



Championing Children and Young People in England

**Office of the Children's Commissioner's
response to the Law Commission
consultation:**

Data sharing between public bodies

December 2013

About the Office of the Children's Commissioner

The Office of the Children's Commissioner (OCC) is a national organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. The post of Children's Commissioner for England was established by the Children Act 2004. The United Nations Convention on the Rights of the Child (UNCRC) underpins and frames all of our work.

The Children's Commissioner has a duty to promote the views and interests of all children in England, in particular those whose voices are least likely to be heard, to the people who make decisions about their lives. She also has a duty to speak on behalf of all children in the UK on non-devolved issues which include immigration, for the whole of the UK, and youth justice, for England and Wales. One of the Children's Commissioner's key functions is encouraging organisations that provide services for children always to operate from the child's perspective.

Under the Children Act 2004 the Children's Commissioner is required both to publish what she finds from talking and listening to children and young people, and to draw national policymakers' and agencies' attention to the particular circumstances of a child or small group of children which should inform both policy and practice.

The Office of the Children's Commissioner has a statutory duty to highlight where we believe vulnerable children are not being treated appropriately in accordance with duties established under international and domestic legislation.

Our vision

A society where children and young people's rights are realised, where their views shape decisions made about their lives and they respect the rights of others.

Our mission

We will promote and protect the rights of children in England. We will do this by involving children and young people in our work and ensuring their voices are heard. We will use our statutory powers to undertake inquiries, and our position to engage, advise and influence those making decisions that affect children and young people.

About The United Nations Convention on the Rights of the Child

The UK Government ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1991.¹ This is the most widely ratified international human rights treaty, setting out what all children and young people need to be happy and healthy. While the Convention is not incorporated into national law, it still has the status of a binding international treaty. By agreeing to the UNCRC the Government has committed itself to promoting and protecting children's rights by all means available to it.

The legislation governing the operation of the Office of the Children's Commissioner requires us to have regard to the Convention in all our activities. Following an independent review of our office in 2010 we are working to promote and protect children's rights in the spirit of the recommendations made in the Dunford report and accepted by the Secretary of State.

In relation to the current consultation, the articles of the Convention which are most relevant to this area of policy are:

- Article 2:** Children's rights shall be respected and ensured without discrimination of any kind, and children shall be protected against all forms of discrimination on the basis of the status, activities, opinions or beliefs of their parents, guardians or family members.
- Article 3:** The best interests of the child must be a top priority.
- Article 4:** The government must take all appropriate measures to implement the Convention rights.
- Article 6:** Every child has the right to life. Government must do all they can to ensure that children survive and grow up healthy.
- Article 12:** Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously.
- Article 16:** Every child has the right to privacy. The law should protect the child's private, family and home life.
- Article 19:** Government must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and mistreatment by their parents or anyone else that looks after them.
- Article 28:** Every child has the right to an education.
- Article 34:** Governments must protect children from sexual abuse and exploitation.

¹ You can view the full text of the United Nations Convention on the Rights of the Child on the Office of the United Nations High Commissioner for Human Rights website at: <http://www2.ohchr.org/english/law/crc.htm>. A summary version, produced by UNICEF, is available at: http://www.unicef.org/crc/files/Rights_overview.pdf

Article 36: Governments must protect children from all other forms of exploitation which may harm them.

The response below has therefore been drafted with these articles in mind. We do not propose to respond separately to every consultation question. Rather, we will respond where we feel the UNCRC gives us a locus to do so, and where our existing evidence base gives us a perspective.

Office of the Children's Commissioner response to the Law Commission consultation on data sharing between public bodies

Summary

What we have found:

- There are clear variations in understanding across the country and between agencies on how, when and why data should be shared leading to large inconsistencies in decision making in this area.
- Issues regarding data sharing are compounded by the lack of consistency in how data is gathered, stored, handled and shared across agencies and local areas.
- There are multiple guidelines on how and when to share data including legislation and individual statutory gateways. This in conjunction with issues/ gaps around leadership, training and knowledge lead to the inconsistencies seen in practice around data sharing nationally.

