**Memorandum of Understanding**



**June 2019**

**To be reviewed June 2020**

**Memorandum**

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***Constitution***

The following partner agencies have signed up to the Merton Safeguarding Adults Board (MSAB) constitution:

* Local Authority
* Healthcare Foundation Trust
* Wandsworth & Merton CCG
* London Ambulance Service
* Healthwatch
* Merton Safeguarding Children’s Partnership
* Community Safety Partnership
* Health & Wellbeing Board
* National Probation Service
* London Borough of Merton
* London Fire Brigade
* NHS Foundation Trust
* Housing services
* Metropolitan Police
* Central London Community Healthcare NHS Trust (CLCH)

***Purpose***

The Merton Safeguarding Adults Board (MSAB) is established in line with duties set out in section 43 of the Care Act 2014 as the statutory mechanism for agreeing how partner agencies cooperate to protect adults at risk, prevent neglect and abuse and promote the wellbeing of adults in Merton.

Statutory safeguarding responsibilities arise where there is reasonable cause to suspect that an adult:

* Has care and support (whether or not the authority is meeting any of those needs);
* Is experiencing, or is at risk of, abuse and neglect and
* As a result of those needs is unable to protect themselves against the abuse or neglect or the risk of it.

The MSAB’s objective is to ensure that local safeguarding arrangements and partnerships act to help and protect adults at risk of, or experiencing, neglect and/or abuse, hereafter referred to as adult.

The MSAB is a multi-agency strategic partnership made up of senior officers within various partnership organisations. It coordinates the strategic development of adult safeguarding across Merton and ensures the effectiveness of the work undertaken by partner agencies in the area.

In achieving the above, the following 6 key principles must be followed:

**Empowerment:** Presumption of person led decisions and informed consent.

**Prevention:** It is better to take action before harm occurs.

**Proportionality:** The least intrusive response appropriate to the risk presented.

**Protection:** Support and representation for those in greatest need.

**Partnership:** Local solutions through services working with communities.

**Accountability:** Accountability and transparency in delivering safeguarding.

***Function of the Board***

The core duties of the MSAB are set out in the Care Act Guidance, which requires the Boards:

* Publish a Strategic plan for each financial year detailing how it will meet its main objectives and what the members will do to achieve this.
* Publish and Annual Report detailing what the MSAB has done during the year to achieve its main objectives and what each member has done to implement its Strategic Plan. The Annual Report will also set out the findings of any Safeguarding Adult Review (SAR) completed during the year and the subsequent actions arising from the reviews.
* Conduct any SARs in accordance to section 44 of the Care Act.

The MSAB has a unique statutory role in ensuring that partners have effective safeguarding arrangements in place and are cooperating and assisting with the planning and delivery of services for adults who may be in need of care and support. The Board must be able to form a view of the quality of local activity, challenge organisations as necessary and speak with an independent voice.

The key functions of the MSAB are to:

* Offer advice and assistance regarding safeguarding responsibilities and promote the understanding that ‘safeguarding is everyone’s responsibility’.
* Co-ordinate what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of the adults in Merton.
* Ensure the effectiveness of what is done by each person or body for that purpose.

In order to deliver these functions the MSAB will develop policies and procedures and, where relevant, oversee the development of policies and procedures within partner agencies to:

