

Communities, Equality and Local Government Committee

Meeting Venue:
Committee Room 2 - Senedd

Meeting date:
13 October 2011

Meeting time:
09:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

1. Introductions, apologies and substitutions

2. Scrutiny of Welsh Government 2012/2013 draft budget (Pages 1 - 9)

Welsh Government (09.30 – 11.00)

CELG(4)-05-11 (p1)

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- **Jane Hutt AM, Minister for Finance and Leader of the House (09.30 – 10.00)**
- **Amelia John , Head of Equality, Diversity and Inclusion Division**
- **Claire McDonald, Head of the Equality Unit**

- **Huw Lewis AM, Minister for Housing, Regeneration and Heritage (10.00 – 11.00)**
- **John Howells - Director of Housing, Regeneration & Heritage Department**
- **Kath Palmer – Deputy Director, Housing Department**

3. Papers to note (Pages 10 - 25)

Legal Advice Note – Data Sharing

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Precis – Legal Advice Note – Data Sharing

CELG(4)-05-11 (p3a)

Agenda Item 2

Communities, Equality and Local Government Committee

CELG(4)-05-11 : Paper 1

Evidence paper to the Communities, Equality and Local Government Committee by the Minister for Finance and Leader of the House

The Budget 2012-13: Equality Impact Assessment

1. In February 2011, The Equality Impact Assessment (EIA) of the Draft Budget 2011-12 was published alongside the Final Budget 2011-12. Departments undertook an EIA of their own budget allocation decisions, which resulted in a number of adjustments. This EIA was carried out on the strategic decisions that Cabinet made and resulted in increases to funding to social services and housing for vulnerable people.
2. This year's allocations are largely unaltered from those in last year's budget, which was a three year budget; therefore the Welsh Government has not repeated the detailed work undertaken last year. However, we have undertaken assessments where there has been a budgetary change. It is important that this years EIA and the EIA for the Budget 2011-12 are considered together.
3. Where spending plans have changed from those published in last year's Budget they have been equality impact assessed and, in particular, this includes additional allocations on:
 - Our **Five for a Fairer Future** commitments;
 - Continuing to deliver our suite of universal benefits; and
 - Ensuring financial sustainability in the NHS

Assessing the changes for the Budget 2012-13

4. The equality duty requires public authorities to demonstrate that they are making financial decisions in a fair, transparent and accountable way, considering the needs and the rights of different members of their community. This is achieved through assessing the impact that changes to policies and practices could have on different protected groups.
5. In order to be confident that the equality impact has been assessed in the budget areas, Welsh Government departments undertook an initial screening to consider whether there may be a potential equality impact as part of the Welsh Government's Inclusive Policy Making (IPM) process.

6. During the screening stage, officials were guided to consider the availability and quality of the evidence on which to base the decisions regarding the level of likely adverse differential impact the policy may have on any of the equality strands. The quality of the evidence gathered was measured as well as the likely differential impact.
7. Following the initial screening, if it was apparent that proposed changes would have a significant impact on people with one or more of the protected characteristics, then a detailed assessment was required to better understand the potential impact of the proposed budget allocations.
8. The detailed assessment would typically involve a more in-depth assessment of the policy or practice aims and objectives, how they relate to equality and if there are ways they could better advance equality, based on the evidence and research gathered during the screening stage. It should result in a considered judgement about the level of impact that the policy or practice could have on any or all equality strands.
9. It was made clear that those departments where potential equality impact assessments would be undertaken that they must engage with and take account of the views of relevant stakeholders where appropriate and ensure that they were based on sound evidence.

Inclusive Policy Making

10. As mentioned in paragraph 5, within the Welsh Government our method for assessing budgetary decisions for equality impacts is through the Inclusive Policy Making (IPM) process.
11. Welsh Government Departments used the IPM guidance to help access all the relevant material when making their assessments and in advising Ministers on their decisions.

<http://wales.gov.uk/topics/equality/publications/ipmguide2/?lang=en>

Jane Hutt AM

Minister for Finance and Leader of the House

Communities, Equality and Local Government Committee

CELG(4)-05-11 : Paper 2

Evidence paper on the Draft Budget: Minister for Housing, Regeneration and Heritage

Introduction

1. This paper provides background financial information to the Committee regarding the spending plans of the Housing and Heritage parts of the Minister's portfolio, as outlined within the Draft Budget.
2. Annex A gives a breakdown of the Draft Budget, by Action, and by BEL within each Action. This also includes the draft budgets for the Regeneration part of the portfolio, which falls within the remit of the Enterprise and Business Committee.

Background and Summary

3. The draft budget figures for the areas coming within the remit of this Committee may be summarised as follows:

Spending Programme Area	Baseline 2011-12 £'000	Draft Budget 2012-13 £'000	Indicative Plans 2013-14 £'000	Indicative Plans 2014-15 £'000
Revenue:				
Museums, archives and libraries	38,191	37,436	37,445	37,445
Arts	39,428	38,782	39,569	39,569
Sports and physical activity	25,437	24,923	24,853	24,899
The historic environment	11,712	11,658	11,541	11,541
Total Heritage	114,768	112,799	113,408	113,454
Housing	154,765	151,147	151,792	151,792
TOTAL REVENUE	269,533	263,946	265,200	265,246
Capital:				
Museums, archives and libraries	5,673	4,973	4,043	4,043
Arts	485	480	475	475
Sports and physical activity	345	345	345	345
The historic environment	5,500	5,313	5,031	5,031
Total Heritage	12,003	11,111	9,894	9,894
Housing	249,392	231,970	206,782	206,782
TOTAL CAPITAL	261,395	243,081	216,676	216,676
TOTAL DEL BUDGET*	530,928	507,027	481,876	481,922

* These figures do not include Annually Managed Expenditure budgets. Details are provided below.

4. The budget process for this year has been 'light touch'. Compared to the indicative plans published in last year's Final Budget (as restated for the portfolio changes), the total allocation for Housing and Heritage has increased by £0.353m in 2012-13 and £0.621m in 2013-14. The indicative plan for 2014-15, which is published for the first time, includes an additional £0.046m above the 2013-14 figure.
5. The additional budgets relate to:
 - Additional allocations to Cadw's running costs of £0.353m in 2012-13, rising to £0.621m in 2014-15, in recognition of its role in delivering front line services which benefit wider tourism, education and sustainable development; and
 - An additional amount of £0.046m in 2014-15 for the Free Swimming commitment.

Programme of Government

6. The Department has a wide ranging remit, with responsibility for developing and delivering policies on housing, regeneration, the arts, culture, sport and active recreation, museums, archives and libraries, and the historic environment.
7. The department has a number of main aims reflected across the Programme for Government, and this budget shows how we will deliver in 2012-13 and beyond. We will ensure that people have high-quality, warm and secure homes to live in. Although the impact of our interventions in this area are likely to be felt over the longer-term as we make changes to planning legislation and expand our stock of social housing. In the shorter term, however, economic influences such as UK fiscal and monetary policy will have a profound impact on our overall success.
8. We will continue to support the culture and heritage of Wales to provide a better foundation for life through vibrant places, culture, sport and media.

