FURTHER CLARIFICATION AROUND THE ISSUES OF CONSENT & INFORMATION SHARING

Following the recent dissemination of the briefing from the Head of Safeguarding about contact with MASH; the issues of consent being obtained prior to referral to Social Care and the problems of sharing information have recently been brought to the attention of the safeguarding children team on an increasingly frequent basis.

The following information is intended to clarify the situation for practitioners:

Legislation does allow for the dispensation of consent in specific circumstances – namely under the Data Protection Act and S115 of the Crime and Disorder Act, where there are grounds of safeguarding or crime detection/prevention.

However, referrals should not be made without obtaining consent unless to do so would place the child or staff member at serious risk of harm. Even in the safeguarding context – we should, in most cases, where safe to do so – ‘inform’ families when the intention is to make a referral to Children’s Social Care (MASH).

With regards to ‘information sharing’ and the recurrent Serious Case Review question of ‘why was this information not shared?’ relates to information of a safeguarding nature. The Children’s Social Care MASH is duty bound to take information coming in to it and decide whether or not this is a ‘contact’ or a ‘referral’.

If you are unsure about whether information should be ‘shared’ or a referral made then it is acceptable to consult with the MASH Principal Social Worker and discuss the case without giving client identifiable information before deciding whether it should be referred. If this form of advice is sought it is not appropriate to then record it within a specific child’s record as it will be generic advice not case specific.

If it is not a ‘referral’ the MASH service has no reason to record it or store it (where there is no consent) unless they wish to record why they have not escalated the information to a referral and evidence what has been told to them and what advice has been given. This would be recorded as a contact and possibly referred back to a ‘step down’ to the referring agency or support services.

If Health or any agency wishes to ‘share information’ or ‘seek information’ the purpose should be clear. For instance, it is important in safeguarding cases (or families where the agency has concerns about the implications or significance of information) to notify of significant changes such as address, incidents of concern, risky adults joining/leaving families, protective factors/risk factors etc. but the same information should not be shared where there is no concern or where the family has no knowledge of this information being shared.

We should not be notifying or sharing information without a ‘clear purpose’ of why we are sharing it and how it should be used, particularly if you have no evidence or are unable to validate its accuracy.

Rule of thumb should be: Share information if you are clear about the purpose and you believe:
a) You have consent to do so and also believe it is necessary to inform a referral, assessment or investigation;

b) You do not have consent but not sharing would place somebody at risk or fail to prevent or detect a crime;

c) You are required to do so by guidance or have a legal duty to share information (e.g. as part of an inquiry or safeguarding assessment etc.)

d) You are clear about the purpose of sharing the information, you can validate its accuracy and the person you are sharing it with needs to know and the information you are sharing is proportionate for its purpose

Where information is ‘requested’ from yours or any other agency – good practice always indicates that you should let the subject know that it is being shared unless to do so would place someone at risk etc. even though you may have explicit or implicit consent at the commencement of your service’s involvement with the family.

Data protection requires us to share, receive and store information purely on a needs to know basis and ‘proportionate’ to that need and should comply with the revised Caldicott Principles of Information Sharing (DH, 2013)

Reference:
Dept. of Health (2013) Information: To Share or not to Share