* Establish ways of analysing and interrogating data on safeguarding notifications and completed enquiries which increases the MSAB’s understanding of the prevalence of abuse and neglect locally that builds up a picture over time.
* Hold partners to account and gain assurance of the effectiveness of its arrangements for safeguarding adults.
* Determine its arrangements for peer review and self-audit.
* Establish mechanisms for developing policies and strategies for protecting adults which should also take account of the views of adults who have needs for care and support, their families advocates and carer representatives.
* Develop preventative strategies that aim to reduce instances of abuse and neglect in its area.
* Identify types of circumstances giving grounds for concern and when they should be considered as a referral to the local authority as an enquiry, including referral pathways and thresholds for intervention.
* Formulate guidance about the arrangements for managing adult safeguarding, and dealing with complaints, grievances and professional and administrative malpractice in relation to safeguarding adults.
* Develop strategies to deal with the impact of issues of race, ethnicity, religion, gender, sexual orientation, age, disadvantage and disability on abuse and neglect.
* Balance the requirements of confidentiality with the consideration that, to protect adults, it may be necessary to share information on a ‘need to know basis’.
* Identify mechanisms for monitoring and reviewing the implementation and impact of policy and training.
* Carry out SARs and advise Board Partners on lessons to be learned.
* Publish a Strategic Plan and an Annual Report.
* Evidence how MSAB members have challenged one another.
* The Board will engage in any other activity that facilitates the achievement of its objectives.

***Governance and accountability***

Board Members

Board Members represent their agencies and must be of sufficient seniority to do so, and they also have a responsibility to ensure effective safeguarding within their agencies and across partner agencies. If there is any possibility of conflict of interest, the Board member should declare their interests.

Relationship with other strategic Boards

In order to ensure an ongoing and direct relationship with other key strategic Boards and bodies the MSAB will have in place protocols to outline its relationship with relevant Boards & Partnerships.

The Chair will present the Board’s Annual Report to these Boards on an annual basis. Similarly the Chairs of other Boards and Partnerships or their representative will present their reports to the MSAB. The MSAB Chair will raise any concerns the MSAB may have regarding the effectiveness of the arrangements these Boards and Partnerships or their members in safeguarding adults.

Accountability

The MSAB is accountable to the Chief Executive of the Council and Lead Members for Adult Social Care in respect of its governance. However, the MSAB will act independently in respect of monitoring safeguarding arrangements and it is within its remit to scrutinise the safeguarding arrangements of all responsible organisations with Merton.

The Board is accountable to its core funding partners and as good practice the Strategic Plan, Annual Report and the Business Plan will be shared with all the executive bodies of partner agencies.

It is the responsibility of the Chief Executive Officer and the Lead Member for Adult Social Care, as well as of partner agencies to ensure that an effective local Safeguarding Adults Board is in place.

The role of elected member and non-executive directors

The Lead Members for Adult Social Care are politically accountable for ensuring the local authority fulfil their legal responsibilities for safeguarding and promoting the welfare of adults and should provide the political leadership needed for the effective co-ordination of work with other agencies with safeguarding responsibilities.

The function of challenge

One of the primary functions of the MSAB is to set in place quality assurance mechanisms to monitor the effectiveness of work carried out by the partners to safeguard and promote the well-being of adults. This covers not just the quality of the joint work that goes on between partner agencies, but also the quality of the work within individual agencies.

The MSAB will receive and scrutinise regular quality-assurance reports by individual agencies to identify good practice and highlight any shortcomings within those agencies. If shortcomings are identified, the MSAB and the agency in question will agree a remedial action plan. The implementation and resulting impact of the action plan will be reviewed by the MSAB.

If a Board partner is found not to be performing effectively in safeguarding and promoting the welfare of adults, and the MSAB is not convinced of the adequacy of the planned action to improve practice, the Chair, in consultation with the relevant Director of Adult Social Care, will seek to provide support and ensure adequate action is taken to improve practice.

Whilst the MSAB has a role in coordinating and ensuring the effectiveness of work by local individuals and organisations in relation to safeguarding and promoting the welfare of adults, it is not accountable for their operational work. Each Board partner has their own existing lines of accountability for safeguarding and promoting the welfare of adults by their services.

Dispute resolution between board partners

The SAB always seeks to operate on a consensus basis. If it is not possible to reach a consensus, members will be required to undertake a formal vote on a simple majority basis which will be recorded. Each statutory agency’s representative in attendance will have a single vote. In the event of a tied vote, the Chair will have the casting vote.