Housing

9. Our national housing strategy *Improving Lives and Communities – Homes in Wales*, which was published last year, set out our strategic priorities for housing: increasing the supply of housing; improving its quality; and improving housing-related services – particularly for those who are vulnerable or homeless.

Increasing the supply of housing

10. We are seeking to address the supply-side issues to meet demand and increase the numbers of affordable homes which will also assist in addressing homelessness. We are investing a total of £57m (£55m capital

and £2m revenue) in the Social Housing Grant Programme in 2011-12. This figure reduces to some £46m in future years. However, it is important to bear in mind the growth in this programme in recent years, as well as additional funding of £62m which was made available from the Strategic Capital Investment Fund.

11. In addition, and in response to the reduction in capital budgets, we are further exploring new innovative ways of increasing supply with such products as “First Rent” – houses with an intermediate rent which require a lower level of social housing grant to develop; and the recently launched Welsh Housing Partnership – a partnership with housing associations who are investing equity.

Quality of housing

12. Ensuring people have a home that meets their needs – warm, affordable, secure, in good condition and with non detrimental impact on the environment is a key priority for the Welsh Government. A home is a vital part of people’s lives. It affects health and well-being, quality of life, and the whole life chances of individuals and families. That is why I am continuing to protect the Major Repairs Allowance, at £108m per annum - a budget which funds major repairs for local authority housing, and dowry payments for former local authority housing that has transferred to new stock transfer landlords. Both of these funding streams help to achieve the Welsh Housing Quality Standard (WHQS), the broad objective of which is to ensure that the social housing stock in Wales is fit for the 21st Century.

Housing-related services

13. We are also continuing to invest over £130m a year in delivering housing related support to vulnerable people through the Supporting People Programme. This is a priority if we are going to combat the impact of the welfare reforms and economic downturn. The programme is supporting 50,000 people per year and provides good value for each Welsh pound we spend. We are also committed to preventing homelessness, one of the extreme examples of deprivation.
14. Enabling people to live independently in their own homes for as long as possible is also a priority for the Welsh Government and that is why we have protected our investment in the Rapid Response Adaptations Programme. This programme also helps to reduce the demand on the NHS and social services by enabling people to leave hospital or residential care as soon as they are able to.
15. Within the Housing budgets, there is a budget line for local authority general capital funding, amounting to £47.2m in 2012-13. This funding is unhypothecated, and as such, once it is distributed to the local authorities as part of the local government settlement, we are not able to direct its spend.

Heritage

16. Providing a better foundation for life through vibrant places, culture, sport and media is a key priority for the Welsh Government. We will continue to provide financial support for delivery by the Arts Council for Wales, Amgueddfa Cymru – National Museum Wales, the National Library of Wales, Sport Wales and Cadw.
17. We recognise the vital importance of the arts to Wales and the contribution it can make to the quality of people's lives. That is why we are continuing to afford arts funding a level of protection in this Budget. We will also continue to provide financial support to the National Botanic Garden of Wales.
18. Our support for Amgueddfa Cymru – National Museum of Wales and the National Library of Wales will enable us to retain our policy of free entry to our national museum sites. We will also continue to provide financial support and strategic leadership to local museums, archives and libraries via CyMAL recognising the significant contribution these services make to local communities in terms of access to information and cultural heritage, and their role in supporting tourism in Wales.
19. Cadw is the Welsh Government's historic environment service. Cadw is charged with conserving this heritage, which includes World Heritage Sites, listed buildings and scheduled monuments. Cadw also works to sustain the distinctive character of our towns and landscape and helps people understand and care about their place and history. We recognise the importance in economic and social terms of this contribution and are committed to their ongoing programme of work.
20. In addition, we are committed to the delivery of the £19m Heritage Tourism Project, which will improve the fabric and visitor experience at many of our monuments. The project is largely funded by the Welsh Government and from EU Convergence Funds, and will help maximise the economic value of heritage by increasing the number, length and value of visits to Wales. The project will also help open Wales's outstanding heritage to a wider audience by making it more enjoyable both for visitors and for people who live in Wales. Cadw is leading the Project having successfully bid for Convergence Funding. The project will run until December 2014 and is worth a total of £19m. Cadw's capital works programme, in part, match funds this project.
21. We also recognise the huge benefits that sport and physical activity can bring on a range of different levels, including the improved health and well-being of individuals. In support of this, we are committed to retaining our free swimming commitment, and have provided additional funding of £46k in 2014-15 to maintain provision.

Annually Managed Expenditure

22. Annually Managed Expenditure budgets comprise:

- Provision for any pension charges which may be necessary in respect of the pension schemes of the National Museums of Wales

and the National Library of Wales. The total for 2012-13 is £2.490m. This is a non cash budget; and

- A credit amount - of £61m in 2012-13 – representing the amount, calculated on a formula basis, which Welsh Local Authorities have to repay to the Treasury in respect of the Housing Revenue Account Subsidy (HRAS) system. In England, Local Authorities have bought themselves out of the system, and we are currently exploring the option of doing so in Wales.

