

## DISCLOSURE OF INFORMATION DURING AND AFTER MARAC MEETINGS: FREQUENTLY ASKED QUESTIONS

These FAQs are designed to be used by newly established MARACs to address the likely concerns that MARAC members may have about information sharing. This document does not provide legal advice. As each decision to share information must be made on a case-by-case basis, if there is any doubt as to whether disclosure is appropriate, specific legal advice should be sought.

For the purposes of these FAQs, it is assumed that no consent has been obtained from any individual (the victim, the victim's children and/or the alleged/suspected perpetrator) as to the sharing of their information.<sup>1</sup> In practice, consent should always be sought if possible and it is safe to do so, although the individual practitioner needs to take an independent decision on whether sharing information with MARAC members is necessary and permitted by law to address the safety of the individual or individuals.

If consent is not obtained, disclosures can still be made under the Data Protection Act (*DPA*), the Human Rights Act (*HRA*) and the Caldicott Guidelines<sup>2</sup>. Decisions to disclose must:

- be reached on a case-by-case basis;
- be based on a necessity to disclose;
- ensure that only proportionate information is disclosed in light of the level of risk of harm to a named individual or a known household in each case; and
- be properly documented at the time a disclosure decision is made,<sup>3</sup> identifying the reasons why the disclosures are being made (i.e. what risk is believed to exist), what information will be disclosed and what restrictions on use of the disclosed information will be placed on its recipients.

### 1. WHAT ARE THE KEY PIECES OF LAW AND GUIDANCE GOVERNING DISCLOSURES MADE DURING OR FOLLOWING MARAC MEETINGS?

- Data Protection Act (the *DPA*);
- Common law duty of confidence;
- Human Rights Act (the *HRA*); and
- Caldicott Guidelines (the *Guidelines*) (although as these are guidelines only, if there is any conflict between them and DPA and HRA, the legislation must take precedence).

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<sup>1</sup> The information would include names, dates of birth, addresses, details of previous convictions, mental health problems and wider personal circumstances of victims of domestic abuse, children of these victims and the alleged perpetrators of domestic violence.

<sup>2</sup> Individual agencies may wish to refer to other statutes which apply specifically to them. Thus for example, the police may refer to the Crime and Disorder Act 1998.

<sup>3</sup> The disclosure decision would be made by the agencies attending the MARAC meeting at which the relevant case was discussed.

## **2. WHAT ARE THE KEY PRINCIPLES GOVERNING DISCLOSURES MADE DURING OR FOLLOWING MARAC MEETINGS?**

- Decisions to disclose must be necessary and proportionate, taking into account:
  - the prevention or detection of crime, including safeguarding someone's life and/or child protection; and/or
  - in the interest of the public; and/or
  - the right to life and to live free from inhuman and degrading treatment and torture; and/or
  - allowing confidential counselling, advice and support to take place.
- Decisions to disclose must be properly documented, including:
  - the reasons behind the decision to disclose;
  - the extent of any disclosures made (which should be the minimum necessary); and
  - the permitted use of the disclosed information.

## **3. WHICH INDIVIDUALS' PERSONAL INFORMATION MAY BE DISCUSSED AT OR SUBSEQUENT TO A MARAC MEETING?**

- the victims<sup>4</sup>
- the children
- the (alleged) perpetrator and, where relevant to the risks posed, the perpetrator's family or other relationships.

However, different levels of disclosure may be appropriate and in all cases disclosure must be proportionate to the risks faced.

## **4. WHAT HAPPENS IF THE DATA SUBJECT DOES NOT CONSENT?**

Individuals are referred to a MARAC using a strict referral process. In many circumstances, it would increase the risk of the victim suffering further harm if consent were sought or given, for example if the alleged perpetrator discovered that the victim had given consent.

If consent is not obtained, the data subject's information may still be discussed at a MARAC. A decision as to whether to disclose information should not be based upon whether or not consent has been obtained. Any decision to disclose information should conform with the principles set out in 2 above.

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<sup>4</sup> A victim may be deemed as such by virtue of circumstances. For example, the term 'victim' incorporates the scenario where an individual has a new partner who has previously been disclosed as a perpetrator of domestic violence at MARAC against a former partner and the individual is unaware of this and is at risk of domestic violence. It may include other family members or anyone directly included in a safety plan.

