

## **Response from the Information Commissioner's Office to the Welsh Assembly Government Consultation: Substance Misuse Service & System Improvement 2010**

The Information Commissioner's Office (ICO) is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

The ICO regulates the Data Protection Act 1998 and the Freedom of Information Act 2000. The ICO's main functions are educating and influencing (we promote good practice and give information and advice), resolving problems (we resolve eligible complaints from people who think their rights have been breached) and enforcing (we use legal sanctions against those who ignore or refuse to accept their obligations).

The ICO will provide responses to questions relevant to the scope of the office, and from the perspective of the Data Protection Act. Answers will be provided for questions 1, 2 & 4 only.

### **1. Is the guidance clear and understandable?**

With regard to the privacy aspects of this guidance, the ICO is content that clear protocols for information sharing have been cited as necessary for the strategy to operate in practice.

The ICO has long held the view that information sharing between agencies must be promoted where this is appropriate for the service, and that this is permitted within the existing framework of Data Protection legislation. However, it is understood that individuals working with young people occasionally misinterpret the Data Protection Act, and the proposals contained in this consultation document will certainly assist in reassuring these workers that sharing data is allowable in certain circumstances and where adequate protocols are in place.

### **2. Do you wish to make specific comment on any part of the guidance?**

The section 'Consent and Confidentiality' beginning at paragraph 4.23 provides a good starting point for sharing personal

information, and the ICO very much welcomes the requirement for ISPs based on WASPI to be in place between all participating organisations.

The inclusion of non-statutory partners and third sector agencies within the strategy may raise issues of consistency in information handling, particularly in systems for disclosure and security. The third sector in particular does not have the same powers as the public sector to share personal information, and our experience has shown that in general the sector may not have the same understanding of the requirements of the Data Protection Act as the public sector. Non-statutory partners should provide comparable safeguards and measures to those provided by the statutory partners in order to ensure the safety of sensitive personal data. Signing up to WASPI and the setting up of information sharing agreements based on that framework should help to ensure those safeguards are in place.

Section 4.24 directs readers to Appendix 6 for a contact point for advice in the development of ISP's, however no direct contact point is made explicit within this Appendix. The ICO would recommend the installation of a contact point for organisations to approach for guidance on developing adequate ISP's. This facility may be useful for private and third sector organisations involved in this strategy, as well as for statutory organisations. We are also aware that the Welsh Assembly plans to make some form of support available for those sharing information in this way, as part of its plans to roll out the adoption of WASPI across Wales. If possible, a reference to this support would be both appropriate and useful.

In 4.26 with regard to the potential for sensitive personal information to be disclosed to parents or safeguarding agencies, the legal right of subject access to personal information provided by the Data Protection Act 1998 may allow parents or legal guardians to access the personal information of a young person considered too young to understand or exercise this right. If not already covered within it, this right must be considered alongside SCODA/CLC guidance when assessing the potential for disclosure of personal information as part of the right of subject access.

We also welcome the establishment of SMAPBs to oversee service delivery plans, and as mentioned at paragraph 4.27, to ensure that ISPs are in place between all agencies. There is much evidence that a strong governance structure with clear lines of accountability is crucial to achieving Data Protection compliance.

**3. Is the guidance presented in a logical sequence?**

N/A

**4. Are there any gaps or areas that are not adequately addressed?**

The ICO welcomes the guidance provided in Appendix 6 for information sharing between organisations. However we would recommend that more emphasis is given here to the fact that ISP's are practical documents relating to the day-to-day information sharing activities of the partners, rather than strategic documents of perhaps less operational relevance. It will be essential to ensure not only that WASPI is signed up to at strategic level, but that the specific sharing protocols are used effectively at operational level across all partners. Practices such as, for example, the increasing use of removable media (USB sticks, laptops) or use of inadequately secured computers compromise the security of personal information and ultimately the effectiveness of this strategy.

The ICO would recommend carrying out a privacy impact assessment when designing the ISP's to be used. This process will ensure that the privacy impacts of the strategy are assessed and that safeguards are built into the relevant procedures from inception. Further guidance on the process is available from the ICO website.

**5. Does the guidance give sufficient direction to support the development of local integrated care pathways.**

N/A

**6. Do you currently use either screening tool mentioned in the document?**

N/A

**7. Are there any other screening tools you would like to see added to the consultation?**

N/A

**8. Are here any other issues that you would like to raise?**

N/A

It is hoped that this response provides a clear statement of the ICO position on this matter. The ICO would be pleased to discuss or expand upon any of the points raised above.

November 2011