is to ensure that any alleged perpetrator does not have access to the information.

Other Documentation

- Any rough notes made during the investigation must be kept with the record
- Minutes from Strategy Meetings must be kept with the record
- Minutes from the Case Conference must be kept with the record
- All protection plans and reviews must be kept with the record.

Legal Requirements

- Records should not breach a person's legal rights
- All agencies should identify arrangements, consistent with principles of fairness, for making records available to those affected by and subject to the investigation.

Service User as Perpetrator

- If the alleged perpetrator is a service user then information about his/her involvement in an Safeguarding Adults investigation, including the outcome of the investigation, should be included on his/her case records (No Secrets, 6.18, page 30).

Storing of Information

- All records must be stored in accordance with your own agency's policies with regard to the Data Protection Act 1998.

Standards of Recording

- Best practice in recording is based on key principles of partnership, openness and accuracy. Effective recording is part of the total service to the user.

References

- Mandelstam, M. (1998) An A-Z of Community Care Law, page 163, Jessica Kingsley Publishers Ltd.
- Data Protection Act, 1998, Guidance to Social Services, page 14, Department of Health

CAPACITY & CONSENT GUIDANCE

A person's decision making capacity is the pivotal issue that determines whether or not his/her right to make decisions must be respected – balancing the right to autonomy and self-determination against the right to safeguards and protection from harm where the person lacks capacity to make decisions to protect him/herself.

During a Safeguarding Adults investigation process, it is essential that professionals are certain whether or not the Adult at risk fully understands the nature of the concerns and choices facing them.

Assessments in Respect of Capacity

Doubts about a person's capacity may arise for a number of reasons. Any doubts must be considered specifically in relation to the particular decision that needs to be made.

Capacity should be assessed in relation to the specific activity or issue that is being considered.

Stage 1: Impairment or Disturbance

In order to decide whether an individual has capacity to make a particular decision, a two stage test must be applied:

Is there an impairment of, or disturbance in the functioning of, the person's mind or brain? If so:

Is the impairment or disturbance sufficient that the person lacks the capacity to make that particular decision?

An impairment or disturbance of the brain may occur in a wide range of situations.

Stage 2: Inability to Make a Decision

If Stage 1 of the test of capacity is met, the second stage requires it to be shown that the impairment or disturbance causes the person to be unable to make the decision in question.

Section 3 of the Mental Capacity Act sets out the test for determining whether a person is unable to make a decision for him/herself and therefore lacks capacity. This is a 'functional' test focussing on how the decision is made, rather than the outcome or consequence of the decision.

Section 3 (1) provides that a person is unable to make a decision if he/she is unable:

- To understand the information relevant to the decision
- To retain the information
- To use or weigh that information as part of the process of making the decision
- To communicate his/her decision by any means.
- Circumstances where the Adult at risk is considered to lack capacity might include those:
Where the Adult at risk does not know that they have a decision to make
- Where the Adult risk does not understand the choices available or the consequences of those choices
- Where the Adult at risk cannot communicate their decision.

However, in these and other circumstances they can only be deemed incapable of making a decision where every reasonable effort has been made to assist their understanding of the situation and the communication of their wishes. This will include arranging an advocate and/or interpreter where necessary and possible.

There may be situations where the Adult at risk seems able, in terms of their knowledge and understanding, to make their own decisions.

However, they may be subject to undue pressure or duress to support a particular course of action, perhaps pressure from, or fear of, a professional or relative.

Workers will need to determine whether the Adult at risk is making the decision of their own free will or whether they are being subjected to coercion or intimidation.

If it is believed that the Adult at risk is exposed to intimidation or coercion, efforts should be made to offer the adult “distance” from the situation in order to facilitate decision making.

Situations where the Adult at risk does have Capacity

If it is decided that the Adult at risk does have capacity, has taken an informed decision and by that action is placing him or herself at risk, staff should consult with:

- The Adult at risk themselves
- Their carer/relatives – with the person’s consent
- Their community supports
- Any other relevant agency service or individual to ensure that the Adult at risk understands the risks that they are taking and the choices available to them to remove or reduce the risk.