CELG(4)-05-11 : Paper 2 : Annex A

HOUSING, REGENERATION AND HERITAGE MAIN EXPENDITURE GROUP (MEG)								
REVENUE BUDGET - Departmental Expenditure Limit								
SPA	Actions	Budget expenditure Line (BEL)	BEL	2011-12 Final Budget	2012-13 Indicative Plans	2013-14 Indicative Plans	2014-15 Indicative Plans	
Housing	Achieve quality housing	Stock trans/Comm mutual Support & Capacity Build	1162	274	274	274	274	
		Total Achieve quality housing		274	274	274	274	
	Develop housing policy, legislation and regulation	Regulation Inspection Programme	1161	176	172	173	173	
		Management and Advice	1181	246	246	246	246	
		Affordable Homes	1014	115	115	115	115	
		SHMG Black Minority Ethinc (BME) Housing Budget	1221	392	0	0	0	
		Social Housing Management Grant	1220	1,688	2,016	2,027	2,027	
		Total Develop housing policy, legislation and regulation		2,617	2,549	2,561	2,561	
		Enable people to live independent lives	Home Improvement Agencies	1100	4,783	4,671	4,691	4,691
	Rapid Response Adapt Prog		1285	440	430	432	432	
	Supported People Grant		1011	62,395	135,978	136,558	136,558	
	Supporting People Grant-Local Authorities		1020	75,690	0	0	0	
	SHRG Rev Subs Misuse/Young Offenders		1010	1,148	0	0	0	
	Total Enable people to live independent lives			144,456	141,079	141,681	141,681	
	Increase the supply and choice of housing	Housing Enablers	1286	97	95	95	95	
		Total Increase the supply and choice of housing		97	95	95	95	
	Tackle homelessness	Homelessness & Rough Sleeping	1120	7,321	7,150	7,181	7,181	
		Total Tackle homelessness		7,321	7,150	7,181	7,181	
	Total Housing				154,765	151,147	151,792	151,792
	Regeneration	Implementation of Strategic Regeneration areas	Implementation of Strategic Regeneration areas	4151	5,189	6,136	6,397	6,397
Manage Delivery of Legacy Regeneration Areas		Manage Delivery of Legacy Regeneration Areas	4162	8,200	8,200	8,000	8,000	
Prepare Future Strategic Regeneration Areas		Prepare Future Strategic Regeneration Areas		0	0	0	0	
Groundwork & Coalfields Regeneration Trust		Groundwork & Coalfields Regeneration Trust	1400	1,100	0	0	0	
Total Regeneration				14,489	14,336	14,397	14,397	
Museums, Archive and Libraries	Foster Usage and Lifelong Learning through Museum Services	Amgueddfa Cymru - National Museum of Wales - Running costs	5540	24,541	24,051	24,040	24,040	
		Amgueddfa Cymru - National Museum of Wales - Current receipts	5540	-1,604	-1,604	-1,604	-1,604	
		Amgueddfa Cymru - National Museum of Wales - Depreciation	5540	1,120	1,120	1,120	1,120	
		Foster Usage & Lifelong Learning through Museum services		24,057	23,567	23,556	23,556	
	Foster Usage and Lifelong Learning through Library Services	National Library of Wales - Running costs/Current expenditure	5660	11,046	10,825	10,821	10,821	
		National Library of Wales - Current receipts	5660	-400	-400	-400	-400	
		National Library of Wales - Depreciation	5660	1,250	1,250	1,250	1,250	
		Foster Usage & Lifelong Learning through Library services		11,896	11,675	11,671	11,671	
	Strategic Leadership for museum, archive & library services	CyMAL - Current expenditure	6170	227	216	206	206	
		CyMAL - Grants	6170	1,711	1,678	1,712	1,712	
		CyMAL - Peoples' Collection	6170	300	300	300	300	
		Strategic Leadership for museum, archive & library services		2,238	2,194	2,218	2,218	
Total Museum, Archive and Libraries				38,191	37,436	37,445	37,445	
Support and sustain a strong arts sector via the Arts Council and others	Support and sustain a strong arts sector via the Arts Council and others	Arts Council of Wales - Running costs	5800	2,379	2,284	2,181	2,181	
		Arts Council of Wales - Current expenditure (Inc WMC)	5800	31,759	31,218	31,490	31,490	
		Arts Council of Wales - Depreciation	5800	119	119	119	119	
		Support for the Arts (Inc NBGW)	5812	1,140	1,181	1,853	1,853	
		Support and sustain a strong arts sector via the Arts Council and others		35,397	34,802	35,643	35,643	
Media and Publishing	Media and Publishing	Welsh Books Council - Running costs	6150	1,258	1,207	1,153	1,153	
		Welsh Books Council - Current Grants	6150	2,773	2,773	2,773	2,773	
		Promote wider use of the Welsh language via the WLB & others		4,031	3,980	3,926	3,926	
Total Support and sustain a strong arts sector via the Arts Council and others					39,428	38,782	39,569	39,569
Delivery of effective sports & physical activity programmes	Delivery of effective sports & physical activity programmes	Sports Council for Wales - Running costs	5900	1,448	1,390	1,327	1,327	
		Sports Council for Wales - Depreciation	5900	779	779	779	779	
		Sport & Active Wales Fund - Current expenditure	6010	23,049	22,600	22,400	22,400	
		Sport & Active Wales Fund - Free Swimming	6010	3,500	3,500	3,500	3,546	
		Sport & Active Wales Fund - Current receipts	6010	-3,484	-3,484	-3,484	-3,484	
		Support for Sport & Physical activity	6012	145	138	331	331	
Total Delivery of effective sports & physical activity programmes					25,437	24,923	24,853	24,899
Conserve, protect,sustain and promote access to the historic environment	Conserve, protect,sustain and promote access to the historic environment	Cadw - Running costs/Current expenditure	2700	12,124	12,196	12,144	12,144	
		Cadw - Grants	2700	2,035	1,995	2,016	2,016	
		Cadw - Current receipts	2700	-5,000	-5,000	-5,000	-5,000	
		CADW - Depreciation	2700	275	275	275	275	
		RCAHM - Running costs/Current expenditure	6200	2,055	1,973	1,885	1,885	
		RCAHM - Grants	6200	169	165	167	167	
		RCAHM - Current receipts	6200	-80	-80	-80	-80	
		RCAHM - Depreciation	6200	134	134	134	134	
Total Conserve, protect,sustain and promote access to the historic environment					11,712	11,658	11,541	11,541
Total Revenue - Housing, Regeneration and Heritage				284,022	278,282	279,597	279,643	

CAPITAL BUDGET - Departmental Expenditure Limit							
SPA	Actions			2011-12 Final Budget	2012-13 Indicative Plans	2013-14 Indicative Plans	2013-14 Indicative Plans
Housing	Achieve quality housing	Major Repairs Allowance	1061	108,000	108,000	108,000	108,000
		Housing General Support	1062	53,906	47,186	37,470	37,470
		Renewal Areas	1063	16,597	14,528	11,537	11,537
		Total Achieve quality housing		178,503	169,714	157,007	157,007
	Enable people to live independent lives	Rapid Response Adapt Prog	1285	1,641	1,641	1,641	1,641
		Total Enable people to live independent lives		1,641	1,641	1,641	1,641
	Increase the supply and choice of housing	Social Housing Grants (SHG)	982	62,785	55,198	43,833	43,833
		Receipts/Repayments of SHG following Property Sale	1000	275	0	0	0
		ExtraCare	1005	6,188	5,417	4,301	4,301
		Total Increase the supply and choice of housing		69,248	60,615	48,134	48,134
Total Housing				249,392	231,970	206,782	206,782
	Implementation of Strategic Regeneration areas	Implementation of Strategic Regeneration areas	4151	39,693	36,500	33,000	33,000