If there is a dispute between the Board partners, dispute resolution procedures will be followed. Within 28 days of the Board determining that a dispute exists, the MSAB Chair, in consultation with the Director of Adult Social Care, will convene a joint meeting of the partied in dispute. This should take place as soon as is reasonably practicable, but within 3 months. In most cases the Chair of the SAB will chair the meeting. The agenda will be agreed jointly by the Chair and the parties in dispute, or agree the issues that separate them and possible ways forward.

Where there is no agreement, either party may suggest to the Chair that an independent mediator be appointed to resolve the dispute; this course of action requires the agreement of the partners. If they cannot agree this within 28 days, the Chair, in consultation and agreement with the Director of Adult Social Care may refer the dispute to a Chartered Institute for Arbitrators to be resolved.

If there is a dispute between a MSAB partner and the Chair similar dispute resolution procedures will be followed. The Director of Adult Social Care will convene a meeting of the parties in dispute within the same timescales and with the same aims as above. Where there is no agreement, either party may suggest to the Director of Adult Social Care that an independent mediator be appointed. If the partners cannot agree this within 28 days the Director of Adult Social Care, in consultation with the Chief Executive, may refer the dispute to the Chartered Institute for Arbitrators to be resolved.

Role of independent Chair

The Chair is appointed by the Chief Executive of the Local Authority following a recommendation from a panel made up of relevant partners from the MSAB. There will be a clear role description for the Chair. The Chair’s role will include the requirement to challenge partner agencies at a senior level where there are concerns about safeguarding performances or systems. The Chair will provide independent leadership and strategic vision to the MSAB and ensure that the MSAB has an independent, objective and authoritative identity.

The Chair is responsible for chairing all main MSAB meetings. The Chair will agree the agenda and correct and agree the minutes. The Chair will represent the Board at formal meetings with other Partnerships and scrutiny bodies.

The Chair will present the Annual Report of the MSAB’s activities, including an assessment of the effectiveness of the local safeguarding arrangements and the challenges for the next year to relevant statutory bodies.

The Chair is also responsible for raising safeguarding issues with relevant statutory bodies as the representative of the MSAB and challenging the Board and its members if these are not addresses appropriately.

The Chair should be independent, either as a voluntary or paid position under contract. The Chair does not report to the Chief Executive or the Lead Member, but should liaise with them and brief them on a quarterly basis.

Board members will be consulted on the appointment of the Chair with the Director of Adult Social Care review the appointment annually to consider how effective the current arrangements are and whether the objectives of the Board are being met under the current chair. The role of the Independent Chair is held for a period of 2-3 years to ensure consistency and continuity. Thereafter, a review of employment should be undertake and members consulted on the continuation of the Chair.

***Structure of the Board***

Frequency of meetings

The MSAB will adopt the financial year April 1st – March 31st. The full Board will meet quarterly.

Extraordinary meetings may be called by the Independent Chair where arises. As much notice as possible will be given.

Membership

The full Board will be chaired by the Independent Chair, who will agree the agenda. The MSAB will elect a vice chair who will chair the meeting on occasions that the Independent Chair is unable to do so.

Organisations must designate particular, named people as their representative on the MSAB so that there is consistency and continuity un the membership of the Board. Members are required to nominate a suitable alternative representative in the event of them being unable to attend a meeting.

Membership should be from all key agencies or major service areas represented, and at as senior level as possible. The representative should hold a strategic position within their organisation with respect to safeguarding and promoting the welfare of adults. Board members and any suitable alternative representative must be:

* Experienced in the work of their organisation.
* Able to explain their organisation’s priorities.
* Able to promote the aims of the SAB.
* Understand pressures facing front line practitioners.
* Able to speak with authority within their organisation.
* Hold their organisation to account and
* Commit their organisation on policy and practice and to agreed actions, including those with financial implications.

Members of MSAB have a duty to contribute effectively to the work of the Board and its sub-groups.

Board members will also be responsible for cascading information about the activity of the MSAB as well as local and national developments to senior management teams and Executive Board within their own agency.

In the event of a member no longer being able to represent their agency, reasonable notice should be given to the Independent Chair so that a replacement may be found.

