
Information Sharing Databases in Children' Services

Consultation Response

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INFORMATION SHARING DATABASES IN CHILDREN'S SERVICES: CONSULTATION ON RECORDING PRACTITIONER DETAILS FOR POTENTIALLY SENSITIVE SERVICES AND RECORDING CONCERN ABOUT A CHILD OR YOUNG PERSON

THE BAAF RESPONSE

1. The British Association for Adoption and Fostering (BAAF Adoption & Fostering) is the leading charity and membership organisation for fostering and adoption in the UK, we:

- promote the highest standards of child-centred policies and services
- speak out on behalf of looked-after children
- influence UK-wide policy and legislation
- provide much-needed information and advice
- promote greater public understanding of adoption and fostering
- support our members in their work

BAAF's main activities are the development, promotion and advocacy of best policy and practice; the provision of advice and information to our members and to the general public; training, consultancy and seminars; child placement services including the publication of our flagship monthly newspaper, *Be My Parent*. We also publish a quarterly professional journal, *Adoption and Fostering*, books and guides for professionals, academics, parents and carers and research studies. The main users of our services are our members comprising local authorities across England, Scotland and Wales, voluntary adoption agencies, independent fostering agencies and also individual social work, legal and medical professionals and carers. BAAF has several special interest groups, Health, Legal, Research, and Social Work, and this response has been informed by their input.

2. GENERAL COMMENTS

2.1 Our responses to the specific consultation questions are brief. This is because we have profound misgivings about the entire proposal for the information-sharing database. We have no confidence that its establishment will achieve real improvements in services to children and families – certainly not the significant improvements that would be required to justify the colossal likely expenditure of money, time and professional resources. On the contrary, we fear that some aspects of the proposal would actually be damaging in that they risk having an adverse effect on the relationship between professionals and the users of the services.

2.2 Human Rights and Data Protection Issues

The Consultation paper seeks views only on certain aspects of the recording of practitioner details for potentially sensitive services, and the recording of concerns. It does not address underlying issues of the

recording of the “basic data” about every child in the country, without the explicit consent of the child/young person or their parent or guardian. It is suggested in paragraph 2.19 and 2.20 that the imposition of a legal obligation on practitioners to disclose information will itself justify what would otherwise be a breach of data protection principles. This is disingenuous. The question that needs to be asked is whether the government can be justified in imposing on practitioners such an obligation when no evidence is produced to show that this is necessary.

Article 8 of the European Convention on Human Rights enshrines the right to respect for private and family life. Interference with the exercise of this right can be justified insofar as it is “in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. Merely to provide that an interference with Article 8 rights is “in accordance with the law” (by imposing a legal obligation to record information) does not in itself satisfy the second limb, that the interference is necessary. In many, probably most, cases, we acknowledge that consent to the recording of the information would not be refused but paragraph 2.18 of the consultation paper proposes that consent would not be sought in every case.

The provisions of Article 8, and existing case law and practice, make it clear that duties of confidentiality may be overridden by the need to protect a child at risk of significant harm. This, we maintain, is an appropriate position, and we cannot see in these proposals any justification for brushing aside the right of an individual (or his or her parent or guardian) to give or withhold consent to the sharing of information where the overriding considerations of child protection are not involved.

2.3 **Better Use of Resources**

As BAAF pointed out in response to the Green Paper “Every child matters”, where the existing system fails children, parents are more often likely to complain that services are unavailable, or that the threshold for entitlement to services is set too high. The establishment of the database will not in itself do anything to improve the availability of services – rather it will direct resources away from the provision of services to a monitoring system of questionable usefulness.

2.4 **Professional/Client Relationship**

Where parents seek help for their children, or young people themselves approach professionals for help, they are entitled to expect that information they impart to the professional concerned will be treated in confidence and will only be disclosed to others with the consent of the person giving the information or where disclosure without consent is necessary for the safeguarding of the child. To alter

this framework threatens to undermine the trust between client and professional.