What we recommend:

- All decisions on whether to share data relating to children and young people need to put safeguarding and the child's best interests first.
- There need to be nationally and locally agreed information-sharing protocols that specify every agencies' and professional's responsibilities and duties for sharing information about children who are or may be in need of protection.
- Further evidence gathering is required in order to fully understand the impact of mandatory reporting including the commissioning of a pilot before actual changes to legislation are considered.
- Clear structures and infrastructures where information can be safely and accurately collected, shared and securely stored are required.
- When collecting data and information, services need to be clear with the individual concerned that, should the information they disclose indicate that someone is at risk, it may be shared with the relevant authorities who can help, and consent sought and given from the outset unless to do so would place a child at greater risk.
- Good leadership, training and guidance need to be put in place in order to ensure that professionals and agencies are not only sharing information responsibly but also in the best interests of the child and/or young person.
- A review of the all the statutory gateways relating to individual data sources should be considered to enable a rationalisation of legislation or guidance as relevant.

1. Introduction

1.1 The Office of the Children's Commissioner (OCC) has specific statutory powers to collect data from across public bodies under section 2(9) of the Children Act 2004. This reads:

Any person exercising functions under any enactment must supply the Children's Commissioner with such information in that person's possession relating to those functions as the Children's Commissioner may reasonably request for the purposes of his function under this section (provided that the information is information which that person may, apart from this subsection, lawfully disclose to him).

1.2 The statutory powers have enabled the OCC to collect data from public bodies at both an aggregate and individual level including that deemed as personalised.

1.3 The OCC has run two national Inquiries which in part called on its statutory data collection powers. These have enabled the office to gather first-hand experience of collecting data as well as gathering evidence across a range of agencies/ services of their experiences with regards to data sharing.

1.4 The Inquiries focussed on two specific issues; 'Illegal School Exclusions' and 'Child Sexual Exploitation involving Gangs and Groups (CSEGG)'². They were initiated using the OCC's powers as set out in the Children Act 2004, section 3. The Inquiries involved the collection of data from a range of public bodies including central government departments, educational establishments, police forces, children's services, health agencies and the voluntary sector.

1.5 The OCC is a nominated member of the 'National Preventative Mechanism' (NPM) on behalf of the Government and as such carries out visits to places of detention for children and young people. These include youth offending institutions and secure health settings. The visits involve the collection of personalised data as well as aggregate data relating to the experiences of the children incarcerated within the establishment. The visits are unannounced and performed under the OCC's powers set out in section 2(8) of the Children Act 2004:

The Children's Commissioner or a person authorised by them may for the purposes of his function under this section at any reasonable time—
(a) Enter any premises, other than a private dwelling, for the purposes of interviewing any child accommodated or cared for there; and
(b) If the child consents, interview the child in private.

1.6 The OCC undertakes activity across a range of policy areas and commissions research from external agencies as relevant. The office also undertakes participation work with children and young people to gather evidence based on their views or experiences on a given topic.

1.7 Our response to this consultation is based on the experiences of the office and evidence gathered through these areas of work.

² More detail of the Inquiries including the full reports can be found on the OCC website:
<http://www.childrenscommissioner.gov.uk/>

2. What other agencies have told us about their decision-making regarding information-sharing

2.1 The overall reasons provided for not sharing data included:

- concerns about breaching confidentiality
- fear that sharing information may compromise the individual's safety or security
- fear of defamation of character
- lack of consent
- lack of awareness or confidence on what to do with regard to sharing data
- lack of clarity and guidance on information sharing
- lack of training or organisational support
- lack of infrastructure including IT systems and standardised practice
- the process of gathering and sharing information can be time consuming particularly if not done proactively
- fear that data will be compromised

2.2 Reasons provided by agencies and professionals for sharing data included:

- helps identify child at risk and in need of care and support
- helps identify and address the needs of children and young people
- enables agencies to operate in a more effective and efficient manner by building knowledge and developing a comprehensive evidence base.