## **5. WHEN CAN A MARAC MEMBER MAKE A DISCLOSURE TO OTHER MEMBERS OF THAT MARAC?**

There should be a strict referral process to MARAC that ensures that all cases being brought to the meeting meet the criteria outlined below.

### ***Data Protection Act***

The prevention of crime exemption under the DPA can be used if disclosure to members of the same MARAC is necessary to prevent a crime against a named individual or specified household. The risk of crime must be a genuine or likely risk.

### ***Common law duty of confidence***

An obligation of confidence will exist where the individual has provided the information to another in circumstances where it is reasonable to assume that the provider of the information expected it to be kept confidential. Where there is a clear duty of confidence the information can only be disclosed to "third parties" if there is informed consent, compulsion of law or public interest.

### ***Human Rights Act***

A disclosure to members of the same MARAC will comply with the HRA if it:

- (a) is made for the purposes of preventing crime, protecting the health and/or safety of alleged victims and/or the rights and freedoms of those who are victims of domestic violence and/or their children;
- (b) is necessary for the purposes referred to in (a) above and is no more extensive in scope than is necessary for those purposes; and
- (c) complies with all relevant provisions of law, including the DPA and the Caldicott Guidelines.

### ***Caldicott Guidelines***

Where an individual has not consented to the use of their information, that individual's wishes should be respected unless there are exceptional circumstances. One such exceptional circumstance arises where there is a serious public health risk or risk of harm to the patient or other individuals, or for the prevention, detection or prosecution of serious crime.

Cases considered at MARAC meetings are likely to constitute exceptional circumstances as defined in the Caldicott Guidelines, because MARACs are a forum to discuss the most serious cases of alleged or suspected domestic violence. However, each case must be considered individually, taking into account its specific circumstances. Practitioners should be aware that Caldicott Guidelines are not law and that the DPA, HRA and common law will always take precedence. If there is an apparent conflict between legislation and the common law, legislation takes precedence.

For example, the fact that a woman has had repeat attendances at A&E might not be disclosable at MARAC unless another agency brought information to the MARAC that indicated that these were directly or indirectly as a result of violence from the alleged perpetrator.

## **6. WHAT INFORMATION CAN BE DISCLOSED AT THE MEETING?**

The information disclosed could pertain to any of the data subjects in section 3 and may cover the following areas:

- Name, date of birth, address(es), aliases and gender;
- Current information relating to recent contact, meetings, sightings, phone calls. This could include attendance or non-attendance at appointments, who is present at an address and attendance at A&E or other health settings;
- Current information on attitude, demeanour, behaviour etc;
- Information about Court Orders, injunctions, bail conditions and other legal issues;
- Historic relevant information such as for example, previous convictions, family or relationships history, other safety options considered or substance misuse issues;
- Other information relating to the risks facing the victim or other data subjects.

## **7. HOW WILL THE INFORMATION BE USED?**

7.1 The information that is shared is used at a MARAC meeting to construct a unique safety plan that will attempt to address the risks faced by the adult victim and children. It may also cover risks faced by agency staff, neighbours or colleagues and indeed the perpetrator themselves.

7.2 All decisions about how the information is to be used must be taken within the meeting. This includes both use by participants in the meeting and those outside the MARAC meeting.

## **8. IS THE PERPETRATOR INFORMED ABOUT THE MEETING AND THE SAFETY PLANS?**

8.1 No. It would defeat the purpose of the MARAC meeting if the perpetrator was informed about the safety plan. In most areas, where the police have attended an address, they will send a letter to the victim that their case will be discussed at MARAC because of the level of risk. The perpetrator may become aware of the meeting taking place but should not be informed of the safety plan.

8.2 Participants should take extraordinary care not to inform the perpetrator of any element of the safety plan inadvertently.

## **9. DOES THE SUBSEQUENT USE OF THE DISCLOSED INFORMATION BY MARAC MEMBERS COMPLY WITH THE DPA, HRA, COMMON LAW AND THE GUIDELINES?**

### ***Data Protection Act***

Yes provided that all of the matters considered for Q.5. are taken into account.

### ***Human Rights Act***

Same considerations as in Q.5.

***Common law duty of confidence***

Same considerations as in Q.5.

***Caldicott Guidelines***

Same considerations as in Q.5.