The consultation paper places great weight on the fact that the database will include only the factual information that a particular professional is involved with the child and, in some circumstances that he or she has concerns and a “flag” is entered. Paragraph 3.25 of the consultation paper makes it clear that it is still expected that where a practitioner who has registered a concern is contacted by another professional for information he or she “will need to consider the legal position in each instance before disclosing details which may for example be subject to the common law duty of confidentiality.” We agree that this consideration is necessary but it follows that such consideration is necessary **before** registering the concern since it would be pointless to have registered it if the practitioner concerned is then constrained from disclosing information to another practitioner who reacts to such a registration. Good practice would dictate that in the circumstances outlined in paragraph 3.23 where it is proposed that the practitioner should raise an indicator of concern, he or she will already have discussed with the child/young person and/or parent what he or she is proposing to do and why, and has obtained their agreement. He or she would need to have established with the client what the expectations were about the further sharing of information and to have respected their wish for not sharing the information unless there was an overriding need to do so. Any undermining of the proper relationship of trust between professional and service user will run the obvious risk that those who need services will in some circumstances be reluctant to seek the help they need.

3. **ANSWERS TO THE CONSULTATION QUESTIONS**

Question 1: Do you agree with the Government’s view at 3.12 on whether practitioner details should be included as a matter of course, or made subject to consent?

The question is ambiguously worded. These details should not be entered without consent unless the concern is sufficient to trigger a child protection referral – in which case other action will in any case be more appropriate (as outlined in paragraph 3.6).

Question 2: If you disagree, for each of the practitioners listed at 3.5, which option (1,2 or 3) do you think should be adopted?

Option 2 is the most appropriate but it should be clear that in the very exceptional circumstances where an entry is made without consent the child/parent is at least informed that this has been done.

Question 3: Do you agree with the Government’s initial views at 3.13 on whether access to practitioner contact details should be

available to all users of the databases, or restricted only to certain categories of users?

Again the question is ambiguously worded. Provided option 2 is accepted as the appropriate way forward in response to question 2, option B or C would be acceptable.

Question 4: If you disagree, for each of the practitioners listed at 3.5, which option at 3.10 (A, B, or C) should be adopted?

See above

Question 5: Are there other types of practitioners or other options which should be taken into account?

CAFCASS officers should be included in the list at 3.5. What is needed also is clarity as to whether it is intended that it should be the responsibility of an individual practitioner or of an agency to make entries on the database. For example in social services departments, a child may be seen by members of the duty team and may not have an allocated key worker. Confusion is also possible in respect of general practitioners' group practices and there are no doubt other examples.

Question 6: What issues need to be addressed to implement these proposals successfully?

Please see our general comments. We very much hope that these proposals will not be implemented in any event.

Question 7: Do the proposals on indicators of concern address the issues that have been identified?

Only partially. For example, the confident prediction in paragraph 3.28 (iv) that out of date "flags" will be removed promptly is probably over optimistic.

Question 8: What issues need to be addressed to implement these proposals successfully?

As mentioned above clarity is needed as to whether responsibility for making entries is that of individual practitioners or of agencies.

The Guidance referred to in paragraph 2.25 is a necessary prerequisite to any such system.

Paragraph 2.15 proposes that the basic details relating to each child will include their name, address, date of birth, gender, a unique identifying number and "the name and contact details of a person with parental responsibility or care of the child". This seems a recipe for

confusion. Most children are likely to have at least two people with parental responsibility for them who may or may not be their carers. What is it proposed should be entered where a child is looked after by a local authority and would this be different according to whether or not he or she was in care, or whether a foster carer was caring for the child. How would confidentiality of adoptive placements be maintained? There is a whole range of practical issues that while they may appear trivial would actually make the operation of this database complicated and confusing.

Paragraph 3.5 suggests that the practitioners in the targeted and specialist services “could” record their contact details. Is it proposed that they would be **required** to, and in what circumstances?

Question 9: Is there any better terminology that could be used to describe the indicator a practitioner puts on a child or young person’s record, rather than a “concern”?

Since it seems to be proposed (paragraph 3.23) that there are certain specific circumstances where a practitioner should put a flag against his or her name on the child’s record, it would seem more appropriate to use a form of words related to those three circumstances. Perhaps an indicator of “involvement” would be sufficient. In any case, as stated above, it is essential that the child or young person and their parent are kept informed about what entry has been made on the database.