The Board regularly reviews membership to ensure it reflects those organisations that have a key role in safeguarding across Merton to ensure service users’ views can be included within the voice of the Board.

The MSAB will include 1 senior representative for the organisations/services below:

* Healthcare Foundation Trust
* Merton Safeguarding Children’s Partnership
* Community Safety Partnership
* Health & Wellbeing Board
* Wandsworth & Merton CCG
* London Ambulance Service
* Healthwatch Merton
* National Probation Service
* London Borough of Merton
* London Fire Brigade
* NHS Foundation Trust
* Housing services
* Metropolitan Police

The MSAB will secure the involvement of other relevant organisations, either by inviting them to be representatives of sub-groups or through invitation for specific issues for discussion at a MSAB meeting of through some other mechanism. In addition, links will be maintained with the following:

* Joint Legal Team
* Public Health and WDP
* Service user and carer forums
* MAPPA
* MARAC/CMARAC
* Advocacy services
* Department for Work and Pensions
* Office of the Public Guardian
* Coroner’s Office
* Care Quality Commission

At the discretion of the Chair, advising officers and observers can attend Board meetings. Advising officers provide information and professional expertise. They and observers may, at the discretion of the Chair, address meetings but are not members of the Board and cannot vote.

Attendance

For the Board to be successful and to achieve its goals it needs to be truly reflective of all partner agencies. Attendance at the Board is essential to its success. Board members are expected to attend a minimum of 75% of Board meetings.

For some individuals in smaller organisations, it is accepted that a ‘virtual membership’ is the only way they can commit to the Board. Rather than lose their voice, the Board will list these individuals as members and they will receive all minutes and paperwork and be informed by the Business Manager of agenda items that may be specific interest to them or issues that the Board would like them to comment on.

Attendance at Board and sub-group meetings will be monitored and reported as part of the MSAB’s Annual Report and any issues regarding attendance of agencies will be raised with the agency concerned.

Records and confidentiality

The minutes of the MSAB meetings will be entered as a permanent record and submitted for approval at the next meeting.

The meetings of the MSAB will not be held in public, although the minutes of the Board will, subject to issues of confidentiality and legal considerations, be a public document and posted on the website.

Documents relating to SARs are only shared with the SAR Evaluation Group members and anonymised summaries are provided to the Board.

***Sub-groups***

There are various sub-groups which meet, usually in advance to the Board meeting, and provide an update to each Board meeting. Time limited tasks groups may be set up for individual pieces of work. These will be agreed and monitored by the Board.

***Strategic Plan***

The MSAB will publish a Strategic Plan covering each financial year outlining its strategy for achieving its objectives and what each member is to do to implement that strategy. In preparing its strategic plan, the MSAB will consult with Board members.

The Strategic Plan will outline a set of key priorities and objectives which the MSAB will use as benchmarks to assess the performance and effectiveness of local services in relation to safeguarding related activities. The scope of the MSAB includes a broad range of activities to improve outcomes for adults at risk by promoting awareness, improving practice and learning and the prevention of harm to adults across a range of areas of activity.

Individual partners are expected to use their own internal governance arrangements to seek wider endorsement of and contribution to the plan.

***Annual Report***

Each year the MSAB will publish an Annual Report outlining the progress of safeguarding adults work in Merton in the past year. The Annual Report will include reports from each sub-group in respect of progress within their areas of responsibility. The Chair will coordinate the production of the Annual Report, but this will be agreed by the partner agencies and will detail:

* What it has done during that year to achieve its objective.
* What each member has done during that year to implement the objectives of its Strategic Plan.
* The findings of any SARs which have concluded in that year (whether or not they began in that year).
* The reviews arranged by it under the section which are ongoing at the end of that year (whether or not they began in that year).
* What it has done during that year to implement the findings of any SARs and
* Where it decides during that year not to implement a finding of a review arranged by it under that section, the reasons for its decision.