**10. WHEN CAN A DISCLOSURE BE MADE TO A BODY OUTSIDE THE MARAC STRUCTURE?**

***Data Protection Act***

This area is more sensitive but the considerations that apply are similar to those in Q5. The risk of crime must be genuine or likely. If there is genuine risk of crime to specific (named) individuals or a specific household, the Data Protection Act allows only the minimum necessary information to be disclosed by a MARAC agency to non-MARAC recipients to allow a crime to be prevented.

It may be the case, that in order to implement an effective safety plan for a victim, that persons who are not signed up to a MARAC Information Sharing Protocol need to be informed of certain facts.

For example, a perpetrator's name could be disclosed to a concierge or playground assistant so that they know not to admit him to certain premises, but they should not be told why he is barred from these premises.

In other circumstances, a perpetrator of domestic violence and/or a victim may move to a new area. For example, the fact that A, a man with convictions for violent behaviour against women, moves into a neighbourhood would not be disclosable unless he presents a likely risk to named women or a particular household. If A begins a relationship with a vulnerable woman or moves in with her, information relating to A's convictions could be disclosable information. See 11 below for information-sharing between MARACs where the perpetrator/victim has moved to a new area.

***Human Rights Act***

Disclosures by a local MARAC to any person outside the MARAC framework are not prohibited by the HRA. However, MARAC members should be cautious about making such disclosures, and should satisfy themselves in advance that such disclosures are strictly necessary for the purposes for which they are made (see (a) in Q5 above), and are no more extensive in scope than is necessary for these purposes, bearing in mind that a stricter level of control is appropriate when contemplating disclosures outside the MARAC framework.

***Common law duty of confidence***

Same considerations as in Q.5.

***Caldicott Guidelines***

Same considerations as in Q.5.

**11. CAN YOU REFER A CASE TO ANOTHER MARAC IF THE VICTIM OR PERPETRATOR MOVES TO A NEW AREA?**

Yes. The principles set out in 2 above should be followed.

The initial disclosure by the referring MARAC should be restricted to the disclosure of the victim's or perpetrator's name and the fact that he or she had been the subject of discussion at that MARAC. If the recipient MARAC later considers that individual's case because of an incident or observation in the new area, it can ask the referring MARAC for more information. The referring MARAC should then decide what it can disclose and properly document the reasons for disclosure, what information will be disclosed and what restrictions are placed on use of the disclosed information.

**12. DOES THE DECISION TO DISCLOSE INFORMATION NEED TO BE MADE PRIOR TO THE MEETING?**

No. It is possible that the relevance of a particular piece of information does not become apparent until other matters are disclosed during the MARAC meeting. For example:

(a) A woman may have had one or more terminations of pregnancy. This may not seem relevant, but it may be disclosed during the meeting that if it is believed that she had been raped. If the timing correlates, the decision to disclose the terminations may be made.

(b) A victim may have made one or more trips to A&E. These may become relevant if it emerges that these trips correlate with police attendances at domestic disturbances.

**13. SHOULD DECISIONS TO DISCLOSE INFORMATION BE RECORDED?**

Yes. It is very important to properly document all decisions made in respect of the sharing of information including:

- (a) the reasons behind the decision to disclose;
- (b) the extent of any disclosures made (which should be the minimum necessary); and
- (c) the permitted use of the disclosed information.

**14. WHAT SHOULD BE DONE IF THERE ARE ANY DOUBTS AS TO WHETHER DISCLOSURE IS APPROPRIATE?**

If there is any doubt as to whether a decision to disclose is appropriate, advice should be sought from a senior member of your organisation who is responsible for confidentiality issues. In some circumstances, it may then be necessary for external legal advice to be sought. In some cases, you may attend the MARAC meeting with information whose relevance you cannot establish until you have heard the information that is shared by other agencies at the meeting (e.g. dates when a victim has attended the accident and emergency department in a local hospital). In these cases, you should decide at the meeting itself whether to disclose the information to other MARAC agencies and why that disclosure is being made. CAADA has produced a simple form for recording these decisions that can help you to analyse what to disclose and to whom (see [www.caada.org.uk](http://www.caada.org.uk)).

**15. HOW LONG CAN INFORMATION BE HELD FOR?**

Each agency that attends a MARAC meeting can hold relevant information for as long as a risk to the victim or children remains. The information retained should be proportionate to the perceived risk.

It would be good practice for each agency attending a MARAC meeting to review its own initial recording of a case after six or twelve months and decide whether it was still relevant for it to retain all or some of the information that was initially recorded.

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