

# **Wigan Safeguarding Adults Board - Information Sharing Agreement**

**Wigan Safeguarding Adults Board**

## **Information Sharing Agreement**

**March 2021**

# **Wigan Safeguarding Adults Board - Information Sharing Agreement**

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# Wigan Safeguarding Adults Board - Information Sharing Agreement

## 1. List of Partners to the Agreement

Wigan Council  
Greater Manchester Police  
Wigan Clinical Commissioning Group  
Greater Manchester Fire and Rescue Service  
Healthwatch  
Greater Manchester Community Rehabilitation Company  
National Probation Service  
HM Prisons  
NHS England  
Care Quality Commission  
North West Ambulance Service  
Wrightington, Wigan and Leigh Health Trust  
GMMH

## 2.0 Introduction

The purpose of this Information Sharing Agreement (ISA) is to allow information that satisfies the definition of personal information (as defined by the United Kingdom General Data Protection Regulation (UK GDPR) 2020, to be lawfully shared between members of the Wigan Safeguarding Adults Board (WSAB) and its constituent subgroups. It is anticipated that such information sharing will be to enable the WSAB to undertake and complete its statutory functions, particularly Brief Learning Reviews (BLRs) / Safeguarding Adults Reviews (SARs).

Each constituent area within the WSAB will have their respective Information Sharing Agreements or protocols to facilitate information sharing at an operational level. Therefore, this ISA is not intended to replace or supersede those operational information sharing arrangements.

## 3.0 Data Protection Legislation

### 3.1 *The Data Protection Act (DPA) (2018)*

The DPA 2018 is intended to make our data protection laws fit for the digital age when an ever increasing amount of data is being processed. It empowers people to take control of their data; supports UK businesses and organisations through this change and ensures that the UK is prepared for the future now we have left the EU.

### 3.2 *UK General Data Protection Regulation (UK GDPR)*

The UK GDPR took effect on 01 January 2021 and, alongside the Data Protection Act of 2018, governs all processing of personal data from individuals located inside the United Kingdom.

The UK GDPR provides the framework for the sharing of information and data. It should not be regarded as intended to prevent data sharing in itself, but as a set of

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compliances and principles that allows the lawful sharing of data, whilst protecting data subjects' rights.

There is an expectation that all signatories will have a comprehensive understanding of their obligations under UK GDPR and that the processing of personal data will comply with the principles of UK GDPR.

This document is designed to facilitate the sharing of information within the UK GDPR principles, between the constituent agencies for the lawful purposes of the Wigan Safeguarding Adults Board, as a statutory body established under the Care Act 2014.

### 3.3 *Personal Data*

The UK GDPR applies to 'personal data' meaning any information relating to an identifiable natural person who can be directly or indirectly identified in particular by reference to an identifier.

This definition provides for a wide range of personal identifiers to constitute personal data, including name, identification number, location data or online identifier, reflecting changes in technology and the way organisations collect information about people (see UK GDPR Article 6).

The UK GDPR applies to both automated personal data and to manual filing systems where personal data are accessible according to specific criteria. This could include chronologically ordered sets of manual records containing personal data.

Personal data that has been pseudonymised – e.g. key-coded – can fall within the scope of the UK GDPR depending on how difficult it is to attribute the pseudonym to a particular individual.

### 3.4 *Sensitive personal data*

The UK GDPR refers to sensitive personal data as "special categories of personal data" (see UK GDPR Article 9).

The special categories specifically include genetic data, and biometric data where processed to uniquely identify an individual.

Personal data relating to criminal convictions and offences are not included, but similar extra safeguards apply to its processing (see UK GDPR Article 10).

The sharing of personal information and data impacts upon the fundamental individual rights of privacy and confidentiality. This is particularly relevant in the provision of social care and health, where the information collected and shared by authorised departments and staff will be regarded as special category data.

## 4.0 **Agreed Terms and Definitions**

The principal terms used in this ISA are based upon the definitions laid out in Article 4 of the UK GDPR which include the following:

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**‘Controller’** means, a person who (either alone or jointly or in common with other persons) determines the purposes for which and the way any personal data are, or are to be processed

**‘Processor’** in relation to personal data, means any person (other than an employee of the controller) who processes the data on behalf of the data controller

**‘Personal data’** means data which relates to a living individual who can be identified. The UK GDPR applies to ‘personal data’ meaning any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier.

This definition provides for a wide range of personal identifiers to constitute personal data, including name, identification number, location data or online identifier, reflecting changes in technology and the way organisations collect information about people.

The UK GDPR applies to both automated personal data and to manual filing systems where personal data are accessible according to specific criteria. This could include chronologically ordered sets of manual records containing personal data.

Personal data that has been pseudonymised – e.g. key-coded – can fall within the scope of the UK GDPR depending on how difficult it is to attribute the pseudonym to a particular individual. Personal data relating to criminal convictions and offences are not included, but similar extra safeguards apply to its processing.

