

**The National Data Guardian's
response to the Home Office
consultation on the draft
statutory guidance on the
Serious Violence Duty**

Submitted 21 July 2022

Introduction

This is the National Data Guardian's (NDG's) written response to the Home Office consultation on the draft statutory guidance on the Serious Violence Duty which will be issued under section 19 of the Police Crime and Sentencing Courts Act 2022.

The role of the National Data Guardian

The National Data Guardian (NDG) for health and adult social care in England is appointed by the Secretary of State for Health and Social Care to provide independent advice on matters related to the use of people's confidential health and care information. The role seeks to build public trust in data use by advising and challenging the government and those within the health and social care system to ensure that people's information is being kept safe and secure, and only used when appropriate to achieve better outcomes for patients and the public.

Draft guidance for responsible authorities

Many elements of this guidance fall outside of the NDG's remit. As such, these have not been considered in our response to this consultation.

Instead, our response focuses on the specific elements of the guidance that are relevant to the health and adult social care system, namely the section on information sharing in *Chapter 2* and the sector specific guidance for health in *Chapter 4*.

Overall, the NDG welcomes this important piece of guidance which reflects the legislative requirements of the Serious Violence Duty (SVD), as it applies to health and social care bodies, contained in the Police Crime and Sentencing Courts Act (PCSC) 2022.

This guidance will provide the system with clarity on the appropriate disclosure of information, so that it can prepare and implement appropriate strategies for preventing and reducing serious violence in local communities. By making it clear what information can and cannot be disclosed, consistent standards for disclosing information in compliance with the SVD can be established nationally. This will allow the vital work required to tackle serious violence to be undertaken in a consistent manner, and one which maintains public trust in the confidentiality of our health and social care services.

Below we set out specific amendments which we believe will add greater clarity to the guidance.

Paragraph	Comment
Information Sharing	
139	<p>“To recognise the importance of effective multi-agency information sharing, the Serious Violence Duty legislation, Part 1 of Chapter 2 of the PCSC Act, includes specific provisions to support partners to share information”. This paragraph should state: “Chapter 1 of Part 2”.</p>
141	<p>Point 1:</p> <p>In our review of the pre consultation guidance, we asked that you make the restrictions on the uses of patient information more explicit to the reader by presenting the information earlier on in the document. We are pleased to see that the restrictions have now been explained much earlier in the background section of the draft guidance, and we think this will help to prevent any misunderstanding of how the guidance applies to disclosure of patient and personal information.</p> <p>Point 2:</p> <p>You could strengthen the guidance by providing more information on the definitions of patient and personal information as defined in section 10(10) of the Act.</p>
143	<p>In discussion on Violence Reduction Units (VRU), we asked that this guidance reflect the VRU interim guidance, which states that VRUs should primarily rely on anonymised aggregated data to inform strategy.</p> <p>We are pleased to see this has now been included in the consultation guidance.</p>
145	<p>Point 1:</p> <p>“The Legislation – Disclosure of information (section 16)”.</p> <p>This section now makes clear the permissive nature of this information sharing gateway, which is helpful.</p>

Paragraph	Comment
	<p>Point 2:</p> <p>This paragraph could make clearer that Section 16 enables those listed in section 16(2)(a)-(e) to disclose information they hold for the purposes of their functions to each other <i>for the purposes of their functions under the duty</i>.</p> <p>At the moment the guidance only states that specified authorities may disclose information to each other. The added specificity of what information authorities are permitted to share will add clarity for the reader.</p>
146	<p>Point 1:</p> <p>“The powers permit requests to be made for sharing information but does not require this.”</p> <p>This wording here is unclear and ambiguous. It isn’t clear if the above sentence is meaning to say that requests are permitted by the powers, but the recipients of those requests are not, in turn, obliged to disclose the information requested of them? Given our difficulty inferring the accurate meaning, we would suggest rewording to avoid any issues of interpretation.</p> <p>Point 2:</p> <p>Considering the restrictions on health and social care authorities sharing both patient and personal information, the Home Office should consider whether using the example of a CCG choosing to share anonymous, aggregated management information is relevant or appropriate here. It should instead consider using a more relevant example which involves the sharing of patient or personal information.</p> <p>Point 3:</p> <p>CCGs ceased to exist in July 2022 when the Health and Care Act 2022 abolished them and established Integrated Care Boards (ICBs) to replace them. Although you acknowledge this in the health section of the guidance, that is only in the latter part of the document. Although CCGs will be replaced by ICBs they will operate very differently, so you</p>