Question 10: General Comments

Please see our general comments at paragraph 2 of our response. We also append the relevant extract from BAAF’s response to the Green Paper “Every Child Matters”.

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19 January 2005

Appendix

Extract from BAAF's Response to the Green Paper, "Every Child Matters" November 2003

CHAPTER 4 - EARLY INTERVENTION AND EFFECTIVE PROTECTION

1. Most parents want their children to grow up as healthy, happy and fulfilled people. They will go to extraordinary lengths to ensure that this is so. Universal mainstream services are critically important in this - particularly health and education. Equal access to high quality services is something that most parents both need and want. State provided services have had almost universal support for a generation of families. Education in particular connects children to wider society through their contact with friends, sport, and leisure activities as well as the general benefits of education.
2. Where there is a problem, it is in one of the following four areas –
 - unequal access to required services
 - high thresholds of eligibility for services
 - poor quality services that do not meet needs
 - unwanted direct state intervention where children are deemed to be at risk
3. The Laming Report highlighted an important debate that centres around two issues –
 - The State's duty to protect and promote children's development
 - The right to privacy and family life as a human rights issue. Society has accepted that where there is a prima facie case, intrusion into family life to protect children is warranted.
4. The greater majority of children do very easily come into contact with mainstream services such as health and education and as a result, where there are concerns, can be referred for investigation. The question posed by the Green Paper is -should these powers be extended in some way with the objective of identifying children that universal services do not have contact with or creating a more sensitive trigger for investigating concerns about children already known to the system?
5. Research evidence commissioned by the Department of Health strongly suggests that child protection investigations outside of the provision of general family support services are not helpful. They are stigmatizing, intrusive and achieve little of direct benefit to families who may be struggling with a wide range of difficult issues which either directly or indirectly affect the care of their children.

6. The Green Paper does not identify why this system exceptionally fails but for the most part it is important to acknowledge that it only fails occasionally. Where parents have a complaint, it is more likely to be that services are not available or responsive or that the threshold for access is set at such a high level rather than the other way around.
7. The best information, referral and tracking system we have is parents or other family members who know their children, understand their needs and take action to meet them. While computers may play some supplementary part in this as they do with routine immunisations and other health checks, they are not sensitive to the complex information processing requirements of family support.
8. BAAF supports the enhancement of child protection registers but is concerned that the proposal that attempts to track all children through a unique identifying number will create a bureaucratic and expensive monitoring system that will do nothing to support parents and do nothing to improve services. The problem of engaging parents when they are suspicious or hostile or indeed when they have something to hide will not be dealt with by computerised systems.
9. BAAF is concerned about potentially serious issues of rights and data protection in what could become virtual electronic tagging of families where there are child protection concerns. Many of these families are already stigmatized and labelled and the risk of locking people to self-fulfilling prophecies is great. Families in poverty are already heavily tracked by government departments in relation to social welfare benefits.
10. BAAF is also concerned that where information does need to be exchanged that there is a significant lack of clarity across social services, health and education about confidentiality and disclosure. Protocols do not currently exist that address this in a transparent and workable way. While BAAF believes that data protection and human rights issues are centrally important, the exchange of information to protect and promote children's welfare is equally important. At the moment, this issue is often left too much to the discretion of the individual practitioner. They may then either feel constrained by the potential difficulties and risks of disclosing information even when to do so is specifically in the best interests of the child or may disclose personal information when other people have no need to know. Examples of this include the exchange of maternal information especially obstetric information about blood tests which have direct implications for children's health and development; information from G.P.'s and adult psychiatrists that will not be disclosed without written consent. BAAF believes that this issue must be addressed by central government in a way that brings together the positions of the General Medical Council, the Medical Defence Associations, Data Protection Commissioner and human rights legislation.

11. BAAF believes it is essential for the government in designing an IRT to take into account some of the basic issues concerning the design of any child protection system.