**‘Sensitive personal data’** contains further information identified in the Section such as ‘physical or mental health or condition’. The UK GDPR refers to sensitive personal data as “special categories of personal data”. The special categories specifically include genetic data, and biometric data where processed to uniquely identify an individual.

### 5.0 Scope

5.1 Each signatory will be deemed as a Controller for that information collected to fulfil its statutory functions and, as such, will be responsible for its own information governance compliance.

In the event of additional information sharing and processing agreements between any of the constituent agencies, evidence of compliance may be requested as part of the terms and conditions.

This position remains compatible with any constituent agencies acting in the capacity of Processor with regards to specific data arrangements and contracts.

5.2 This ISA is restricted to the constituent agencies and cannot be extended to other organisations without the expressed and auditable agreement of all partners.

This agreement is restricted to data which is collected and processed for the purpose of the Safeguarding Board and its related committees carrying out its statutory functions.

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Any modifications to the scope of this ISA must be agreed by all

This ISA does not negate or supersede any unilateral or bilateral data sharing agreements currently in operation by any of the signatories.

## 6.0 Key Safeguarding Legislation and Guidance

### 6.1 Care Act 2014

The Care Act provides for a number of 'gateways' that define both the types of information and the conditions for sharing. It also creates at least two clearly identifiable and broadly-framed implied statutory gateways for sharing information and data.

In particular, Sections 6 and 7 provide a clear legal basis for information and data sharing arrangements between local authorities and other bodies in the adult social care field.

The Section 45 gateway applies where a Safeguarding Adults Board makes a request of any person "to supply information to it, or to some other person specified in the request". Where such a request is made then, subject to certain prescribed conditions being satisfied, that person is subject to a duty to share the requested information. The Act does not specify any grounds for refusal.

The Section 79 gateway applies where a local authority authorises another person to carry out its functions (subject to certain functions which cannot be delegated: section 79(2)) under Part 1 of the Act.

S.14 of the Care and Support Statutory Guidance sets out the expectations of Safeguarding Adults Boards (SAB) in relation to information sharing at para.14.186:

*14.186 An SAB may request a person to supply information to it or to another person. The person who receives the request must provide the information to the SAB if:*

- the request is made in order to enable or assist the SAB to do its job*
- the request is made of a person who is likely to have relevant information and then either:*
  - the information requested relates to the person to whom the request is made and their functions or activities*
  - the information requested has already been supplied to another person subject to an SAB request for information*

This ISA does not moderate the above-mentioned obligations already imposed on the constituent agencies.

### 6.2 Applying Caldicott

In 2013, Dame Fiona Caldicott published an information governance review at the request of the Department of Health. The Department's Response, "Information: To share or not to share" was published March 2013. It resulted in the development of a

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new Caldicott principle that “the duty to share information can be as important as the duty to protect patient confidentiality”.

Recommendation 2 of the Caldicott Review specifically states: *“For the purposes of direct care, relevant personal confidential data should be shared among the registered and regulated health and social care professionals who have a legitimate relationship with the individual”*.

The Health and Social Care (Safety and Quality) Act 2015 (Commencement No. 1 and Transitory Provision) Regulations 2015 came into force on 1<sup>st</sup> October 2015.

Regulation 3 imposes a new duty on relevant health or adult social care commissioners or providers to share information held about an individual where they consider that the disclosure is likely to facilitate the care provided to the individual and is in their best interests.

In effect this puts the new Caldicott 2 principle onto a statutory footing and is a further underpinning of the ‘implied consent’ conditions.

However, this duty to share should be carried out subject to consideration of the duty of confidentiality under Common Law, and the UK GDPR.

It is recognised that there are several further legal statutes that are relevant to the sharing of data that each signatory will be aware of, and compliant with.

### 7.0 Lawful Basis For Processing The Data

The following are the UK GDPR lawful bases under which the signatories will be sharing and processing the personal data, including special categories of personal data and criminal offence data:

- Article 6(1)(e) Public task: the processing is necessary for the performance of a task in the public interest or in the exercise of official authority.
- Article 6(1)(c) Legal obligation: the processing is necessary in order to comply with the law.

The legislation underpinning these tasks and duties is set out in paragraph 6 above.

- Article 9 (2)(h) Health and social care treatment: processing is necessary for the purposes of the provision of health or social care or treatment or the management of health or social care systems and services
- Article 9(2)(g) Substantial public interest: the processing is necessary for reasons of substantial public interest.

For both Articles 9(2)(g) and 9(2)(h) the partners will rely on meeting the conditions in Schedule 1, Part 2, paragraph 6 and Schedule 1, Part 1, paragraph 2 of the DPA 2018 to process Special Category Personal Data in accordance with section 10(3) of the DPA 2018.

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- Article 9(2) (c) Vital interests: the processing is necessary to protect someone's life

The partners will also meet the conditions in Article 10 of the UK GDPR and section 10(5) of the DPA 2018 to process criminal offence data since processing is authorised under Section 10(5) and Schedule 1, Part 2, paragraph 6 of the DPA 2018.