Regeneration	Manage Delivery of Legacy Regeneration Areas		Manage Delivery of Legacy Regeneration Areas	4162	3,900	3,400	2,000	2,000
	Prepare Future Strategic Regeneration Areas		Prepare Future Strategic Regeneration Areas		0	0	0	0
	Local Authority Regeneration General Capital Funding		Local Authority Regeneration General Capital Funding	1380	11,500	11,577	10,888	10,888
	Groundwork & Coalfields Regeneration Trust		Groundwork & Coalfields Regeneration Trust	1400	250	0	0	0
Total Regeneration				55,343	51,477	45,888	45,888	
Museums, Archive and Libraries	Foster Usage and Lifelong Learning through Museum Services	Amgueddfa Cymru - NMW - Capital Maintenance Grant	5540	600	600	600	600	
		Amgueddfa Cymru - NMW - Speciman Purchase Grant	5540	538	538	538	538	
		Amgueddfa Cymru - NMW - St Fagans	5540	1,980	1,000	1,000	1,000	
		Foster Usage and Lifelong Learning through Museum Services		3,118	2,138	2,138	2,138	
	Foster Usage and Lifelong Learning through Library Services	National Library of Wales - Capital Maintenance Grant	5660	550	550	550	550	
		National Library of Wales - Speciman Purchase Grant	5660	305	305	305	305	
		National Library of Wales - Electronic Legal Deposit	5660	100	100	0	0	
		National Library of Wales - Replace Library roof	5660	0	530	0	0	
		Foster Usage and Lifelong Learning through Library Services		955	1,485	855	855	
	Strategic Leadership for museum, archive & library services	CyMAL - Peoples' Collection	6170	100	100	50	50	
		CyMAL Capital	6170	1,500	1,250	1,000	1,000	
		Strategic Leadership for museum, archive & library services		1,600	1,350	1,050	1,050	
Total Museum, Archive and Libraries				5,673	4,973	4,043	4,043	
Support and sustain a strong arts sector via the Arts Council and others	Support and sustain a strong arts sector via the Arts Council and others	Arts Council of Wales - Capital Investment (Inc WMC)	5800	355	355	355	355	
		Support for the Arts - Capital Investment (Inc NBGW)	5812	105	100	95	95	
		Support and sustain a strong arts sector via the Arts Council and other		460	455	450	450	
Media and Publishing	Media and Publishing	Welsh Books Council - Capital	6150	25	25	25	25	
Total Support and sustain a strong arts sector via the Arts Council and others				485	480	475	475	
Delivery of effective sports & physical activity programmes	Delivery of effective sports & physical activity programmes	Sport & Active Wales Fund - Capital expenditure	6010	400	400	400	400	
		Sport & Active Wales Fund - Capital receipts	6010	-55	-55	-55	-55	
Total Delivery of effective sports & physical activity programmes				345	345	345	345	
Conserve, protect,sustain and promote access to the historic environment	Conserve, protect,sustain and promote access to the historic environment	CADW - Capital expenditure	2700	5,485	5,298	5,016	5,016	
		RCAHM - Capital expenditure	6200	45	45	45	45	
		RCAHM - Capital receipts	6200	-30	-30	-30	-30	
Total Conserve, protect,sustain and promote access to the historic environment				5,500	5,313	5,031	5,031	
Total Capital - Housing, Regeneration and Heritage				316,738	294,558	262,564	262,564	

REVENUE BUDGET - Actually Managed Expenditure							
SPA	Actions			2011-12 Final Budget	2012-13 Indicative Plans	2013-14 Indicative Plans	2013-14 Indicative Plans
Housing	Achieve quality housing			-72,000	-61,000	-55,000	-55,000
Museums, Archive and Libraries	Museums			1,797	1,976	2,174	2,174
	Libraries			468	514	566	566
Total Museum, Archive and Libraries				2,265	2,490	2,740	2,740
Total AME - Housing, Regeneration and Heritage				-69,735	-58,510	-52,260	-52,260

Summary - Housing, Regeneration and Heritage							
				2011-12 Final Budget	2012-13 Indicative Plans	2013-14 Indicative Plans	2013-14 Indicative Plans
	Revenue			284,022	278,282	279,597	279,643
	Capital			316,738	294,558	262,564	262,564
	Total DEL			600,760	572,840	542,161	542,207
	AME			-69,735	-58,510	-52,260	-52,260
Total - Housing, Regeneration and Heritage				531,025	514,330	489,901	489,947

CELG(4)-05-11 : Paper 3 : Paper to Note

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chynghor i Aelodau Cynulliad a'u cynorthwyywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau fod yr wybodaeth a'r cynghor a gynhwysir ynddi yn gywir, ond ni dderbynir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partion.

This document has been prepared by National Assembly for Wales lawyers in order to provide Assembly Members and their staff with information and advice in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no liability is accepted for any reliance placed on them by third parties

Communities, Equalities and Local Government

Legal Advice Note

1. Purpose and Background

Whilst conducting an inquiry into Disability Hate Crime, the Communities, Equalities and Local Government Committee ("the Committee"), heard evidence that there were some failings regarding the efficacy of Information Sharing Protocols ("ISP's") governing the sharing of data between agencies. The risk of ISP's not being used to their full potential is that agencies will be insufficiently informed to assist those most in need and the legislative framework within which the ISP lies may not be adhered to. The paper also examines both the general and specific legislative framework governing data sharing and the inherent weaknesses of any such powers and obligations within the legal framework. The Committee has also expressed an interest in data sharing within in a sole organisation and also issues that arise from the Crown Prosecution Service ("CPS") in the context of disability hate crime.

2. The Legal and Statutory Framework

The principal general legislative instruments that control the exchange of information in the fulfilment of public sector responsibilities are: -

- The Data Protection Act 1998 ("DPA")
- The Human Rights Act 1998 ("HRA")
- The Common Law tort of the breach of Confidence
- The law that governs the action of public bodies:-Administrative Law
- The Freedom of Information Act 2000 ("FOIA")
- The Caldicott Principles (where the sharing of information relates to health and social organisations' use of patient identifiable information)

3. The Difference between the FOIA and DPA:-

The ISP's are principally concerned with the sharing of personal data, in which case if an applicant is requesting personal information about himself or

herself or another person then under the FOIA a request for personal information must be treated under sections 7 to 9 of the DPA. Consequently, it would be preferable if requests concerning personal information would be treated as requests under the DPA.

4. Disclosure

Under the Common Law Duty of Confidence, the DPA and the HRA it is possible to disclose information without consent in the cases of serious public interest (detection or prevention of a crime) or in the best interests of an individual. Decisions regarding the disclosure of information without consent must be made on a case-by-case basis. Any disclosure must always be proportionate and the minimum necessary to achieve the necessary objective. Article 8 of the European Convention on Human Rights, provides a right to respect for one's private and family life, his or her home and correspondence, and any interference with this qualified right by the state must be proportionate to the legitimate aim being pursued.

The DPA does not define consent. Article 2 of the EC Directive 95/46¹, defines the data subject's consent as "any freely given, specific and informed indication of his or her wishes by which the data subject signifies his or her agreement to personal data relating to him or her being processed," and it should not be given unambiguously. "Explicit consent" is required for sensitive personal data whereas "consent" is merely required for personal data, which is not sensitive.