PREDICTIVE SCREENING

12. All mechanisms of predictive screening have to manage the problem of false positives and false negatives. Epidemiologists will identify that in developing any screening instrument that attempts to identify and predict potential problems – whether this is child abuse, physical ill health or traffic accidents - the instrument's usefulness will depend on two factors -

- its sensitivity – the probability that it will successfully identify a child at risk
- its specificity – the probability that a child 'not at risk' is correctly identified

13. To be useful, an instrument should be high in specificity and sensitivity. If then we take a hypothetical instrument (and at the present time, no such instrument exists) with say an established 80% sensitivity and 90% specificity and apply it to a condition where we know that there is 5% prevalence rate in the population, we would correctly identify in a sample of 1000, 40 of those at risk and we would miss 10. We would also have correctly identified 855 not at risk but also included 95 not at risk in the 'at risk' population. The consequences for the missed 10 'at risk' could be very serious. But equally, those 95 identified 'not at risk' could also suffer serious consequences.

14. These questions will need to be asked of the IRT. The conclusion to be drawn from this is likely to be that there is no simple or easy tool or method of screening that can be used in child protection that is statistically, practically or ethically sound. However, other tools and procedures might be helpful but they need to be placed within the context of other considerations.

THE CHILD PROTECTION SYSTEM

At present four elements currently make up the child protection system:

- A set of policies and procedures that operate within the context of a series of complex, multi-level organizational and professional relationships
- Paper based tools such as the Assessment of Children in Need Framework
- The complex judgments of professionals and others in the context of expertise mediated by organizational pressures. The Laming Report and the Green Paper identifies the impact of poor information, and lapses and fragility of judgment related to poor training, inadequate support and supervision.

Response on information sharing databases in children's services

- Resources

Each of these factors needs to be understood within the very specific nature of child protection and child welfare.

'HARD' AND 'SOFT' FACTS

15. The Green Paper fails to distinguish that the process of child protection is not primarily concerned with hard facts but with 'soft' or social issues. Even where there are 'hard' facts – actual injury or the consequences of injury – they need to be placed within the context of the psychosocial situation – the people and their circumstances that have generated the injury. Even where causation can be attributed - that it was this person that did this – that piece of hard information has to be placed within the context of the softer information of who that person is, what their history and circumstances are and how that might contribute to our understanding of what the current and continuing risks are and what might then be done to alleviate this. Hard facts are not particularly easy to come by in child protection work, but even where they are, they are never sufficient in themselves.

CREATING MEANING

16. The process underlying child protection can therefore be thought of as being concerned with generating meaning out of what are often a limited series of hard facts and a far greater number of softer, social facts. Even when these social facts have a hard centre to them, they do not in themselves create something which is meaningful. We might, for example, be able to establish who the members of a family are - their formal identity and relationships - but their feelings, alliances and history – what they mean to each other is far more complex to describe accurately. Procedures and tools might structure and positively contribute to this difficult process but in the end they are always dependant on the accuracy and skills of professionals engaged in a continuous process of creating meaning out of the facts they are presented with.

17. In virtually all child abuse inquiries, individual and organisational failure occurred not primarily in establishing the facts of who people were – this was often well known - but with the process of creating something meaningful out of the hard and soft social data that might indicate something of a child's lived experiences. This means being able to move beyond the immediate sense of what is presented to the social worker or other professional to imaginatively construct what this might mean and particularly whether it might mean that there are serious risks in this situation that can lead to injury or death.

ROLE OF PROFESSIONAL JUDGEMENT

18. In child protection work, multiple versions, accounts, or perspectives of the same set of events confront social workers. They must inquire, interpret

Response on information sharing databases in children's services

and manage risk and dangerousness while piecing information together to produce a coherent picture of a child's world, needs and circumstances.

19. What rests at the centre of this task is professional judgment. It is the primary tool through which any other tool is mediated. However sophisticated other tools might be such as the 'Assessment of Children in Need Framework' or the procedures that bind people and organizations together such as 'Working Together to Safeguard Children', they are always tools which are delivered through and brought to life in the process of creating meaning through professional judgment. The routine nature of professional and organizational day-to-day practice could be described as being concerned with creating a meaningful picture through the process of professional judgment.
20. Individual professional and organizational judgments are the means by which meaning is given to social information but by their very nature, human judgement can be problematic and fallible. While all professions and organizations devise structures and processes aimed at minimizing the opportunity for individual or organizational error, eradicating error is an unachievable objective without eradicating the means by which organisational work is done. There are a host of issues connected with this but two are particularly important in pursuing this argument from the child protection perspective.
 - Individual practitioners and organizations are continuously faced with the problem of sifting through hard and soft social facts that look remarkably similar. There is a very wide range of social and family circumstances shared across a spectrum of families that can become the genesis of child protection concerns. In fact, only a few actually become identified as child protection issues where intervention takes place.
 - The factors that generate organizational priorities and meaning are different for each organization. Additionally, they are not always determined by the primary task of the organization.

