

## **4. Legal framework.**

### **4.1. Confidentiality**

4.1.1. The rules on confidentiality, privacy and the need to safeguard personal information arise from both legislation and case law. These enshrine the need for fair and ethical treatment of information where there is a duty of confidence, issues of privacy or where personal information is involved.

4.1.2 The common law duty of confidentiality is not a written Act of Parliament. It is “common” law. This means that it has been established over a period of time through the Courts. It recognises that some information has a quality of confidence, which means that the individual or organisation that provided the information has an expectation that it will not be shared with or disclosed to others.

For information to have a quality of confidentiality it is generally accepted that:

- it is not “trivial” in its nature,
- it is not in the public domain or easily available from another source,
- it has a degree of sensitivity,
- it has been communicated for a limited purpose and in circumstances where the individual or organisation is likely to assume an obligation of confidence. For example information shared between a solicitor/client, health practitioner/patient.

In such circumstances the information should only be disclosed:

- with the permission of the provider; or,
- if the confidentiality requirement is overridden by legislation; or,
- if an effective case ‘that it is the public interest’ can be made.

### **4.2. Data Protection Act 1998.**

4.2.1. The Data Protection Act (DPA) requires anyone who handles the personal information of living individuals to comply with eight data protection principles. It also gives individuals rights over their personal information. In assessing whether you are handling personal data within the law, these principles are critical and the most important of them are:

- the 1<sup>st</sup> Principle, which requires processing to be fair and lawful and requires criteria to be met to achieve this;
- the 2<sup>nd</sup> Principle, which requires personal data to be processed for one or more lawful purposes;
- the 3<sup>rd</sup> Principle, which requires personal data to be protected against unauthorised or unlawful processing and against accidental loss, destruction or damage.

4.2.2. The Information Commissioners Office (ICO) upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The

ICO publishes a range of information on their website to understand the law around data control and the data sharing code of practice. <https://ico.org.uk/>

### **4.3. The Crime and Disorder Act 1998**

4.3.1. Any person may disclose information to a relevant authority under Section 115 of the Crime and Disorder Act 1998, 'where disclosure is necessary or expedient for the purposes of the Act (reduction and prevention of crime and disorder)'. 'Relevant authorities', broadly, are the police, local authorities, health authorities (clinical commissioning groups) and local probation boards.

### **4.4. Human Rights Act 1998**

4.4.1. Human rights are freedoms which belong to all individuals regardless of their nationality and citizenship. They are fundamentally important in maintaining a fair and civilised society.

4.4.2. In cases of concern or allegations against people who care for adults with care and support needs the Act is relevant when decisions have to be made which consider balancing one right against another, or one person's right against the interest of society. These rights are fundamental and the most important of them are;

- Article 6: Right to a fair trial – A person has a right to a fair and public hearing within a reasonable amount of time. This applies both to criminal charges against them and to cases concerning their civil rights and obligations...If it is a criminal charge, the person is presumed innocent until proven guilty according to law and has certain guaranteed rights to defend themselves.
- Article 7: No punishment without the law – A person normally has the right not to be found guilty of an offence arising out of actions which at the time they committed them were not criminal.
- Article 8: Right to respect for private and family life - A person has the right to respect for their family life, their home and their correspondence. This right can be restricted only in specified circumstances.