**Appendix D: Legislation**

**Data Protection Act; Schedules 2 and 3**

The conditions for processing are set out in Schedules 2 and 3 to the Data Protection Act. Unless a relevant exemption applies, at least one of the following conditions must be met whenever you process personal data:

**Schedule 2**

* The individual whom the personal data is about has consented to the processing.
* The processing is necessary:
	+ in relation to a contract which the individual has entered into; or
	+ because the individual has asked for something to be done so they can enter into a contract.
* The processing is necessary because of a legal obligation that applies to you (except an obligation imposed by a contract).
* The processing is necessary to protect the individual’s “vital interests”. This condition only applies in cases of life or death, such as where an individual’s medical history is disclosed to a hospital’s A&E department treating them after a serious road accident.
* The processing is necessary for administering justice, or for exercising statutory, governmental, or other public functions
* The processing is in accordance with the “legitimate interests” condition.

**Schedule 3**

At least one of the conditions listed above must be met whenever you process personal data. However, if the information is sensitive personal data, at least one of several other conditions must also be met before the processing can comply with the first data protection principle. These other conditions are as follows:

* The individual whom the sensitive personal data is about has given explicit consent to the processing.
* The processing is necessary so that you can comply with employment law.
* The processing is necessary to protect the vital interests of:
	+ the individual (in a case where the individual’s consent cannot be given or reasonably obtained), or
	+ another person (in a case where the individual’s consent has been unreasonably withheld).
* The processing is carried out by a not-for-profit organisation and does not involve disclosing personal data to a third party, unless the individual consents. Extra limitations apply to this condition.
* The individual has deliberately made the information public.
* The processing is necessary in relation to legal proceedings; for obtaining legal advice; or otherwise for establishing, exercising or defending legal rights.
* The processing is necessary for administering justice, or for exercising statutory or governmental functions.
* The processing is necessary for medical purposes, and is undertaken by a health professional or by someone who is subject to an equivalent duty of confidentiality.
* The processing is necessary for monitoring equality of opportunity, and is carried out with appropriate safeguards for the rights of individuals.

**Data Protection Act 1998: Guidance from the Financial Framework for the Expanded Troubled Families Programme (Department for Communities and Local Government)**

As most of the data to be processed for the purpose of identifying families will be “personal data”[[1]](#footnote-1) within the definition of the Data Protection Act, and in many cases this data may be considered “sensitive personal data”[[2]](#footnote-2) within the definition of the Data Protection Act it will be important for local authorities to ensure that the processing of personal data is carried out in accordance with the data protection principles set out in Schedule 1 to that Act.

The first of these principles requires that personal data must be processed fairly and lawfully and, in particular, that a condition of Schedule 2 is met. Where the data to be processed is sensitive personal data, a condition of Schedule 3 must also be met. One of the conditions an authority may rely on to process personal data under these Schedules is the individual’s consent (or in the case of sensitive personal data, explicit consent) to that processing. However, where it is not possible for an authority to seek consent in advance of processing personal data there are other conditions for processing which an authority may seek to rely on. For instance, when seeking to satisfy a Schedule 2 condition, authorities may look to paragraph 5(d) of the Schedule which allows for processing where it is necessary for the exercise of a function of a public nature exercised in the public interest by any person.

The conditions to allow for the processing of sensitive personal data under Schedule 3 are more limited and careful consideration will need to be given to the applicability of any particular condition. For instance, where it is not possible to seek explicit consent to processing, it may be possible for authorities to rely upon the condition set out in para 7(1)(b) of Schedule 3. This allows for processing where it is necessary for the exercise of any functions conferred on any person by or under an enactment and you will need to consider whether the information is needed in order that you can carry out a function which you have a duty or power to carry out under legislation.

It may also be possible for you to rely on Article 4 of the Data Protection (Processing of Sensitive Personal Data) Order 2000, which provides for processing which (a) is in the substantial public interest; (b) is necessary for the discharge of any function which is designed for the provision of confidential counselling, advice, support or any other service; and (c) is carried out without the explicit consent of the data subject because the processing is necessary in a case where consent cannot be given by the data subject; the data controller cannot reasonably be expected to obtain the explicit consent of the data subject; or it must be carried out without the explicit consent so as not to prejudice the provision of that counselling, advice, support or other service

**The Information Commissioner’s view of data sharing in the context of the “Troubled families” initiative**

While the general public policy questions around sharing information for the purposes of assisting “troubled families” are not considerations for the ICO, we recognise that there such sharing will have to meet the requirements of the Data Protection Act (the Act).

The key issue to consider is whether processing information relevant to this initiative can be done in such a way so as to meet the requirements of the data protection principles and in particular the first data protection principle. This states that personal (and sensitive personal) data must processed “fairly and lawfully” and further must not be processed unless a Schedule 2 condition can be satisfied, and in the case of sensitive personal data, unless a Schedule 3 condition can be also be met.

