

Consent in Relation to Safeguarding

The Care Act 2014 statutory guidance advises that the first priority in safeguarding should always be to ensure the safety and wellbeing of the adult.

Making Safeguarding Personal is a person centred approach which means that adults are encouraged to make their own decisions and are provided with support and information to empower them to do so. This approach recognises that adults have a general right to independence, choice and self-determination including control over information about themselves. Staff should strive to deliver effective safeguarding consistently with both of the above principles. They should ensure that the adult has accessible information, in a communication format which is preferable to them, so that the adult can be supported to understand the information given to them and make informed choices about safeguarding: what it means, risks and benefits and possible consequences. Staff will need to clearly define the various options to help support them to make a decision about their safety.

Adults may not give their consent to the sharing of safeguarding information for a number of reasons. For example, they may be unduly influenced, coerced or intimidated by another person, they may be frightened of reprisals, they may fear losing control, they may not trust social services or other partners or they may fear that their relationship with the abuser will be damaged. Reassurance and appropriate support may help to change their view on whether it is best to share information. Staff should consider the following and:

- Explore the reasons for the adult's objections – what are they worried about?
- Explain the concern and why you think it is important to share the information;
- Tell the adult with whom you may be sharing the information with and why;
- Explain the benefits, to them or others, of sharing information – could they access better help and support?
- Discuss the consequences of not sharing the information – could someone come to harm?
- Reassure them that the information will not be shared with anyone who does not need to know;
- Reassure them that they are not alone and that support is available to them.

Reasons to Override Consent

If, after this, the adult refuses intervention to support them with a safeguarding concern, or requests that information about them is not shared with other safeguarding partners, in general, their wishes should be respected. However, there are a number of circumstances where staff can reasonably override such a decision, including:

- The adult lacks the mental capacity to make that decision – this must be properly explored and recorded in line with the Mental Capacity Act;
- Emergency or life-threatening situations may warrant the sharing of relevant information with the emergency services without consent;
- Other people are, or may be, at risk, including children;
- Sharing the information could prevent a serious crime;

- A serious crime has been committed;
- The risk is unreasonably high and duty of care has to be considered;
- Staff are implicated;
- There is a court order or other legal authority for taking action without consent.

In such circumstances, it is important to keep a careful record of the decision-making process. Staff should seek advice from managers in line with their organisations' policy before overriding the adult's decision, except in emergency situations. Managers should make decisions based on whether there is an overriding reason which makes it necessary to take action without consent and whether doing so is proportionate because there is no less intrusive way of ensuring safety. Legal advice should be sought where appropriate. If the decision is to take action without the adult's consent, then unless it is unsafe to do so, the adult should be informed that this is being done and of the reasons why. In addition, if there are any other adults or children at risk seek advice from the safeguarding lead for the organisation.

If none of the above apply and the decision is not to share safeguarding information with other safeguarding partners, or not to intervene to safeguard the adult:

- Support the adult to weigh up the risks and benefits of different options;
- Ensure they are aware of the level of risk and possible outcomes;
- Offer to arrange for them to have an advocate or peer supporter;
- Offer support for them to build confidence and self-esteem if necessary;
- Agree on and record the level of risk the adult is taking;
- Record the reasons for not intervening or sharing information;
- Regularly review the situation;
- Try to build trust to enable the adult to better protect themselves.

It is important that the risk of sharing information is also considered. In some cases, such as domestic abuse or hate crime, it is possible that sharing information could increase the risk to the adult. Safeguarding partners need to work jointly to provide advice, support and protection to the adult in order to minimise the possibility of increasing risk of harm to the individual within the relationship or risk of retribution from the abuser.