

### Legal authority to disclose

The processing of most personal data is governed by the General data Processing Regulation (GDPR). However, GDPR specifically excludes processing for law enforcement purposes from its scope. The Data Protection Act 2018 (DPA) governs the processing of personal data for law enforcement purposes and requires data to be processed lawfully and fairly. To comply with DPA principles, all disclosures of information about offenders to third parties must be necessary and proportionate. When deciding whether to disclose personal information, agencies must consider the following:

**Lawful:** The legal authority to disclose information includes:

- **Statutory** - The Domestic Violence, Crime and Victims Act 2004 Part 3 obliges probation to provide victims with information about an offender's licence conditions that relate to contact with the victim and other appropriate information.
- **Common law** – provides the authority to share information for the prevention and detection of crime. These powers are the basis for disclosure schemes such as the domestic violence disclosure scheme (DVDS).

**Fair:** For disclosure to be fair, the decision maker must show that they have considered the Human Rights Act 1998 (HRA), which provides a right to respect for private and family life. Any interference with this right by a public authority must be necessary ***“for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”***

Disclosure should take place only when the need to protect the victim(s) outweighs the offender's right to privacy.

### Disclosure to potential victims

As with all disclosures, the provisions of Schedule 8 of the DPA must be satisfied. However, the following considerations will help to consider whether disclosure to a particular victim is justified:

- Does the offender pose a risk to the victim?
- Can disclosure be considered necessary for the prevention or detection of crime?
- Is the disclosure necessary and proportionate?
- Will disclosing the information put the victim at greater risk?

Circumstances where disclosure should be considered include, but are not limited to, where:

- There is a need to protect the potential victim, in particular where offenders strike up new relationships. For example, an offender on licence starts a new relationship.
- There is a need to protect children age 16 and under with whom the offender has contact.

### Risk assessment

The likelihood and degree of harm that might arise as a result of the disclosure, including the potential impact on the offender, must be assessed. Information should be disclosed only where this is a necessary and proportionate step to protect potential victim(s). Contingency plans to support both victims and offenders must be put in place in relation to any identified negative impacts of disclosure.

## Making a disclosure in domestic abuse cases

### **Making the disclosure**

The individual(s) to receive disclosure must be correctly identified. The person best placed to make the disclosure must also be identified. Preparation and discussion must take place with whoever will be receiving the information. This includes checking what they already know; that they understand the sensitive nature of the information they are receiving; and that they know how to make use of the information, what to do in the event of anything occurring that they need to report, whom to contact, and how to access support if required. Details of the nature of the offending behaviour and the requirements for successful risk management must be identified, for example, "This is what you need to look out for..." or "if he does X, you need to contact Y." Getting them to sign a disclosure form will provide an audit trail of what has been agreed, which can be helpful for both parties and is good practice.

Each decision must be considered on its merits, having regard to the individual circumstances of the case. Both the likelihood and the impact of the risk must be taken into account. The offender should be involved in the disclosure when it is safe to do so. However, if informing the offender of the disclosure could increase the risk to the victim(s) or other individuals then the offender should not be told that a disclosure has taken place. If the offender has not been told about a disclosure, the person receiving the disclosure should be told that the offender does not know that it has been made.