2.3 Whilst reviewing data sharing guidance and the consultation paper, it appears that there is often clearer guidance on when not to share information than when to share it. This has been reflected in the responses given to the OCC by professionals and agencies who provided clearer and more detailed responses on why they didn't share information rather than why they did.

3. Evidence of national practice

3.1 We found an **inconsistent picture of how data is collected and shared** across the country.

3.2 55% of LSCBs nationally identified lack of information or intelligence sharing as an issue during evidence captures for the CSEGG Inquiry.

3.3 51% of police forces nationally identified lack of information or intelligence sharing as an issue during evidence captures for the CSEGG Inquiry.

3.4 Data sharing issues were experienced both within internal organisations and with external

parties. This was particularly evident in some health services where issues of data sharing were identified across internal departments as well as with external safeguarding agencies.

3.5 Particular concerns have been raised with regards to health agencies and their data sharing practices.

3.6 Data collected from sexual health, child and adolescent mental health services and substance misuse services during the CSEGG Inquiry indicates that agencies will in the majority of instances share data (i.e. make a referral to an external safeguarding agencies) when a child or young person discloses sexual abuse to them. However, the responses indicated that their propensity to do this reduces as a child goes from under 13 years old to the 14-15 age categories and even further between the ages of 16 to 18. In these age categories the health services stated that they are more likely to only share data where the explicit consent of the child or young person is provided. It is also clear that there is more resistance from a number of health services to share data when approached by other external safeguarding agencies (e.g. Police, children's services) to gather relevant data to help inform their safeguarding decisions. Those health agencies which would not share often cited concerns that children or young people would not return/ access services if they shared their data. This goes against national guidance as set out in the Adoption and Children Act 2004 and in *Working Together to Safeguard Children*.³What

3.7 In the CSEGG report however an example of how health data can be shared to identify children at risk and in need of care and protection has been highlighted.

3.8 We found that **different agencies have different methods** of recording data which can impact on their ability to share information effectively. Often this is due to a lack of means to share information or a lack of set criteria for sharing information or different IT systems.

3.9 14% of LSCBs stated when information is shared the paperwork and data is often incomplete. To our knowledge data collection is not reviewed and thus there is limited or no review of the quality of information shared and how consistent it is.

3.10 Agencies highlighted in the CSEGG Inquiry and in our studies on the impact of Parental Alcohol Misuse that when children and young people were referred to their services, the agencies referring to them failed to share information regarding the needs of that child or young person and thus how and why they need support. In some cases, if children's and adult's services would be involved in a child's or young person's case, they were failing to communicate and share important information. This was also identified as an issue when young people are transitioning from children's services to adult services. This impacted on the agency's ability to provide the most effective support for that child or young person.

4. Emerging issues and considerations resulting from OCC data captures

4.1 A number of issues/ considerations have arisen from the OCC's first-hand experiences of collecting data:

- **Clear inconsistencies in data sharing decision making:** Inconsistencies in whether personalised data was shared with the OCC was seen across individual services/agencies

³ Department of Education (2013) *Working together to Safeguard Children*. Available at: <http://media.education.gov.uk/assets/files/pdf/w/working%20together.pdf>

types (e.g. some substance misuse services shared data and others did not) and at an individual geographical (local authority) area (i.e. some agencies within a local authority shared and others did not). It could not be isolated to a singular strand and the inconsistency in decision making appeared to be a more systemic issue with regards to understanding and interpretation of legal/ practice requirements.

