



## Prison Safety Learning Bulletin

### Issue 37: Sharing information with a prisoner's family and/or friends: when can it be done and what can be disclosed?

#### Who Needs to See This Bulletin?

All staff

Disclosure of confidential information about a prisoner should normally only take place with the consent of the person concerned, but there are circumstances in which it is appropriate to share information without consent. Getting a prisoner's consent to share information about themselves ensures that prison staff can safely disclose relevant details about that person's wellbeing while in custody, and if appropriate, what actions are being taken to help them.

In this bulletin you will find guidance about the importance of having consent, what information it is appropriate to share, and when it is legal and appropriate to disclose that information without consent.

*Please note that this is guidance for prison staff about custodial information and does not apply to medical information which is held by the healthcare provider, not by the prison, and to which separate legal arrangements and professional standards apply.*

#### Actions for Staff

The Data Protection Act is not a barrier to sharing information. It is there to make sure that personal information about living people is shared appropriately.

- Be open and honest with prisoners about why, what, how and with whom information could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so.
- Share relevant information about a prisoner's wellbeing with their consent where appropriate. You may still share information without consent in certain situations.
- Base your information-sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.
- Ensure that the information you share is: necessary for the purpose for which you are sharing it; shared only with those people who need to have it; accurate and up-to-date shared in a timely fashion; and shared securely.
- Keep a record of your decision and the reasons for it - whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

## Why is it important to have consent for the purposes of information sharing?

[PSI 2015/07 – Early Days](#) states that the details of a prisoner's family and their next-of-kin should be recorded on arrival to prison, either during the reception process or the first night. When asking prisoners for their consent, it is important to explain to the person that by providing their consent, if they encounter a problem, or if a named third party contacts the prison with concerns about them, then prison staff will know what kind of information they can safely share about their wellbeing, with whom, and what actions are being taken to help them.

If the prisoner is at risk of self-harm, their family or significant other may well be in a better position to know when something is wrong, and to spot signs of improvement. They can offer insight into past behaviour, what is 'normal' for that person and what support has helped in the past. They can also support that person if they are aware.

Ask prisoners during their early days in prison whether they would like a family member or significant other to be involved in their care whilst in prison, and for their consent to share information in specific circumstances to boost the support available to them.

## Ensure the prisoner knows what the consent is for

You must make sure that the prisoner fully understands what they are consenting to and the implications of giving or not giving their consent. Being open and honest, including being clear about information sharing and respecting their wishes wherever possible, will help to maintain their trust and confidence and determine how you will be best able to support them.

It is important to help the prisoner understand that sharing information is an essential part of supporting them, and that you will normally only share relevant information with their agreement. Also that they understand you will review the situation at regular intervals or if circumstances change, particularly in terms of information sharing and risk and that they can change their minds at any stage.

## How long does consent last for?

As long as a prisoner is told that they will *not* be asked on each occasion for their consent, and that it will be assumed they *have* consented to whatever they have previously agreed to be disclosed for the future, it is OK not to ask them on each occasion.

It should be made clear to prisoners that they can change their minds at any stage, but that they will need to let the prison know if they do, in order for their record to be amended. It is good practice for prisons to check with prisoners that their consent information is up to date, around every 6-12 months, or when records are being reviewed or updated. If a prisoner continually changes their mind you may need to check more often.

## The consent form

The consent given should specify what types of information can be shared and who it can be shared with. This can also include details of specific exceptions; for example, types of information that cannot be shared and/or people that information cannot be shared with. A prisoner could give their consent to share everything, to only discuss a particular issue or aspect of their situation, or only to confirm their location and wellbeing. Written consent is preferable to avoid the possibility for later disputes. You should also ensure that the decision regarding consent is recorded. A sample consent form is available at annex A.

## What if a prisoner does not want to give consent?

Prisoners may choose not give their consent for a number of reasons. They may be frightened of reprisals, they may fear losing control, or they may fear that information will be shared with other agencies to which they do not wish it to be known. Reassurance and appropriate support along with gentle persuasion may help to change their view on whether it is best to share information:

- explain why you are concerned and why you think it is important to share the information
- tell them precisely who you would like to share 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 they or someone else 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.

### **Do you always need consent?**

Every prisoner should be confident that their personal information will be kept safe and secure and only shared when it is appropriate to do so. However, there are certain circumstances where information *can* be shared without consent. You should ensure that the prisoner understands that you will *only* share information *without* their consent in exceptional circumstances such as when you believe that they or someone else may be at risk of harm. The safety of the prisoner is paramount and our data protection responsibilities should be balanced against our duty of care for the person concerned. Decisions to share information should be defensible, not defensive.

### **The Mental Capacity Act 2005**

The Mental Capacity Act makes it clear that a person must be assumed to have capacity unless it is established that they lack capacity, and that a person is not to be treated as unable to make a decision merely because they make an unwise decision. A prisoner may have withheld their consent to share information and subsequently gone on to lose their mental capacity. This is not, in itself, sufficient reason to disregard the earlier decision.

### **When can prison staff disclose information without consent?**

As the guidance for professionals contained in the [consensus statement on information sharing and suicide prevention](#) makes clear, where a person is at imminent risk of suicide there may well be doubts about their mental capacity. Where this is the case, and you have confirmed the identity of the person calling, relevant confidential information *can* be disclosed *if* it is considered to be in the person's best interest to do so. So, where it is believed that the involvement of a family member or friend may help to prevent serious harm to a prisoner who is at risk of suicide, it may be appropriate to disclose information to them without the prisoner's consent. The urgency of the need for disclosure will be relevant to the judgement that is taken in each case. Wherever possible staff should take advice from a manager and discuss with healthcare colleagues before making decisions of this nature.

#### **Information may be shared without the consent of the prisoner when:**

- they are assessed as lacking capacity to make a decision;
- you believe that they may be at risk of harm, or that other people are, or may be,
- a court order or other legal authority requires disclosure of the information.

Whether information is shared without consent it is important to ensure that you record your decision and the reasons for it, and that you note precisely what you have shared, with whom and for what purpose. **It is important to remember that where you decide not to disclose specific information without consent, you can still share general information about the support that is available to all prisoners with concerned family members or friends to help to reassure them.** See [Prison Safety Learning Bulletin](#) - Issue 38: How to respond to contact from family members and friends of prisoners who are concerned about their wellbeing available.

### **Further information**

- [PSI 2011/64 - Management of Prisoners at Risk of Harm to Self, to Others and From Others](#)
- [PSI 2015/07 – Early Days](#)
- [Consensus Statement on Information Sharing and Suicide Prevention](#)
- [the Human Rights Act 1998, Article 8 \(the right to respect for private life\)](#)
- [the Data Protection Act 1998](#)
- [the Mental Capacity Act 2005](#)

#### **Prison Safety Team**

More information on suicide and self-harm prevention is available [here](#) on our safety page and also on the Prisons and Probation Ombudsman's website, [www.ppo.gov.uk](http://www.ppo.gov.uk).

**Contact us: SaferCustodyPolicyandLearning@noms.gsi.gov.uk**

