



Report for:	CYPS Scrutiny Panel 16 July 2013	Item Number:	
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Title:	Update on AB and CD Judgment
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Report Authorised by:	Lisa Redfern Deputy Director
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Lead Officer:	Iain Low
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Ward(s) affected:	Report for Key/Non Key Decisions:
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1. Describe the issue under consideration

- 1.1 On 13th March 2013, the High Court found that the London Borough of Haringey acted unlawfully in the decision to undertake an enquiry under section 47 of the Children Act 1989 (“the section 47 enquiry”) and in not seeking the consent of the parents before approaching their child’s GP and school for information. Further, the request to the GP contained erroneous information.
- 1.2 A S47 enquiry is carried out where a child is suspected to be suffering, or likely to suffer, significant harm; the local authority is required under s47 of the Children Act 1989 to make enquiries to enable it to decide whether it should take any action to safeguard and promote the welfare of the child.

2. Cabinet Member introduction

- 2.1 The High Court decision resulted in the Children and Young People’s Service (CYPS) revising in the interim the information sharing protocol with all LSCB partners.
- 2.2 The Director of Children and Young People’s Service has instigated measures designed to examine and where necessary, improve on social work practice and procedures, this includes:



- a review of procedures that support our assessment of children in need
- external expert data protection advice
- input from our Internal Audit Team to audit data compliance within the Multi Agency Safeguarding Hub (MASH) in this financial year
- informing both the Department of Education and the information Commissioner
- commissioning two independent reviews of cases.

2.3 There will also be a review of information sharing documents including the MASH Information Sharing Agreement and Governance to ensure that the issue of consent is sufficiently addressed.

3. Recommendations

3.1 Members are asked to note the contents of this report and consider whether an update on this issue is required.

4. Alternative options considered

4.1 It is recommended that an independent organisation carries out the two reviews.

5. Background information

5.1 The two reviews commissioned are for (1) S47 Child Protection Investigations and (2) Gaining Consent.

The comprehensive review of S47 Child Protection investigations will audit an appropriate and representative sample amounting to 30% of section 47 enquiries in the First Response Service between May 2011 and March 2013 and will include:

- a review of the process and procedure followed and whether they comply with approved social work practice and procedure;
- a review as to whether parental consent was sought to share information for 10% of the sample. If not, the reasons why and whether sufficient records were kept of such decision;
- a review of decisions made, in particular, on threshold and reasonableness of such decision;
- a review of whether there were appropriate records of the enquiries and the outcomes and whether they comply with best social work practice and procedure.

5.2 The review will report back to CYPS's Senior Leadership Team (SLT) and make recommendations if required on the following:-



Haringey Council

- effective practice and procedure for the conduct of section 47 enquiries;
 - effective practice and procedure for considering consent to share information; and
 - to highlight any issues of concern regarding practice.
- 5.3 The Consent review will audit contacts from agencies within a given date range and where the thresholds for Children's Social Care ([Haringey LSCB Thresholds](#)) were not met for the service to undertake:
- an offer of Early Help
 - S17 Children Act 1989 Assessment
 - S47 Children Act Child Protection Investigation
 - action that resulted in a child or young person becoming 'looked after' by the Local Authority.
- 5.4 The review will be conducted within the legislative framework governing Children's Social Care, the London Child Protection Procedures (2010), all local policies and procedures within LB Haringey's CYPS.
- For the identified contacts, the reviewers will confirm the reason for the contact to FR, and against Information Sharing: Guidance for Practitioners and Managers [Information Sharing - Children and young people](#) (2008), identify those where gaining parental consent might have been reasonably overridden; this will leave a number of cases where the Service will need to consider what action to carry out.
- 5.5 An independent organisation has been identified to carry out the review and is on track to commence week beginning 24th June 2013.
- 5.6 Further communication has taken place with the Office of the Information Commissioner and they are of the view that any discussions with their Office should take place after we have completed the reviews; we will instigate a meeting following on from the reviews.
- 5.7 The Council has received legal advice on information sharing and consent. The advice re-affirms the existing statutory and other guidance on information sharing. The new Working Together Guidance (2013) emphasises the importance of early information sharing and that fear about sharing information cannot be allowed to stand in the way of promoting child welfare and protecting child safety. The 2013 Guidance endorses the Information Sharing: Guidance for Practitioners and Managers (2008) which lists as an example circumstances in which the Council can share information without parental consent and is not limited to S.47 investigations. The 2008 Guidance states¹

¹ At Paragraph 3.36 – 3.38 and Pages 21 -22



When consent should not be sought

3.36 *There will be some circumstances where you should not seek consent from the individual or their family, or inform them that the information will be shared. For example, if doing so would:*

- *place a person (the individual, family member, yourself or a third party) at increased risk of significant harm if a child, or serious harm if an adult; or*
- *prejudice the prevention, detection or prosecution of a serious crime; or*
- *lead to an unjustified delay in making enquiries about allegations of significant harm to a child, or serious harm to an adult.*

3.37 *You should not seek consent when you are required by law to share information through a statutory duty or court order.*

3.38 *Even where you do not have consent to share confidential information, you may lawfully share it if this can be justified in the public interest. Seeking consent should be the first option. However, where consent cannot be obtained or is refused, or where seeking it is inappropriate or unsafe as explained at 3.36, the question of whether there is a sufficient public interest must be judged by the practitioner on the facts of each case. Therefore, where you have a concern about a person, you should not regard refusal of consent as necessarily precluding the sharing of confidential information.²*

5.8 The Council can adopt the approach set out in the 2008 Guidance when considering whether to seek or share information without parental consent. The Council must always have in mind and comply with the seven golden rules for information sharing:

- Remember that the Data Protection Act is not a barrier to sharing information** but provides a framework to ensure that personal information about living persons is shared appropriately.
- Be open and honest** with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so.
- Seek advice** if you are in any doubt, without disclosing the identity of the person where possible.
- Share with consent where appropriate** and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, that lack of consent can be overridden in the public interest. You will need to base your judgement on the facts of the case.

² Paragraphs 3.37 and 3.38 were not referred to in the advice but are also relevant.



- e) **Consider safety and well-being:** 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.
- f) **Necessary, proportionate, relevant, accurate, timely and secure:** Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.
- g) **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.

5.9 Under the oversight of Legal Services, the following action is being considered with regard to information sharing:

- a) A review of all existing information sharing documents including the MASH documentation;
- b) To ensure the documents adequately address the issue of consent and take into account the new Working Together Guidance;
- c) To ensure the revised and improved documents are approved by the appropriate Committee or body;
- d) To prepare an easy guide for the public on the Council's information sharing arrangement; and
- e) Ensure that relevant staff are fully aware of and trained on any new or revised information sharing documents.

6. Comments of the Chief Finance Officer and financial implications

The cost of undertaking the reviews referred to above will be met from within existing budgets for the Children and Young people's Service.

Where the Council acts outside the law, there is a risk of further financial implications.

7. Head of Legal Services and legal implications

7.1 The legal advice referred to in Paragraph 5.7 is covered by legal professional privilege. The action referred to in the Report is intended to improve social work practice and procedure and ensure compliance with statutory requirements and guidance.

8. Head of Procurement Comments

8.1 The identification of the organisation to carry out the review has followed Council Procurement procedures.