### **8.0 Use and Storage of data on behalf of the Safeguarding Board**

8.1 The use of personal data by the WSAB will be limited to Brief Learning Reviews (BLRs) / Safeguarding Adult Reviews (SARs) and for the purposes of audits. Data related to the aforementioned activities will be collated; retained and disposed of by the WSAB Business Unit. This unit is hosted by Wigan Council and is therefore the employees within that unit are subject to the policies, procedures practice and supervision of that authority, including those that are specific to data protection.

8.2 Data collected and retained that relate to individuals; their families and advocates collected as part of the Brief Learning Review (BLR) / Safeguarding Adult Review (SAR) process will be securely retained within the records maintained by the Wigan SAB Business Unit. Retention disclosure and destruction of this data will be in line with Wigan Council data protection policy and retention schedules. Publication of an SAR will be the subject of specific consideration by the Wigan SAB in line with their BLR / SAR policy.

8.3 Data collected and retained that relates to audits undertaken on behalf of the WSAB will be retained and destroyed in accordance with Wigan Council data protection policy and retention schedules Audit data will be redacted wherever this is practicable. Any audit related narrative will be anonymised. Retention of audit data will be confined to the duration of the audit and securely destroyed immediately after the audit is completed. Personal data will not feature in the final analysis of any audit.

### **9.0 Data Sharing and Process of Sharing**

9.1 Personal data collected as part of the lawful activities of the board described at paragraph 6 above, must be shared only when necessary and proportionate to the proper aims of those activities. Data may only be shared by those with the authority to do so using approved and secure methods and only for the purpose of supporting Care Act functions.

9.2 Individuals in control of personal data must follow the relevant data protection policy of their respective organisation while such data is in their possession.

9.3 Should further guidance be required in relation to information sharing appropriate legal advice should be sought from the relevant organisations Legal Services or Information Governance teams.

## **10. Loss or Unauthorised Release**



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10.1 Any loss or unauthorised release of personal data must be reported to the Data Protection Officer within all partner organisations no later than 48 hours after the loss or unauthorised release is identified/comes to any partner's attention. In the case of a personal data breach, the relevant Controller shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the information Commissioner unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification to the supervisory authority is not made within 72 hours, it shall be accompanied by reasons for the delay.

10.2 The partners acknowledge that any loss or unauthorised release of the personal data can be treated as valid grounds for immediately terminating this agreement by any party.

### **11.0 Freedom of Information (FOIA)**

The partners acknowledge that Wigan Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with their information disclosure requirements in relation to WSAB.

### **12.0 Subject Access Request/UK GDPR rights**

Individuals have the rights accorded by Article 15 of the UK GDPR and Sections 45-47 of the Data Protection Act 2018, including the right for confirmation of and access to a copy of the information held about them. The partners as independent Controllers would each be responsible in responding to any subject's rights requests each receives and also ensuring their privacy notice information is up to date.

### **13.0 Accuracy of Data**

13.1 The partners will ensure accurate data is shared. WSAB will check the quality of these details and ask the partner providing it to check the information supplied if it appears inaccurate.

13.2 Each time new personal data is provided WSAB will use this to over-write previous data provided.

### **14.0 Authorised Representatives**

The partners will each appoint an Authorised Representative to be the primary point of contact in all day-to-day matters relating to this Agreement

### **15.0 Review**

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15.1 Unless otherwise triggered by a request for variation or withdrawal or, a data incident or concern, this ISA will be reviewed bi-annually.

15.2 A review may also be requested by any signatory in response to an Information Commissioner instruction/notice, a material breach of its obligations by a partner, statutory or judicial proceedings or changes to legislation that manifestly affect the scope and effect of this ISA.

### **16. Commencement and Termination**

16.1 This ISA shall commence upon signature by the partners and shall continue in effect until the end of April 2024.

16.2 The partners may, by mutual consent in writing, agree to extend or amend this ISA for a period of time to be agreed between them.

16.1 Any partner may withdraw from this ISA upon one month's written notice to the others.

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### 17.0 Constituent partner agencies agreeing to the Information Sharing Agreement for the sharing and processing of information

Wigan Council

Name.....

Position.....

Date.....

Greater Manchester Police

Name.....

Position.....

Date.....

Wigan CCG

Name.....

Position.....

Date.....

GMFRS

Name.....

Position.....

Date.....

Healthwatch

Name.....

Position.....

Date.....

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The Probation Service

Name.....

Position.....

Date.....

HM Prisons

Name.....

Position.....

Date.....

NHS England

Name.....

Position.....

Date.....

Care Quality Commission

Name.....

Position.....

Date.....

North West Ambulance Service

Name.....

Position.....

Date.....

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Wrightington, Wigan and Leigh NHS Foundation Trust

Name.....

Position.....

Date.....

Greater Manchester Mental Health NHS Trust

Name.....

Position.....

Date.....

Wigan Safeguarding Board Independent Chair

Name.....

Date.....

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