

Child Protection V Data Protection!

Abstract

This article looks at some of the difficulties facing practitioners, who in the course of trying to protect children encounter resistance in acquiring crucial information from other professionals and agencies. It also seeks to outline a few ways in which practitioners can begin to redress the balance between their professional responsibility and legal duty to protect children, against the need to also protect data.

Main Article

Despite the existence of the Data Protection Act (DPA) 1998, hardly a week seems to go by when some government department or official does not own up (or is caught out) ‘misplacing’ masses of our personal data, or ‘unintentionally’ exposing top secret security details! It is therefore hardly surprising, that as a profession we are wary about sharing information which might end up in the public domain, only to find ourselves accused of breaching the DPA, open to disciplinary procedures, and potentially ending up on the front page of a newspaper.

However we also know the difficulty, as confirmed by numerous safeguarding enquiries going back over sixty years to Denis O’Neil (1945), that professionals cannot effectively protect a child without sharing, (both giving and receiving), information from and with a variety of people and agencies who are either working with or are responsible for children.

Not only do the difficulties in accessing information cut across agencies and professional disciplines, in many cases, the situation is compounded for some colleagues who also experience difficulty in getting access to information from within their own agency!

As an independent social worker, I never cease to be amazed by the degree to which many agencies who are also responsible for the protection of vulnerable children seem to resist sharing information with others who are also involved in protecting children. Frequently their reluctance appears to be solely due to their own professional concerns about being in breach of the DPA.

By way of example; I recently had the following experience when assessing a foster family who were hoping to adopt a child placed with them. Having telephoned the family's link social worker to ask them something fairly uncontentious, I was asked by the link social worker; 'Had I heard what had happened?', to which I replied; 'Had I heard what?' only to be informed that; 'I'm sorry, you'll have to ask the foster carers as I cannot tell you due to the DPA!'

Suffice to say, I immediately telephoned the foster carers, (as I knew where to get the information, I delayed raising my concerns about the lack of proactive sharing of crucial information), only to be told that the week before one of them had been arrested for a sexual offence, charged, given a police caution and had since resigned from their other job of working with children. The important point and questions raised were;

- a) Despite the foster carer telling their link social worker 48 hours before I telephoned the link worker, this information had still not been relayed to me;
- b) Despite the initial delay in sharing this crucial information with me, even when asked to share it, the link social worker seemed paralysed into inactivity because of their incorrect interpretation of the DPA requirements, which reflected a complete lack of awareness of their legal duty and professional responsibility to share this crucial information.

- c) That if I had not telephoned the link social worker about an unrelated issue, and the foster carers, who were in a state of semi-shock and had chosen not to tell me what had happened; at what point would I have been made aware of that crucial piece of information which needed to be shared?

Notwithstanding the importance of; Article 8 of the Human Rights Act 1998 (the right to a private family life), the DPA (that it is an offence to disclose personal information without consent), and the Common Law Duty of Confidence (one has to protect special professional relationships; i.e. doctor / patient, solicitor / client, etc); the reality is that the Children Act 2004, amongst several other regulations, clearly stresses the legal duty and professional responsibility on agencies to share information without consent if needed to protect children.

In addition, when it comes to matters of protecting children, all of the above acts and common laws either have provisions within them for sharing information, or conventions where it is permissible to do so: i.e. The DPA 1998 Schedule 3 acknowledges that a child's rights under the Human Rights Act can sometimes only be defended by disclosures between relevant professionals to establish whether a child's welfare needs to be protected.

As noted in the current Working Together (2006, page 32); 'the difficulties (sharing information) lay not in relation to the law, but in its interpretation, resources and implementation'. Furthermore, Lord Laming (2009, page 2) recently stressed; 'organisational boundaries and concerns about sharing information must never be allowed to put in jeopardy the safety of a child.'

So why if the law is so clear about our 'duty' to share crucial information in a timely manner, do we find it so hard to do? Why if, as far as I know, no one has ever been disciplined for sharing information which might protect children, do some professionals involved in working with children continue to find it so difficult to share information?

Why is it that despite numerous enquiries which repeatedly highlight the need for better communication between professionals is information sharing in some quarters still so poor?

My own view is that a significant part of the problem is the lack of professional confidence and awareness regarding what the law actually says, a problem which is frequently compounded by many 'organisational mindsets' which, (however unintentional), actually places a higher value on the protection of data, rather than the protection of children. Not least because protecting data is seen as an easier, simpler and clearer task, rather than taking an active role in the uncertain and risky world of protecting children. Put another way, some professionals simply reflect their own organisational choice to subvert their duty to protect children behind a misplaced notion of seeing the protection of data as somehow more important.

The implications for practice are;

- Crucially, the ability to effectively protect any child is severely limited if professionals do not share relevant information with each other in a timely manner.
- Regulatory bodies are increasingly holding professionals, (even directors), to account for not sharing information.
- The act of not proactively sharing relevant information with other professionals in a timely manner, can and does send out a powerful message that other professionals cannot be trusted, which in turn often makes other professionals less likely to share crucial information with you next time around.

In conclusion, as a social worker one always has a choice.

One can either continue to accept the fact that some professionals limit your ability to effectively protect children, or one can challenge ‘reluctant’ information sharers by adopting any or all of the following strategies;

1. Become familiar with your local LSCB procedures on ‘sharing information’ and refer any concerns you have directly to them.
2. Always challenge when you are refused access to information which you think is important to protect children, pointing out to the person refusing your request the precise part of your local LSCB policy which sets out their legal duty and professional responsibility to share information if required to protect a child.
3. If number 2 above does not yield positive results; I always find that if you ask a ‘reluctant’ information sharer to email / fax you the precise part of their policy which outlines where it says they cannot share information within the context of protecting children, this invariably produces the desired outcome!
4. Promote the implementation of ‘Contact Point’. By making crucial information available much earlier, not only will ‘Contact Point’ hopefully reduce the likelihood of any further tragedies like Denis O’Neil (1945) and Victoria Climbié (2000); but it will also serve as a powerful reminder to all professionals working with children, that not only do they have a legal duty and professional responsibility to share relevant information with others, but that ultimately protecting children will and should, **always** be more important than protecting data.

References

1. Dennis O'Neil, 1945; Home Office Enquiry
2. Children Act 1989
3. Data Protection Act 1998
4. Human Rights Act 1998 Article 6 & 8
5. HM Gov, 2006; Working Together To Safeguard Children.
6. The Laming Reports 2003* & 2009. * Reference Victoria Climbié

Further Reading

1. HM Gov, 2008; Information Sharing Guidance for Practitioners and Managers.
2. Department of Health, 2003: What to do if you are worried a child is being abused.

Notes of the lead author (50)

Eddie O'Hara is a registered independent consultant social worker, trainer and primary school teacher, with over twenty five years of ongoing experience working directly with children and families. For more information about Eddie's work throughout the UK, Ireland, USA and Turkey, please visit; www.eddieohara.com.

Eddie O'Hara MBASW- BA (Hon's) SPA – RSW - CQSW – AASW - PQCP – PQPT – PGCE (Prim) - QTS