- **Clear inconsistencies in data collection and audit / review processes** when sharing it: there were inconsistencies in how data was captured and recorded, not only across agencies, but also by individual professionals. In addition, different agencies often have different systems to record information, including incompatible IT systems. When the decision to share data with the OCC was made, we found evidence of poor or little supervision regarding the actual dissemination of data. In many cases the information gathered and shared was not audited or reviewed for quality or accuracy against the specified requirements. This resulted in both the over and under sharing of data (including that of a personalised nature) to the OCC.
- **Inconsistencies in levels of security and confidentiality** applied to the transference and storage of data: We found through our experience of evidence gathering that there were inconsistencies on how data was sent to us and in what format. The level of security, confidentiality and precautions taken varied, as did the security levels of the IT systems being used by different agencies. In addition the majority of voluntary services and many local statutory agencies do not routinely have access to secure email facilities enabling the safe and effective transfer of personalised or restricted data.
- **The range and prioritisation of statutory gateways** to share data: A number of statutory gateways are in place around the sharing of different individual pieces of data. When OCC data collection exercises were being developed challenges were presented both in terms of identifying all the gateways / related restrictions around individual data sources and ultimately which takes precedence over which. For example, during the CSEGG Inquiry differing legal opinions were provided from OCC legal counsel and Department of Health legal teams regarding the collection of personalised data from sexual health services.
- **Cost and time implications:** Large time and cost implications have been linked to the formulation of data requirements for the organisation. This includes the costs both of obtaining legal counsel to formulate a privacy impact assessment and the interlinked time of liaising and working across relevant stakeholders which hold data or have authority (official or unofficial) over those that do.
- **Identifying and contacting the right people:** When trying to broker and gather data at a national level it is often challenging to identify the appropriate persons who own the data (particularly at a local government level) and obtaining their contact details. There is an absence of up to date and accurate centrally held distribution/ contact lists for key decision makers at a local level.

5. What we suggest needs to be done

5.1 All decisions on whether to share data relating to children and young people need to ensure that the best interests of the child is the primary consideration. Where there are child protection concerns, the presumption must be on sharing unless there are compelling reasons as to why this would be more harmful than sharing. The decision to share the information, how this will be done

and the likely consequences should be fully discussed with the child in a manner that is appropriate to their age and developmental level.

5.2 There need to be nationally and locally agreed information-sharing protocols that specify every agencies' and professional's responsibilities and duties for sharing information about children who are or may be in need of protection. This was a specific recommendation made in the CSEGG report. At the national level, this should be led and coordinated by the Home Office through the Sexual Violence against Children and Vulnerable People National Group. At the local level, this must be led by LSCBs. All member agencies at both levels must be signatories and compliance rigorously monitored.

5.3 The OCC recognises there are arguments for both supporting and opposing changes in legislation with regards to mandatory reporting (information sharing where a child or young person reports they are being abused). Further evidence gathering is required in order to fully understand the impact of this including the commissioning of a pilot before any actual changes to legislation are considered.

5.4 Clear structures and infrastructures where information can be safely and accurately collected, shared and securely stored are required. These include:

- having a clear system and guidance on data collection and gathering
- reviewing information gathered for accuracy and quality
- ensuring that data is stored and transferred in a safe and secure manner and in accordance with the level of security required for that type of data.

5.5 When collecting data and information, services need to be clear with the individual concerned that, should the information they disclose indicate that someone is at risk, it may be shared with the relevant authorities who can help, and consent sought and given from the outset unless to do so would place a child at greater risk. Children and young people with whom we have spoken on this issue said it was very important to be informed at the outset of an intention to share and to be kept informed thereafter on how their data was shared and for what purposes. A number of health services reported a concern that if they were to tell patients that they may share information this would be seen as a breach of confidentiality and patients would be deterred from attending. No evidence has been provided of such a consequence and we note that, we have examples of sexual health services that do share information when concerned about risk and this does not deter people from using their services.

5.6 Good leadership, training and guidance need to be put in place in order to ensure that professionals and agencies are not only sharing information responsibly but also in the best interests of the child and/or young person.

5.7 A review of the all the statutory gateways relating to individual data sources should be considered to enable a rationalisation of legislation or guidance as relevant.

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