The MSAB will send a copy of the report to:

* The Chief Executive of all partner agencies.
* The Chair of the Health and Wellbeing Board
* The Chair of the MSCB
* Healthwatch

The MSAB Strategic Plan, Business Plan and Annual Report will be public documents and will be published on the Board’s website.

***Funding***

The MSAB’s funding partner agencies will contribute annually, at an agreed payment level or, where previously agreed through services in kind to the funding required to meet the responsibilities, duties and objectives of the MSAB. The members agree to the establishment and maintenance of a pooled fund which will be managed by the Local Authority on behalf of Board Partners. The fund will be used for resourcing the Board to ensure it meets its responsibilities, duties and objectives. A transparent budget monitoring process will be employed by the Local Authority, with regular updates provided to the Board. Any unspent funds will be carried over to the next financial year. The financial year will run from the 1st April to the 31st March the following year, with contributing agencies being invoiced by the 1st October each year.

***Appendix 1***

***Memorandum of understanding***

Board member roles and responsibilities

In relation to the Board meetings:

* To attend all meetings and for the whole meeting. The minimum expectation is to attend 75% of meetings in a year.
* To be punctual.
* To read all papers prior to the meeting and be prepared to contribute to the discussion.
* To nominate a named deputy who will attend on occasions when attendance is not possible who will properly briefed to address the issues on the agenda, to present relevant agenda items and to make decisions on behalf of the agency.

In relation to the Board member’s own agency:

The key role is to champion and lead the safeguarding agenda within their agency, to include the following activities:

* To promote the need for a named lead for safeguarding adults within their agency.
* To ensure that relevant departments within their agency contribute to the safeguarding work of the Board.
* Human Resources contribution to Safe Recruitment.
* Finance contribution to the budget for safeguarding work.
* Training contribution to single-agency and multi-agency training programme for safeguarding.
* Media and Communications Teams contribution to media management and publicity.
* Data and ICT contributions to the safeguarding agenda.
* Information systems
* To bring the MSAB agenda, issues regarding safeguarding that relate primarily to their own agency but which have implications for the co-operation between agencies and the monitoring role of the Board e.g. performance assessments, audits of practice, new guidelines either national regional or local.

In relation to the Board’s business

* To lead on key activities outlines in the Business Plan and work programme of the sub-groups and any additional activities to deliver the key priorities and outcomes of the MSAB.
* To be prepared to chair and participate in sub-groups and task and finish groups and to resource these from their agencies where necessary, making sure that representatives are briefed about the strategic context and priorities of the MSAB, attend regularly and make relevant contributions.
* To work within their agencies to ensure that information is communicated efficiently and that activities within the agency are coordinated.
* To communicate key messages about safeguarding within their own agencies.
* To complete required tasks within agreed deadlines.
* To share accountability for multi-agency work in safeguarding proactively.
* To be responsible for identifying poor performance in safeguarding practice within their agency and other agencies, and where responsible for that area of work, acting to address this or bringing it to the attention of the relevant person. Where poor practice continues despite intervention or due to circumstances beyond the individual’s sphere of influence, to bring the concerns to the Board.
* Where required, be a member of a SAR Panel and carry out the responsibilities this entails or commission such membership from within their agency.

In relation to other partner agencies

* To know and understand the roles and responsibilities of other agencies and to hold them to account.
* To support other agencies by respecting and valuing their contribution and actively seeking to contribute to the work they are leading on, ensuring that activity is collaborative and avoids duplication or creating avoidable gaps in provision.
* To challenge attitudes, actions and practices that do not support the objectives of the MSAB.
* To deliver on the Business Plan and work programme(s) and to contribute to the identification and review of priorities.
* To provide support to the agency representatives on the MSAB sub-groups in identifying and accessing sources or performance information in order to contribute to the performance management and priorities for the MSAB.

The MSAB commitment to members

The MSAB is supported by an Independent Chair and Business Manager and the following processes are in place to support the work of the Board, individual members and their agencies.