Paragraph	Comment
	<p>should take care to ensure that any examples you give in the guidance remain relevant to the post-July 2022 health and social care landscape.</p>
147-150	<p>Point 1:</p> <p>These paragraphs explain when personal information can be disclosed under section 16 PCSA 22 but do not provide any case study examples. As the differences between the permitted and non-permitted disclosures in the section are complex and may not be clear to those without the background knowledge of the amendments to the Bill, the reader might benefit from a relevant case study.</p> <p>Point 2:</p> <p>It would be helpful for paragraph 150 to reference the exceptions described in paragraphs 147 and 148 to avoid any misunderstanding in relation to sharing patient or personal information.</p>
152	<p>Point 1:</p> <p>You need to be clearer here that this section is referring to the disclosure of patient information <i>outside the scope of the PCSCA 22</i>, because as paragraph 148 states, there is no power to disclose this information under this Act.</p> <p>Point 2:</p> <p>This paragraph could be improved by mirroring the language in paragraph 165 "in circumstances where health and care authorities consider that disclosures ... <i>not authorised by this legislation</i> are required to support the prevention and reduction of serious violence, this should be done in accordance with existing guidance" (see also comment on paragraph 165 regarding terminology).</p>
155	<p>Supply of information to local policing bodies</p> <p>Reference is made here to "the limitations" in s 17(6). While these are outlined in paragraph 157, it would be more helpful if they could be placed <i>before</i> the description of what information can be disclosed.</p>

Paragraph	Comment
156-159	Similar to comments made in relation to paragraphs 147-150. You should consider providing further explanation of the purpose of these provisions in order to support the readers' understanding.
Data Protection	
165	<p>Point 1:</p> <p>"In circumstances where health and care authorities consider that disclosures of <i>personal data</i> not authorised by this legislation are required to support the prevention and reduction of serious violence, this should be done in accordance with existing guidance".</p> <p>In the interests of using clear and consistent terminology, the wording in this paragraph should be changed to "personal information and patient information" rather than "personal data". This will bring the language that you use in the guidance in line with the wording of the definitions within the Act.</p> <p>Point 2:</p> <p>This section should more closely reflect the legislative framework and associated guidance that governs the sharing of confidential patient information. Perhaps you could provide a specific reference to the General Medical Council (GMC) guidance: Confidentiality: reporting gunshot and knife wounds.</p> <p>The SVD guidance references GMC guidance: Confidentiality: good practice in handling patient information. Within this reference it could be clearer that information may be only disclosed without breaching confidence where there is an overriding public interest. It should also make clear that the conclusion of whether or not there is an 'overriding public interest' is not assessed from a strategic, crime reduction perspective; rather it is interpreted narrowly and on a case-by-case basis. Both the GMC guidance and the Department of Health and Social Care's Confidentiality: NHS Code of Practice - supplementary guidance: public interest disclosures, provide that disclosure on the basis of overriding public interest may be justified if failure to disclose would expose others to a risk of death or serious harm.</p>

Paragraph	Comment
167	<p>This paragraph states that “When disclosing personal data or otherwise processing personal data in order that effectively anonymised data might be shared, all responsible authorities ... should be aware of the exemptions from certain UK GDPR provisions contained in Schedule 2 to the Data Protection Act 2018”.</p> <p>It would be helpful if you could provide further information here to explain how the crime and taxation exemption might apply i.e., explain why applying the DPA in its usual way would prejudice the purpose of developing a strategy.</p>
Health	
219	<p>During our pre-consultation phase review, we asked for the word “anonymous” to be added to the first bullet point in this paragraph. We are pleased to see this has been done. This makes it clearer what category of information is expected to be shared under this duty.</p>
222	<p>Point 1:</p> <p>This paragraph helpfully makes clear the restrictions on sharing health data. However, it would benefit the reader to have this information much earlier in the section.</p> <p>Alternatively, “Sharing of patient and personal information” could be given its own section.</p> <p>Point 2:</p> <p>This paragraph would be clearer if it stipulated that the specific limitations under section 16 and 17 of the PCSC Act apply to the disclosure of both <i>patient and personal information</i> as the defined terms in the s.10(10) of the Act.</p>
223	<p>Point 1:</p> <p>During our pre-consultation stage review, we asked for the guidance to make it clearer that there is an existing legal framework within which organisations must operate to determine whether they are able to disclose confidential patient information.</p>

Paragraph	Comment
	<p>This section now makes reference to that existing framework. However, you could assist readers further by making it clearer that the disclosures described in this section sit outside the powers in the PCSC Act and are not necessary in order to comply with the SVD.</p> <p>Point 2:</p> <p>As with paragraph 152, this paragraph could be improved by mirroring the language used in paragraph 165 “in circumstances where health and care authorities consider that disclosures ... <i>not authorised by this legislation</i> are required to support the prevention and reduction of serious violence, this should be done in accordance with existing guidance” (see also point 1 on paragraph 165 regarding the use of clear and consistent terminology).</p>