The first consideration should be whether the individual has consented to the disclosure. Details of victims, witnesses, and complainants should not be disclosed without their written consent. If consent has been withheld or cannot be obtained the nominated officer should assess whether the lack of consent can be overcome. Specific procedures will apply where the data subject is either not considered able to give informed consent itself because of the data subject's age or where the data subject has a condition which means the data subject does not have the capacity to give informed consent. In these circumstances the relevant policy of the Partner Organisation should be referred to.

Disclosure should be assessed for its potential impact on others who may be identifiable from the data (such as witnesses or staff who are involved in cases) or whose vulnerability makes their interests the over-riding consideration (such as children at risk).

Guidance from the Welsh Government ("WG") together with the Secretary of State², provides advice on disclosure in borderline cases:- "It is increasingly recognised in practice that a failure to share information, even at a level of a "niggling worry", may have serious consequences for the welfare of a child or

¹ EC Directive 95/46 of the European Parliament of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data

² Safeguarding Children:-Working Together Under the Children Act 2004

young person or for others. Lack of information increases the risk of children slipping through the net. You should not be deterred from sharing information by the feeling that there are legal hurdles nor should you assume that the “safer” course is not to share information.”

Consent is not the only means by which personal data can be disclosed. Under the DPA in order to disclose personal data at least one condition in Schedule 2 must be met. In order to disclose sensitive personal data at least one condition in both Schedules 2 and 3 must be met. Sensitive personal data includes physical or mental health condition; sexual life or commission or alleged commission of any offence. The conditions in Schedule 3 for sensitive data are narrower than those in Schedule 2. So it is axiomatic that the threshold is higher for the disclosure of sensitive personal information compared to personal information only. The conditions in Schedule 3 include:- Explicit consent; Protection of the vital interests of the data subject or another person; Information made public by the data subject; Legal proceedings, advice and rights; Administration of justice, statutory functions, government department; medical purposes; Equal opportunities monitoring; and further conditions may be specified in a statutory instrument.

This means that the exchange of information between relevant authorities investigating a case of child abuse will not be restricted under the Act because it will nearly always be the case that the exemptions will either constitute an overriding public interest in favour of sharing the information, or that disclosure will be permitted under Schedule 3 due to the “physical or mental health or condition” of the data subject.

5. Information Sharing Protocols (“ISP’s”)

ISP’s should provide an agreed framework, which underpins the work of multi-agencies, for example Community Safety Partnerships (“CSP’s”) and their partner agencies and their use of information. In particular, the ISP should facilitate the secure sharing and management of information; and enable the responsible authorities in a CSP to meet their legislative obligations effectively. ISP’s should do this by clearly setting out the legislative framework and also what is expected of the Parties signed up to a Protocol including:-

Clearly stated aims and objectives, including which Parties are signatory to the Protocol; purposes for which information may be shared and what parties the information can be shared with, restrictions on the use of information shared, provisions governing consultation; what information is to be shared, the transmitting of shared data, compliance with legal requirements, complaints procedure, and an indemnity clause arising out of any potential breaches of the protocol.

Without a clear legal framework setting out the legal obligations on which the Protocol is based, and clear watertight provisions (as above) the efficacy of exchanging information under the Protocol will be inhibited, and the parties to the Protocol will not clearly understand what is expected of them to perform their roles effectively. The Protocols are not legally binding documents and so

failure to comply with a provision by one of the signatory parties will be difficult to enforce. An indemnity clause will assist in order to keep partner organisations fully indemnified against costs, expenses and claims arising out of any breach of the agreement and also the unauthorised or unlawful access, loss, theft, use, destruction or disclosure by the offending partner or its subcontractors of any personal data obtained in connection with the agreement.

The private and voluntary sectors by nature of the fact that they are not public authorities do not need specific legal power to share information. They must however, fulfil the requirements of the DPA and Common Law Duty of Confidentiality.

6. Information sharing within a single organisation (Local Authority used by way of example):-

The Information Commissioner (“ICO”) has provided advice on whether and how departments within a local authority (“LA”) can share information. The ICO took the view that for the purposes of the DPA a LA is a single organisation, which makes its own decisions about how personal information is used. If one department in an LA passes information to another department within the same LA, this is not a disclosure of personal information as defined by the DPA. But if one LA department passes information to another LA department so that it can be used for a different purpose, then this will be a secondary use by the LA of that personal information. The LA must satisfy itself that such sharing complies with the data protection principles, the most relevant being the first and second (fair and lawful processing and compliance with the conditions in Schedules 2 and 3 of the DPA) and by formally notifying the ICO of the purpose of the disclosure. Consequently, unless there is an express statutory authority for sharing (for example The Social Security Administration Act 1992, section 7B provides for LAS’s to use social security information held by them in relation to Housing Benefit and Council Tax Benefit purposes and section 122E allows a LA administering Housing Benefit/Council Tax Benefit to share “relevant benefit information”) then it would be preferable for a LA to avoid secondary use of disclosure unless it has express lawful authority for doing so.

7. Specific Legislative provisions providing a power or a duty on public authorities to share information in specific circumstances:-

i) Section 115 of the Crime and Disorder Act 1998 (“CDA”) allows information to be shared for the purposes of community safety between Police authorities, Local authorities, Probation Boards and Trusts, Fire and Rescue Authorities, and Health Authorities where it is necessary for fulfilling the duties contained in the CDA. The key condition to consider under section 115 is that “Relevant authorities” have the power (but note **not** a legal duty) to share information. This would include where it is necessary for the formulation and implementation of the local Crime and Disorder Reduction Strategy.

The parties have a discretion only under section 115 CDA and are not under any obligation to share information and may choose not to do so. If the provision were strengthened so that parties were under an obligation to share information then this would ensure that there would be no risk that any information concerning vulnerable people was not passed on to the appropriate authorities. The converse argument is that if the parties are under a compulsion to share the information then there may be a greater risk of misuse of that information.

The power in section 115 CDA does not override legal conditions governing information sharing. These principally relate to the DPA, HRA and the common law of confidentiality.

ii) The purpose of a Protocol under the CDA is to facilitate **the exchange of information** between the partner agencies that will enable the partnership to fulfil its statutory duty and work together (section 17 CDA 1998 as amended by the Police and Justice Act 2006 ("PJA 2006") and the Policing and Crime Act 2009) to further public safety and for the prevention of crime and disorder.