PRIMARY TASK AND WORKING ACROSS BOUNDARIES

21. An organisation's primary task and its related organizational priorities will determine how that system determines what is meaningful. The bombardment of social information faced by any organisation is such that it has to find ways of sifting out what it pays attention to and what it does not. While the organizational system as a whole described in 'Working Together' is designed to create a particular set of meanings – primarily the protection and welfare of children, the primary task of each individual organization that makes up that system is different. For example, the police are primarily concerned with crime prevention, criminal activity and convictions, education with learning and health with illness and disease. Social services clearly do have child protection and welfare as their primary task.

22. The problem for an organisation of working across its boundaries with other organisations when each has its own ways of determining what is meaningful cannot be underestimated. Shared meanings are clearly desirable and necessary as the Green paper identifies but they will always have to take their place within the different responsibilities, language, culture and priorities of each constituent organisation. This means taking into account the inevitable mistrust, conflict and rivalry between professionals or organizations whether this is overt or covert and the impact this has on the way that meanings are constructed, assessments completed, plans made and services delivered.
23. Introducing new inter-organisational rules and procedures will not necessarily make these tasks less problematic. Although some significant gaps and uncertainties in procedural guidance in particular agencies were highlighted in the evidence heard by the Laming Inquiry, the overwhelming impression is of inter-professional and inter-agency work conducted amid a profusion of protocols and policies. However, their net effect was not to illuminate but often to obscure the child's perspective. The Green Paper's solution to this problem is superficial because it fails to understand the nature of organisational work or organisational dynamics.

THE PRIMARY TASK IN CHILD PROTECTION IS INFUSED WITH ANXIETY, UNCERTAINTY AND RISK.

24. For professionals at the front line of service delivery, the complexity of creating meaning where children at risk is extra-ordinarily demanding. While the Laming Report is consistently addressing the issues of danger to Victoria Climbié and the failure to recognise this by a large number of professionals and organisations, there is little discussion of the impact of working in dangerous circumstances.
25. Danger infuses the whole narrative of the Laming Report. Individual responses to danger also infuse the whole report whether this is the frozen responsiveness of Victoria, the dissociated response of her Aunt or the dangerous impulses of Manning. Response to danger must also have played a significant part in the seeming imperviousness of the professionals – their flight or frozen responses to what was presented to them. Nobody seemed to be able to read the signs and signals and nobody could allow themselves to think about the potential danger. This is truly shocking and every response to the picture that the Laming Report paints is one of numb disbelief.
26. Although it readily understandable, it can be difficult to accept that professionals as human beings do respond to dangerous circumstances by numbing themselves when they are under threat. Professionals can also fight and they can also run away. The complex problem of reading social information, creating meaning and exercising professional judgement under dangerous circumstances is therefore of enormous importance. Within this, it is important not to under estimate the personal

and organisational defences that human beings will construct when they feel threatened.

27. The Green paper opens up, identifies the need for and makes proposals for Information Exchange. What it does not do is analyse the nature of information or the nature of human information processing within the context of dangerous circumstances. When human beings are faced with actual or perceived danger, their information processing requirements have to be immediate (instinctive) and require little processing power. Put simply, if you are being charged at by a lion, dwelling too long on the problem may be unwise. However, human beings also have developed the capacity to process more complex information by taking a longer look at it - by analysing, synthesizing and reflecting on what they see, hear, feel or smell. But they only can do this if they perceive the immediate situation not to pose any immediate danger to their well-being – whether this is physical or psychological. When clients or organisations are experienced as dangerous places because they overload people with dangerous or unmanageable information, the safe conditions do not exist for reflection. People can only react to keep themselves safe. Any proposal for change that does not consider this will only continue to create structures and work practices that are unhelpfully and dangerously defensive.