* All papers will be sent out a minimum of 1 week (5 working days) before each meeting.
* Minutes will be sent out 2 weeks after the meeting to ensure that actions can be completed.
* To ensure the effectiveness of the Board, reminders on action points will be sent in a timely fashion.
* Board meetings are quarterly and will last for 2 hours unless told otherwise.

I, the undersigned, confirm my role as member of the Merton Safeguarding Adults Board and agree to carry out my responsibilities as set out in the Board’s Constitution.

Name and position:

Signature:

Date:

I confirm membership of the above and welcome them to the Merton Safeguarding Adults Board.

Name and position:

Signature:

Date:

***Appendix 2***

Arrangements to apply to the MSAB’s powers under section 45 of the Care Act.

The Care Act introduces a new duty for Safeguarding Adults Boards. In essence section 45 of the Care Act means that:

* A person must supply information on request by the MSAB if he/she is likely to have information relevant to the MSAB’s functions.
* The information can be about the person, or a function of activity they engage in, or a person in respect of whom they exercise the function/activity.

The power to request information could be used when carrying out a SAR, but might also assist in the context of an ongoing safeguarding investigation, particularly if issues are raised about the disclosure of relevant information. The request places the person it is made under a duty to disclose.

It is the Board rather than Adult Social Care or any other agency which has the power to request disclosure.

The MSAB has agreed an arrangement for requesting information in urgent cases, as outlines in the following procedure:

1. As the delegate of the MSAB, the Chair or her nominee may request proportionate and relevant information which is required to assist in a safeguarding adult’s investigation.
2. A referral may be made to the Chair and should identify the agency or individual and the information sought from them, together with a brief statement of the reasons for seeking disclosure, and timescale. In specifying a timescale for disclosure, the Chair will consider both the urgency of the request and the time likely to be needed to make available the information requested.
3. The Chair will consider the referral and decide whether to make a request. Any individual or agency recipient will be given the opportunity to state any exceptional reasons for withholding information which has been requested. In deciding whether to make a request, the Chair will consider any exceptional reasons put forward for withholding some or all of the information and will balance these against the likely importance of the information to the achievement of the Board’s functions. Any objections to a request under section 45 could be referred to an Independent 3rd party, whose decision on behalf of the Board would be final.

***Appendix 3***

Merton Safeguarding Adults Board

Information sharing protocol

This protocol has been adopted by the MSAB. It provides a framework for making decisions about sharing information in order to help protect vulnerable adults who may be at risk of abuse or neglect.

The protocol offers guidance to front-line staff in assessing possible risk to adults, and in balancing the risk against the rights to confidentiality and privacy of those who may be a source of risk.

The key stages in the procedures set out in the protocol are to:

* Assess the risk a person is thought to pose.
* Decide which (if any) agencies or individuals need to be told, and what they need to know.
* Consult the person causing concern and (if appropriate)
* Share the information, subject to a rider of confidentiality.

Introduction

**Parties –** This protocol is adopted by the MSAB.

**Purpose –**

* To promote the safeguarding of adults by the carefully considered sharing of information about identified risks, and
* To help front-line staff fairly and consistently to balance the risks of non-disclosure against the infringement of individuals’ rights to privacy and confidentiality.

**Status –**

* This protocol comprises local policy and procedure for multi-agency work to safeguard vulnerable adults within the national framework provided by the law and other guidance.
* This protocol should be read together with any individual agency procedure governing information sharing to safeguard vulnerable adults. Any conflict between local procedures and this protocol should be discussed with a senior manager within the agency concerned and a legal adviser; it should also be reported for information to the MSAB.

**Scope –** This protocol only covers multi-agency sharing of information for purposes of safeguarding adults. In particular, it does not cover information-sharing or disclosure which is addressed in the following:

* For disclosure between Adult Social Care, the Police and Crown Prosecution Service.
* For patient/service user access to records, the Access to Records policy of the agency concerned.
* For information-sharing or disclosure in connection with the Multi-Agency Protection Panel (MAPPA), the Panel’s information-sharing or disclosure arrangements under MAPPA Guidance issued by the Ministry of Justice.
* For information-sharing in connection with a Multi-Agency Risk Assessment Conference (MARAC), and any protocol adopted by member agencies.