Section 17A of the CDA imposes a **duty** on a relevant authority to disclose to all other relevant authorities prescribed information which concerns the reduction of crime and disorder, and anti-social behaviour. Information is of a prescribed description if it is depersonalised (ie. statistical information). The Crime and Disorder (Overview and Scrutiny) Regulations 2009 defines depersonalised information as information which does not constitute personal information under the DPA. When completely depersonalised information is requested the assumption is that it will be shared. However this does **not** require any authority to disclose information of a personal nature within the meaning of the DPA. So the duty will not operate in terms of the sharing of personal information.

iii) The PJA 2006 and the Crime and Disorder (Overview and Scrutiny) Regulations 2009 ("2009 Regulations") incorporate the following **duty** that relates to information sharing. When requested by a crime and disorder committee, responsible authorities and cooperating bodies are under a duty to share with the committee information that relates to the discharge of the authority's crime and disorder functions, or that relates to the discharge by the committee of its review and scrutiny functions under section 19 of the PJA 2006. This **duty** only applies under the following conditions:-

- The information should be depersonalised information, except when the identification of an individual is necessary or appropriate in order to enable the crime and disorder committee exercise its powers properly; and
- It should not include information that would prejudice legal proceedings, or the current or future operations of the responsible authorities.

No explanation is provided as to the meaning of the committee "properly exercising its powers," and the efficacy of the duty may depend partly on how

often the committee meets. It is possible under 2009 Regulations for the committee to meet as rarely as once a year.

iv) The Criminal Justice and Court Service Act 2000 ("CJCSA") re-enacted by the Criminal Justice Act 2003 ("CJA") provides for a **specific duty** for the Police and Probation to share information in order to make joint arrangements for the assessment and management of the risks posed by offenders who may cause serious harm to the public. The exchange of information relating to violent and sexual offenders between agencies is still important for the overall safety of "vulnerable people," particularly where the individual has been the subject of abuse. The **duty to co-operate** under section 325 CJA "**may include the exchange of information.**" As parties have a discretion only to exchange information, and decide not to do so, vital information may be omitted.

8. Disability Hate Crime

Section 146 CJA provides that where it has been proved that hostility based on a person's disability was demonstrated at the time the offence was committed, or immediately before or afterwards, or proved the offence was motivated by hostility towards the disability, the court **must** declare this an aggravating factor at the sentencing stage. It has been acknowledged by the CPS that the biggest barrier to perpetrators of disability hate crime being brought to justice is a widespread mindset that doesn't see disabled people as targets of hostility, rather it prefers to see them as being taken advantage of for being "vulnerable." It is a common view in a case that where disability is a factor in a case, it's not because disabled people are "hated," it is because they're an easy target. Consequently, when considering the threshold tests for prosecution, the CPS consider that because a disabled person is regarded as "vulnerable" that in itself is an aggravating factor that would require a higher sentence, and so the prosecutor can circumvent section 146 CJA which deals with hostility and hatred. By not pursuing a prosecution pursuant to section 146 CJA, the prosecutor is not marking the gravity of the case. The requirement is for evidence of "hostility" not "hate" and in the absence of a legal definition of "hostility," consideration should be given to ordinary dictionary definitions which include spite, contempt or prejudice. In the offences of incitement to racial and religious hatred the bar for prosecution is set deliberately high, this is particularly the case with incitement to religious hatred-because they impact on the right to free speech. But the high bar in those cases is clouding understanding of what is evidentially necessary to prove other hate crimes. What is required is that a case is brought building the full circumstances of the case such as repeated behaviour and a pattern of hostility. This can be compared with a recent case where an aggravated racial offence was brought solely on the basis of using the words "bloody foreigners"³.

To prove an offence is aggravated under section 146 CJA, verbal hostility may need to be "heard" by the victim or witness and in some cases disabled

³ R v. Rogers (2007) 2 WLR 280

victims or witnesses might not be able to hear or may have a learning disability that results in difficulty communicating.

In the CPS Policy on Prosecuting Hate Crime, it states that “it recognises that bullying may involve criminal acts.” The definition of “disability” is not as wide as it was previously under the Disability Discrimination Act 2005 (“DDA”). The definition under section 146 CJA includes any physical or mental impairment, whereas the definition under the DDA was more prescriptive and included people with a wide variety of disabilities, including those people living with HIV or AIDS, or have cancer or multiple sclerosis. Furthermore there is no statutory definition of “disability related incident.” The CPS has adopted a definition in the absence of a legal definition: “Any incident which is perceived to be based upon prejudice towards or hatred of the victim because of their disability or so perceived by the victim or any other person.”

Unlike, child abuse and domestic violence, there is no Protocol in force by the CPS in relation to Disability Hate Crimes and there is very little guidance for prosecutors. However there is a CPS Policy in force in relation to the prosecution of disability hate crimes. However, the lack of a Protocol in force does currently leave the victims of such crimes open to fewer prosecutions being pursued and at greater risk of vulnerability.

9. Child Abuse cases

Professionals can only work together effectively to protect children if there is an exchange of relevant information between them. This has been recognised by the courts⁴: “The consequences of inter-agency co-operation is that there has to be a free exchange of information between social workers and police officers together engaged in an investigation...the information gained by social workers in the course of their duties is however confidential and covered by the umbrella of public interest immunity...it can however be disclosed to fellow members of the child care team engaged in the investigation of the of possible abuse of the child concerned.”

There are **no specific mandatory laws in Great Britain** that require professionals to report any suspicions they may have of child abuse to the authorities. In Northern Ireland however, it is an offence **not** to report an arrestable crime to the police, which by definition includes crime against children⁵.

Lord Bingham CJ considered⁶ that where a public body acquires information relating to a member of the public which is not generally available and is potentially damaging, the body ought not to disclose such information save for the purpose of and the extent necessary for the performance of its public duty or enabling some other public body to perform its public duty.

⁴ R v. G (a minor) (1996) 2 AER 65

⁵ Wallace, Isla and Bunting, Lisa (2007). An examination of local, national and international arrangements for the mandatory reporting of child abuse:-the implications for Northern Ireland. Belfast:-NSPCC N.I. Policy and Research Unit.

⁶ R v. Chief Constable of North Wales Police, ex party Thorpe (1996) QB 396

The exchange of information between relevant authorities investigating a case of child abuse will not be restricted under the DPA because it will nearly always be the case that the exemptions constitute an overriding public interest in favour of sharing the information.

The Criminal Procedure and Investigations Act 1996 (“CPIA”), the Code of Practice made under section 23 of the Act and the Attorney General’s Guidelines on the disclosure of information in criminal proceedings govern the disclosure of unused prosecution material to the defence. The prosecution is under a continuing **duty** to keep under review whether material should be disclosed to the defence.

Where the prosecution holds relevant sensitive material that meets the criteria for disclosure under the CPIA, then a Public interest immunity application (“PII”) should be made to the court to withhold this material from the defence, and any decision to withhold this material is a matter for the court to determine. PII allows the court to reconcile two conflicting public interests-the public interest in the fair administration of justice and the need to maintain the confidentiality of information the disclosure of which would be damaging to the public interest. PII is an exception to the general rule that all material that falls within the test for disclosure must be disclosed.

Local authority social services files are **no** longer a “class” of material to which PII automatically applies. Each case and each document should be considered individually. Where PII can, or may apply, the LA may itself conduct the balancing exercise and agree that in an individual case, the conflicting public interest in the investigation and prosecution of a crime overrides the PII interests in confidentiality⁷.