The first point to consider is whether a data controller has the lawful authority to share/disclose such information. For example in the Localism Act 2011 local authorities have been given a general power of competence (provided for in s1 of the Act). It gives local authorities the same power to act that an individual generally has and provides that the power may be used in innovative ways, that is, in doing things that are unlike anything that a local authority - or any other public body - has done before, or may currently do. We consider that in terms of information sharing this will allow local authorities to do so. Other public sector bodies might not have the same ability/power. It will be up to these organisations to determine whether they have the necessary legal powers (either implied or statutory) to share information.

Once it has been established that a data controller does have the “lawful” power to share personal data it would then need to satisfy a Schedule 2 condition for processing and where sensitive personal data is involved, a Schedule 3 condition. It should be remembered though that even where a condition or conditions for processing can be met this will not on its own ensure that the processing is fair or lawful. These issues need to be considered separately.

It is also worth briefly looking at the issue of “consent” To us “consent” means just that. For example someone is asked if their information can be used in a certain way. If they agree then fine, but if they refuse their consent, then in our view, their wishes should be respected and the information should not be used. What we dislike is where “consent” is sought, it is refused but the data controller goes ahead anyway. That does not fit with how we view consent nor does it meet the Act’s fair processing requirements.

In addition it needs to be remembered that in data protection terms “consent” is but one condition that could be relied on to process personal and sensitive personal data. There are several other conditions that it may be possible to rely on depending on the purpose of the processing (and which are set out in Schedule 2 and in Schedule 3).

In terms of meeting a Schedule 2 condition there are two that could be relied on. In the circumstances of the “troubled families” initiative these are:

5. The processing is necessary –

(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

or

6. – (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

Meeting a Schedule 3 condition is more difficult (and which is the way it should be). However in these circumstances we consider that a condition provided for in SI 417 (2000) could be met, namely:

The processing –

(a) is in the substantial public interest;

(b) is necessary for the discharge of any function which is designed

for the provision of confidential counselling, advice, support or any

other service; and

(c) is carried out without the explicit consent of the data subject

because the processing –

(iii) must necessarily be carried out without the explicit

consent of the data subject being sought so as not to

prejudice the provision of that counselling, advice, support or

other service.

What will be important is the provision of fair processing information to the individuals involved, with more information being required where the data sharing is more extensive. Such material should make it clear to individuals about how their information is being used and where they can find out more about the processing and/or object to the processing (the latter point covering s10 of the DPA).

It is also important to ensure that the other DP principles are complied with e.g. the information shared needs to be relevant and not excessive, it must be accurate and kept up to date, not kept for longer than necessary and kept secure.

**Problem 1: Parents and children involved in crime and/or anti-social behaviour**

**Crime and Disorder Act, section 115:** This provision allows the police, local authorities, health authorities, providers of probation services and other relevant agencies to share information about any person for a purpose linked to any provision under the Crime and Disorder Act, including where it is necessary for crime reduction.

**Crime and Disorder Act 1998, Section 17**: – recognises that local authorities have responsibility for the provision of a wide and varied range of services to and within the community. In carrying out these functions, section 17 places a duty on them to do all they can to reasonably prevent crime and disorder in their area.

**Crime and Disorder Act 1998, Section 37** *-* Everyone carrying out youth justice functions must have regard to the aim of the youth justice system to prevent offending by children and young people.

**Offender Management Act, Section 14:** Permits the sharing of data that would assist with the supervision or rehabilitation of offenders.

**Problem 2 and 3: Children who have not been attending school regularly and children who need help**

**Education (Information about Individual Pupils) (England) Regulation 2013, S.I. 2013/94:** requires maintained schools and pupil referral units to share information about pupil attendance

**School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012, Part 4, Section 23:** Allows Academies to collect school census data and share this with local authorities

**Education Act 2002, s21** *-* Duty on the governing body of a maintained school to promote the well-being of pupils at the school. Well-being in this section is defined with reference to section 10 of the Children Act 2004. This duty extends the responsibility of the governing body and maintained schools beyond that of educational achievement and highlights the role of a school in all aspects of the child’s life.

**Education Act 2002, s175** *-* Duty on maintained schools, further education institutions and independent schools to make arrangements to carry out their functions with a view to safeguarding and promoting the welfare of children.

**Children Act 1989 s17** - Local authorities can request information from any of the list (detailed under s47 below) where it will help to provide services for children in need, or any other functions under part 3 of the Children Act 1989.

**Children Act 1989, s47**-Section 47 places a duty on local authorities to make enquiries where they have reasonable cause to suspect that a child in their area may be at risk of suffering significant harm. Section 47 states that unless in all the circumstances it would be unreasonable for them to do so, the following authorities must assist with these enquiries:

* + - any local authority;
		- any local education authority;
		- any housing authority;
		- any health authority;
		- any person authorised by the Secretary of State.