A Risk Management Meeting should be held to ensure the following:

- Establish capacity and record when, where and by whom the assessment was carried out;
- Agree a Care Plan, and discuss with the network of involved professionals alternative options for encouraging engagement with the Adult at risk.
- Having agreed a Care Plan, the Adult at risk’s resistance to engagement should be tested by reintroduction of the new plan;
- If the plan is still rejected, the meeting should reconvene to discuss and review the plan;
- Consideration should be given to referring the case to the Vulnerable Adult Risk Management Meeting process (VARMM);

If you cannot offer the Adult at risk anything better than the situation they are enduring, they may well choose to remain in an abusive situation.

Situations where the Adult at risk does NOT have capacity

If it is decided that the Adult at risk does not have capacity then staff should act in the best interests of the Adult at risk, and do what is necessary to promote health or wellbeing or prevent deterioration.

Where appropriate, consultation with, or appointment of, a legal or other independent advocate may help make the best decisions on the person’s behalf.

In safeguarding investigations, access to Independent Mental Capacity Advocates (IMCA) is not restricted to people who have no-one else to support or represent them. People who lack capacity who have family and friends can still have an IMCA to support them in the safeguarding process.

There is a requirement to consider whether an IMCA should be instructed for each person at risk who lacks capacity to agree to one or more protective measures being considered. A written record should be made to reflect this.

References

Law Commission (LAW COM 231) (1995) *Mental Incapacity*, HMSO

Skinner, B. et al (1998) *AIMS for Adult Protection The Investigators Guide*, Pavilion Publishing, Brighton

The Lord Chancellor’s Department, (1997) *Who Decides?* The Stationery Office, London

BMA/Law Society (1995), *Assessing Mental Capacity - A Guide for Doctors and Lawyers*

INFORMATION SHARING/CONFIDENTIALITY GUIDANCE

The Government Guidance Document, 'No Secrets', recognises that there are circumstances in which it will be necessary to share confidential information.

- Information will only be shared on a "need-to-know basis" when it is in the best interest of the service user
- Confidentiality must never be confused with secrecy
- Informed consent should be obtained but if this is not possible and others are at risk it may be necessary to override this requirement
- It is inappropriate for agencies to give assurances of absolute confidentiality in cases where there are concerns about abuse, particularly in situations when other people may be at risk. [No Secrets, 5.6, page 24]
- Decisions about who needs to know and what needs to be known should be taken on a case-by-case basis. [No Secrets, 5.7, page 24]
- 'No Secrets' states that the principles of confidentiality designed to protect the management interests of an organisation must never be allowed to conflict with those designed to promote the interest of the service user. "If it appears to an employee or person in a similar role that such confidentiality rules may be operating against the interests of the adults then a duty arises to make full disclosure in the public interest". [No Secrets, 5.8, page 24]
- In certain circumstances it will be necessary to exchange or disclose personal information, which will need to be done in accordance with the Data Protection Act 1998 where this applies. [No Secrets, 5.9, page 24]

The Procedure

Decisions about sharing information need to be taken on a case-by-case basis. Therefore, before you share information you need to ask yourself the following questions:

1. Do I have the permission of the Adult at risk to disclose personal information?

If not:

2. Do I have the legal power to disclose this information?
3. Is there a duty to protect the wider public interest; are other people at risk?
4. Am I proposing to share information with due regard to both common and statute law?
5. Do I have the correct level of seniority to disclose this information?

The sharing of information **must** always be discussed with a senior manager and / or Legal Services Advisor.

All decisions made in terms of withholding or sharing information **must** be recorded.

Service User as perpetrator

If it is assessed that the service user continues to pose a threat to other service users then this should be included in any information that is passed on to service providers. [No Secrets 6.18, page 30]

Practice Guidelines

While papers and records belong to the agency, the information belongs to the Adult at risk. The views and wishes of the Adult at risk will normally be respected when sharing the information they give.

There will be circumstances when a duty to protect the wider public will outweigh the responsibility to any one individual.

Decisions to share information about the Adult at risk **must** be made by the agency and not any member of staff acting on their own.

Agencies should ensure they have clear guidelines for when the duty to protect the wider public outweighs their responsibility to protect the Adult at risks' right to confidentiality.

Staff must never confuse confidentiality with secrecy.

Information given to an individual member of staff, or agency representative, belongs to the agency, **not** that member of staff.

The Adult at risk, and when relevant their carers, must be advised why and with whom information will be shared.

Information must be shared on a **need-to-know basis** only.

Information will be shared **only** for the purpose of providing care or for the protection of the Adult at risk.

Information given to an agency must **only** be used for the purpose for which it was intended.

If confidentiality is broken, **who decided** and **why the decision was taken** should be recorded on the file.