The position of PII with respect to social services files has recently been summarised⁸ as follows:-before embarking on a claim for PII, consideration should be given to the question whether the material passes the threshold test for disclosure under the CPIA, and if so why.

Where a person subject to a criminal investigation has not been charged, it is often the case that the investigating police officer will want to know about the background of the complainant, family and associates. Such information may be helpful in assessing the veracity of any complaint and the likelihood of conviction. Occasionally if the local authority had disclosed material to the police at an earlier stage the person under investigation would not have been charged. In these circumstances the only mechanism to enable the investigators to make an application to the court for disclosure of such material is to consider whether it is appropriate to make an application for Special Procedure Material, under Schedule 1 of the Police and Criminal Evidence Act 1984. However, this is not a satisfactory approach because it goes against the ethos and spirit of the parties exchanging and sharing information where it is necessary to protect children. Therefore where full

⁷ R v. Chief Constable of West Midlands Police ex p. Wiley (1995) 1 AC 274

⁸ Re R (Care:-Nature of Proceedings) (2002) 1 FLR 755

details of the nature of the investigation and the reasons for requiring such material are given to the LA and that material is treated as confidential, and then it is in the interests of justice for there to be disclosure of relevant material before charge. This would be considered “necessary” and in accordance with Schedule 3 of the DPA.

Material obtained by social services in the course of an investigation concerning the welfare of a child under section 47 of the Children Act 1989 (“CA 1989”), may be obtained jointly with the police. Relevant persons have a **duty** to assist social services with their enquiries by providing relevant information and advice if requested to do so, but are not obliged to do so if it would prove unreasonable in all the circumstances of the case. The duty is diluted by the get-out clause that they do not have to assist if it is unreasonable to do so and no explanation is given of what would be unreasonable.

Section 26 CPIA provides that a person other than a police officer who is charged with a duty of conducting an investigation shall have regard to the Code of Practice under section 26 CPIA. Material obtained by social services in the course of an investigation under section 47 CA 1989, which may be obtained jointly with the police, but is not in possession of the police is **not** subject to the Code of Practice. This means that section 47 is not subject to the same rigorous and best practice criteria as material under section 26 CPIA. It is acknowledged that where material is found jointly with the police, the local authority should as a matter of good practice have regard to the Code, but there is **no legal duty** upon them to do so.

10. Vulnerable children at risk of homelessness

Section 213A of the Housing Act 1996 ensures that a housing authority contacts social services (with consent) when a family with children is intentionally homeless, that is they are not owed the main homelessness duty and the family wishes to seek assistance under Part 3 of the CA 1989. If consent is withheld, the housing authority may disclose the information about homelessness to social services if the child is or may be at risk of significant harm. The duty also ensures that housing authorities co-operate with social services to provide the advice and assistance as is reasonable to help ineligible or intentionally homeless households with children to obtain accommodation. However, the duty does **not** extend to providing accommodation for the household.

Section 25 of the Children Act 2004 (“CA 2004”) reflects the aims of the UN Convention on the Rights of the Child and strengthens the arrangements for promoting and protecting the welfare of children and young people. For the first time, it places a **duty** on LA’s in Wales to make arrangements to **promote co-operation** with a view to improving the well-being of children in their area in relation to physical and mental health, and protection from harm and neglect. In fulfilling this duty, the LA is required to promote co-operation between itself and its partners, these being the police, probation board, LHB and NHS Trust and National Council for Education and Training in Wales.

These partners are also placed under a duty to co-operate with the LA in making these arrangements. The duty under section 25 does not explicitly state that co-operation involves “the exchange of information.”

In order to safeguard and promote children’s welfare, the Local Safeguarding Children’s Boards should ensure that its partner agencies have in place arrangements under section 28 CA 2004. This provides that all staff in contact with children **share information** if they believe that a child and family may require additional services if a child is in need. This includes those children suffering or at risk from suffering harm; and guidance and training specifically covers the **sharing of information** between professions, organisations and agencies, as well as within them and arrangements for training take into account the value of multi-agency training as well as single agency training.

Section 29 CA 2004 gives the Assembly (now the Welsh Ministers⁹) power to establish or to require LA’s to establish, maintain and operate a database of basic information on all children in the authority’s area or, if the duty to create a database or databases is placed on another body, to participate in its operation. Guidance or directions implemented by the Welsh Ministers under section 29 can specify how information is to be **transferred** between the databases. There is a limitation imposed which states that any such Regulations must be made with the consent of the Secretary of State. The Welsh Ministers have not as of yet taken advantage of the regulation making powers under this provision.

11. The Wales Accord on the Sharing of Personal Information (“WASPI”)

The WG has issued the “WASPI”, which provides the public sector, third sector and private service with a framework for development of protocols to govern the sharing of personal information for particular purposes. It is being developed to provide the “gold standard” for all Sharing Personal Information (SPI) in Wales. The Accord provides a single basis for protocols that underpin effective collaboration across organisations to make sure their staff can share information safely and legally.

The WG together with the Secretary of State has issued Guidance¹⁰ which reflects the principles contained within the United Nations Convention on the Rights of the Child, ratified by the UK Government in 1991 and takes account of ECHR in particular Articles 6 and 8. A key aspect of the guidance is about **information sharing**. It is particularly informed by the requirements of the CA 1989 and 2004, which provide a comprehensive framework for the care, and protection of children. This Guidance requires each person or body to which the section 28 duty applies to have regard to any guidance given to them for this purpose by the Secretary of State and the WG. This means they must take the guidance into account and, if they decide to depart from it, have clear reasons for doing so.

⁹ Section 162, Para. 30 schedule 11 of the Government of Wales Act 2006

¹⁰ Safeguarding Children-Working Together under the Children Act 2004.

12. Conclusion

The ISP's are only as efficient as the provisions contained therein and the general and specific statutory legislative framework which govern them. The ISP's efficacy is also dependant on the signatories to an ISP complying with its provisions. There is an argument for the tightening of the specific legislative framework in some cases and also for greater clarity of some of provisions so that it is clear that co-operation includes "the exchange of information" where this is in doubt, and for specific provisions to be subject to a code of practice to ensure a best practice regime. There is scope for the Welsh Ministers to take advantage of unused regulation making powers to establish a database and transfer information with the consent of the Secretary of State. The risk of insufficient disability hate crime prosecutions proceeding may be overcome with clearly defined policy, with prosecution thresholds being amended and a protocol being in force so that signatories can receive direction and guidance as to the specific procedure and legislative framework within which the ISP lies, and receive greater clarity as to how and when information can be exchanged.

Legal Services,

National Assembly for Wales,

October 2011

CELG(4)-05-11 : Paper 3a : Paper to Note

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chynghor i Aelodau Cynulliad a'u cynorthwyywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau fod yr wybodaeth a'r cynghor a gynhwysir ynddi yn gywir, ond ni dderbynir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partion.