**Children Act 2004, s10** *-* Duty to co-operate. Duty on each children’s services authority to make arrangements to promote co-operation between itself and relevant partner agencies to improve the well-being of children in their area in relation to:

* + - physical and mental health, and emotional well-being;
		- protection from harm and neglect;
		- education, training and recreation;
		- making a positive contribution to society;
		- social and economic well-being.

Partners must co-operate with the local authority to make arrangements to improve the well-being of children. The relevant partners are:

* + - Shared services from neighbouring councils;
		- Police;
		- Probation Service;
		- Youth Offending Service;
		- Strategic health authorities;
		- Shropshire Community Health Trust;
		- Shrewsbury and Telford Acute Trust
		- Learning and Skills Council.
		- Registered social landlords
		- Voluntary agencies

The section 10 guidance states that good information sharing is key to successful collaborative working and under this section agencies should have arrangements in place to ensure information is shared for strategic planning purposes and to support effective service delivery.

**Children Act 2004, s11** - Duty on key persons and bodies to make arrangements to ensure their functions are discharged with regard to the need to safeguard and promote the welfare of children. The key people and bodies are:

* + - Local authorities (including district councils);
		- Police;
		- Probation Service;
		- Bodies within the National Health Service (NHS);
		- Connexions;
		- Youth Offending Service
		- Governors/directors of prisons and young offender institutions;
		- Directors of secure training centres;
		- British Transport Police.

Agencies should:

* + - carry out their existing functions in a way that takes into account the need to safeguard and promote the welfare of children and
		- ensure services they contract out to others are provided having regard to the need to safeguard and promote the welfare of children.

In order to safeguard and promote the welfare of children, arrangements should ensure that:

* + - all staff in contact with children understand what to do and are aware of the most effective ways of sharing information if they believe a child and family may require targeted or specialist services in order to achieve their optimal outcomes;
		- all staff in contact with children understand what to do and when to share information if they believe that a child may be in need, including those children suffering or at risk of significant harm.

 **Problem 4: Adults out of work or at risk of financial exclusion or young people at risk of worklessness**

**Welfare Reform Act 2012:** Allows the Department for Work and Pensions to share data with local authorities (without informed consent) for the sole purpose of identifying troubled families.

**Memorandum of understanding -** A statement of commitment on both sides that the data is handled and secured properly (see Appendix X)

**Education and Skills Act 2008, Section 68 and 70:** Local authorities have a statutory duty to encourage and assist young people to participate in education or training.

**Localism Act 2011, Section 1:** Local authorities may choose to share information regarding 16 to 19 year olds who are not in any form of education, employment or training internally further to their general powers of competence under this.

**Education Act 1996, Sections 537A(6) and 537A(9):** Information about 16 to 19 year olds who are not in any form of education, employment or training could be defined as individual pupil information under section 537A(9) of this Act so could be shared by local authorities using section 537A(6) of this Act.

**Local Government Act 1972 s111** - A local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

**Local Government Act 2000 s2** - Section 2(1) Local Government Act 2000 states that a local authority has ‘power to do anything which they consider is likely to achieve any one or more of the following objects (Provided this is not specifically forbidden by another statute):

(a) the promotion of improvement of the economic well-being of their area;

(b) the promotion or improvement of the social well-being of their area;

(c) the promotion of improvement of the environmental well-being of their area’.

**Problem 5: Families affected by domestic violence and abuse**

**Crime and Disorder Act, section 115:** This provision allows the police, local authorities, health authorities, providers of probation services and other relevant agencies to share information about any person for a purpose linked to any provision under the Crime and Disorder Act, including where it is necessary for crime reduction.

**Domestic Violence, Crime and Victims Act 2004, section 54:** Information can be disclosed by police to victim support groups (with consent). The data can also be shared between agencies via Information Sharing Agreements. Any information shared between local services and local authorities should conform to IDVA (Independent Domestic Violence Adviser) Protocol, MARAC (Multi-Agency Risk Assessment Conference) Protocol and Specialist Domestic Abuse Court (SDAC) Procedures.

**Problem 6: Parents and children with a range of health problems**

**Children Act 1989 s17 and s47**- As outlined above.

**Children Act 1989 s 27** – Authorises Children’s services in meeting their duties to seek assistance from health professionals

**Children Act 2004, s10** – As outlined above

**National Health Service Act 2006, s82** *-* Duty on NHS bodies and local authorities to co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.

**Children Act 1989, s27** - Section 27 of the Children Act 1989 authorises children’s services, in meeting their duties, to seek assistance from health professionals.

1. means data which relate to a living individual who can be identified – (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual. [↑](#footnote-ref-1)
2. personal data consisting of information as to - (a) the racial or ethnic origin of the data subject, (b) his political opinions, (c ) his religious beliefs or other beliefs of a similar nature, (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992), (e) his physical or mental health or condition, (f) his sexual life, (g) the commission or alleged commission by him of any offence, or (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings. [↑](#footnote-ref-2)