UNDERSTANDING THE CHILD'S POINT OF VIEW

28. The defensive structures identified above have enormous practical consequences for individual practitioners and organisational systems. They also have enormous consequences for those in need of or in receipt of services. In particular, they have a significant impact on the primary task for these services of holding the needs, and experiences of children firmly in mind.
29. Every Child Protection Inquiry since Maria Colwell in the 1970's has highlighted the problems that adults have in seeing situations through a child's perspective. When seen in retrospect, it is almost impossible to understand why this proves to be so difficult but in Inquiry after Inquiry, it presents itself as an issue over and over again. Even when adults think they are looking at things from a child's point of view, it appears too often that they are not. Children's language, culture and means of communication are too often a foreign country to adults.
30. In Victoria Climbié's case, despite the involvement of professionals from many disciplines, it proved impossible for them to imaginatively enter into her world and to ensure that her thoughts and feelings were known and understood and accorded the importance they should have received. The absence of the child's voice is not a new finding. In the course of inspections carried out in 1997, Social Service Inspectors met children who had not been spoken to by their social worker, and some of these children were on child protection registers. They considered these children to be worryingly 'out of sight and therefore out of mind'. In an SSI report summarising 31 inspections in May 2001, covering a period from August

1999 to July 2000, in 24 per cent of cases there was no record of the child's views. The report also identifies the low levels of training in the previous three years reported by key workers in direct work with children (43 per cent), and in communicating with children (30 per cent). Other research findings, including qualitative and impressionistic reports, indicate no improved picture in terms of the skills, time and support made available to social workers for communicating with, listening to and working with children.

31. A primary issue that must be addressed is the importance and significance of professionals and organisations developing child centred practice with the primary question 'Do I understand this child's experience from their point of view?' This also means acknowledging that there are multiple reasons why adopting this perspective is difficult or that there are multiple reasons for not adopting this perspective. There are serious implications here about the need to train, prepare and support professionals and organisations for communicating with, listening to and working with children and young people where this is their primary task. However, the romance of such a proposition must not detract from the evidence that this is something that adults find very difficult to do and may avoid doing so whenever they can.

THE ASSESSMENT OF NEED AND ELIGIBILITY DETERMINATION

32. The Green Paper fails to identify that organisations and professionals are continuously confronted with the public service issue of establishing and responding to priorities and determining eligibility. There is a fundamental conflict between these two dimensions but it is fundamental to public service provision. Public services are therefore continuously confronted with a requirement to establish a bureaucratic framework for eligibility determination while delivering an appropriate response to need and risk.
33. According to the 'Assessment Framework', the primary questions in any determination of need under the Children Act should be the child's health and development. However, the demands on local authorities and other services are such that an approach based on these principles is always likely to be compromised by the demands of eligibility determination and rationing. The political and organisational demands for 'performance' and for public accountability for funding have a powerful reality to them that can exert a vicious grip that easily distorts the professional process of thinking about the circumstances of any individual child and their developmental needs.
34. It is well established that a child protection concern is often necessary for a gateway to be opened for a family to gain access to services. For example, in the DH 'Children Act Now' studies many families believed that hinting at potential maltreatment could be more effective for accessing services from the local system than stressing children's needs. Social Services Departments in the 1990's were struggling to change from the certainty of narrow eligibility for services based on risk of harm to a

concept of service provision based on the needs of children with the aim of optimising children's health and development. The report strongly concluded that systems, which separated child protection enquiries and family support assessment, were ineffective and counter-productive to meeting the needs of children and families.

35. Child protection issues have therefore a dual function – as a signifier of risk and need in relation to the child and as bureaucratic measure of eligibility in relation to the organisation's requirement that it manages and rations its limited resources. All public services have to address this issue and may devise rational, explicit and transparent ways of doing so. The fact that these may have significant negative impact on service users is an accepted part of the limits to public spending. The extent to which a child protection concern is therefore primarily an indication of need with the determination of eligibility a secondary consideration is a complex issue with serious resource implications. Exploring need outside of the constraints of what public bodies can realistically deliver is a political issue and not just a professional one.