This document has been prepared by National Assembly for Wales lawyers in order to provide Assembly Members and their staff with information and advice in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no liability is accepted for any reliance placed on them by third parties

Communities, Equalities and Local Government

Legal Advice Note

Purpose and Background

This paper is a précis of the attached paper, which is concerned with multi-agency data sharing, and how it impacts upon wider issues affecting child abuse, disability hate crime and vulnerable children at risk of homelessness within the framework of both general and specific legislation governing data sharing. The paper also considers data sharing in a single organisation and uses a local authority by way of example. It is intended that this précis be read in conjunction with the attached paper which provides greater detail.

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Purpose and Background

The legal and statutory framework

The difference between the Freedom of Information Act 2000 ("FOIA") and the Data Protection Act 1998 ("DPA")

Disclosure under the DPA, Human Rights Act 1998 ("HRA"), and the duty of the law of confidence

Information Sharing Protocols ("ISP")

Information sharing within a single organisation

Specific Legislative Provisions providing a power or a duty on public authorities to share information in specific circumstances

Disability Hate Crime

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Vulnerable Children at Risk of Homelessness

The Wales Accord on the Sharing of Personal Information

Conclusion including Suggestions for committee for further consideration

1. Purpose and Background

Multi agency data sharing: -Evidence heard by the Committee that there are failings in the efficacy of the Information Sharing Protocols ("ISP's").

Data sharing within a sole organisation: -the rules governing when data can and cannot be shared.

Consideration of the general and more specific legislative background in relation to data sharing, including a critique and examination of any weaknesses of any power and/or obligations.

2. The Legal and Statutory framework

The Data Protection Act 1998

The Human Rights Act

The Common Law of tort of the Breach of Confidence

The Law that governs the action of public bodies:-Administrative Law.

The Freedom of Information Act 2000

The Caldicott Principles (where the sharing of information relates to health and social organisations' use of patients identifiable information.

3. The differences between the DPA and the Freedom of Information Act 2000

("FOIA"):-The Information Sharing Protocols ("ISP's") are principally concerned with the sharing of personal data, in which case if an applicant is requesting personal information about himself or herself or another person then there is no right to know under the FOIA. Requests concerning personal information would be treated as requests under the DPA

4. Disclosure under the DPA; HRA and the Common Law tort of the Breach of Confidence: -

Information may be disclosed without consent where there is an overriding public interest to disclose. There is an enhanced threshold for disclosure of sensitive personal information. Consent is not always required for the disclosure of information if conditions are met in schedule 2 and 3 of the DPA, personal and sensitive information respectfully. Article 8 (right to respect for privacy, home and correspondence) of the European Convention on Human

Rights (“ECHR”) is qualified and can be interfered with by the state, but must be proportionate.

The duty of confidence can be overridden in limited circumstances including where matters of public interest override the benefit of non-disclosure and confidence to the individual.

5. Information Sharing Protocols (“ISP’s):-

Non-legal status so it is doubtful if provisions can be enforced effectively. ISP’s only as effective as the provisions within each Protocol. The efficacy of an ISP is also dependant on the specific legislative framework governing the exchange of information between the Parties under the Protocol.

6. Information sharing in a single organisation:-

The Law that governs the action of public bodies: -Administrative Law: - Considered in the context of sole agency data sharing. Preferable to have express statutory authority to authorise the sharing of data but sharing of data may be possible under LGA 1972 and 2000.

7. Specific Legislative Provisions providing a power or a duty to share or exchange information in specific circumstances: -

- Section 115 Crime and Disorder Act 1998 (“CDA”): -Power to share information between relevant authorities for fulfilling the duties within the CDA.
- Section 17A CDA: -Imposes a duty on a relevant authority to disclose to all other relevant authorities prescribed information which concerns the reduction of crime and disorder and anti-social behaviour. Relates to depersonalised information only.
- The Police and Justice Act 2006 (“PJA”) and the Crime and Disorder (Overview and Scrutiny) Regulations 2009 incorporates a duty that relates to information sharing. Duty mainly relates to depersonalised information.
- The Criminal Justice and Court Service Act 2000 (“CJCSA”) re-enacted by the Criminal Justice Act 2003 (“CJA”) provides for a specific duty for the Police and Probation to share information in order to make joint arrangements for the assessment and management of the risks posed by offenders who may cause serious harm to the public.
- Section 69 CJCSA placed a statutory duty on the Probation Service to offer victims of violent and sexual offences, the opportunity to make representations about the conditions of the release of the offender and to be kept informed of these:-now been repealed.

8. Disability Hate Crime:- Prosecutions under section 146 CJA which deal with hostility and hatred may be circumvented by prosecutors. There is no Protocol in force for Disability Hate Crimes, and little guidance for prosecutors.

9. Child Abuse Cases: -

- Professionals can only work together effectively to protect children if there is an exchange of relevant information between them.
- There are no specific mandatory laws in the UK that require professionals to report any suspicions they may have of child abuse to the authorities.
- LA social services files are no longer a “class” of material to which “Public Interest Immunity” applies.
- Special Procedure Material under Police and Criminal Evidence Act 1984 (“PACE”) goes against the ethos and spirit of the Parties exchanging and sharing information where it is necessary to protect children.
- Section 47 of the Children Act 1989 (“CA”): -Relevant persons have a duty to assist social services with their enquiries by providing relevant information and advice.

10. Vulnerable children at risk of homelessness

- Section 213A of the Housing Act (“HA”): -ensures that a housing authority contacts social services (with consent) when a family with children is ineligible or intentionally homeless.
- Section 25 of the Children Act 2004 (“CA”) places a duty on LA’s in Wales to make arrangements to promote co-operation with a view to improving the well-being of children in their area.
- Section 28 CA:-All staff in contact with children shares information if they believe that a child and family may require additional services.
- Section 29 CA gives the Assembly (now the Welsh Ministers) power to establish or to require LA’s to establish a database of specific information on all children in the authority’s area or to participate in its operation.

11. The Wales Accord on the Sharing of Personal Information (“WASPI”) :-
The Welsh Government (“WG”) has issued the WASPI, which provides the public sector, third sector and private service providers, with a framework for development of protocols to govern the sharing of personal information for particular purposes.

The WG together with the Secretary of State has issued Guidance: -
Safeguarding Children-Working Together Under the Children Act 2004.

12. Conclusion

The tightening up and greater clarity of the specific legislative framework in some cases would be beneficial. Welsh Ministers would be advised to use existing regulatory powers to set up databases and transfer information with the consent of Secretary of State. It is advisable that there are clear ISP’s in force for disability related hate crimes. It would be advantageous if the CPS could clarify terminology where there is a lack of definitive statutory definitions and consider re-examining thresholds in relation to disability hate crime if this would aid prosecutions.