Overview of the law

This is an outline of the law governing the sharing of confidential information. It is important to seek specific advice in the context of individual situations.

**Confidentiality and privacy –** organisations holding personal information are under a common law duty of confidentiality which governs the way the information may be stored and disseminated. In addition, individuals have rights under the Data Protection Act 1998 and the Human Rights Act 1998 and European Convention on Human Rights.

**Data Protection Act 1998 –** the Data Protection Act (DPA) covers the storage and dissemination of manually-recorded as well as electronic data. The DPA enables such information to be shared where this is ‘necessary’ for a range of reasons. These include the legal duties of the person or body sharing or receiving the information; and where the disclosure is necessary to protect the vital interests of another person.

This means that where disclosure is reasonably necessary to fulfil a statutory duty it is permitted. This includes the sharing of information about risk to an adult in the context of assessment under the Mental Health Act 1983 or the Care Act 2014.

**Content to disclosure –** consent should be sought to disclose personal information unless the person lacks capacity to give informed consent.

* Informed consent is based on a reasonable understanding of the implications of both disclosure and non-disclosure.
* With an adult who lacks capacity to give informed consent, no-one can consent on their behalf.

**Disclosure without consent –** where consent to disclose has been refused, or the person has not responded when asked to consent or lacks capacity to give informed consent, an assessment has to be made as to whether disclosure is ‘reasonable in all the circumstances’. This assessment should take into account:

* Any duty of confidentiality owed to the third party.
* The steps taken to obtain consent.
* Whether the third party is capable of giving consent and
* Any express refusal of consent.

Any reasons given for refusing consent should be recorded and carefully considered in deciding whether or not to disclose the information.

**Crime and Disorder Act –** section 115 of the Crime and Disorder Act 1998 contains a general power for anyone to disclose information to Social Services, Probation, the Police or Health. Such disclosure has to be ‘necessary or expedient’ for one of the purposes set out in the Crime and Disorder Act, which include ‘preventing or reducing crime’. This power goes in tandem with the duty under the Data Protection Act to seek consent to disclosure if possible.

**Case law –** the Courts have also made clear that disclosure based on sufficient evidence and a specific risk assessment is permitted.

**Human rights –** in addition to rights to have information about them treated confidentially, individuals have the right to respect for their private and family life under Article 8 of the European Convention on Human Rights. Any disclosure of personal information is required to be ‘proportionate’ to the risk involved and ‘necessary for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others’. The ‘rights and freedoms of others’ would include the rights of others, including children and vulnerable adults under Article 3 of the Convention not to be ‘subjected to inhuman or degrading treatment’, which is likely to include most if not all forms of abuse and neglect.

Potential victims and those giving rise to concern also have the right under Article 6 to be given a ‘fair hearing’. This included being kept informed, having their views recorded and considered, and being given a reasoned explanation of any decision about disclosure.

**Disclosure of information in individual cases –** the process of deciding whether to disclose confidential information will involve the following steps:

* Deciding the likely nature and degree of risk posed.
* Deciding id this risk (and/or a duty on the part of the holder of the information or the proposed recipient) suggests a need to disclose.
* Deciding if there is sufficient reason not to seek consent, and seeking any that is considered necessary and
* If consent is refused or no response is received, deciding whether disclosure should be made in the absence of consent.

**Disclosing after consulting –** the person giving rise to the concern should usually be forewarned of the substance of the allegations against them and invited to comment before disclosure takes place. Such consultation should only be omitted in cases of serious, urgent risk where delay (or forewarning) will cause unacceptable risk. In such cases, the person should be informed after disclosure unless (very exceptionally) there is evidence that informing them even after the event will cause unacceptable risk.

**Explaining decisions –** the reasons underlying any decision to disclose or not disclose information under this protocol should be carefully recorded, and communicated to those who have been consulted prior to disclosure. Decisions to refuse disclosure requests should also be explained.