The ICO view of data sharing in the context of the "Troubled families" initiative

While the general public policy questions around sharing information for the purposes of assisting "troubled families" are not considerations for the ICO, we recognise that there such sharing will have to meet the requirements of the Data Protection Act (the Act).

The key issue to consider is whether processing information relevant to this initiative can be done in such a way so as to meet the requirements of the data protection principles and in particular the first data protection principle. This states that personal (and sensitive personal) data must processed "fairly and lawfully" and further must not be processed unless a Schedule 2 condition can be satisfied, and in the case of sensitive personal data, unless a Schedule 3 condition can be also be met.

The first point to consider is whether a data controller has the lawful authority to share/disclose such information. For example in the Localism Act 2011 local authorities have been given a general power of competence (provided for in s1 of the Act). It gives local authorities the same power to act that an individual generally has and provides that the power may be used in innovative ways, that is, in doing things that are unlike anything that a local authority - or any other public body - has done before, or may currently do. We consider that in terms of information sharing this will allow local authorities to do so. Other public sector bodies might not have the same ability/power. It will be up to these organisations to determine whether they have the necessary legal powers (either implied or statutory) to share information.

Once it has been established that a data controller does have the "lawful" power to share personal data it would then need to satisfy a Schedule 2 condition for processing and where sensitive personal data is involved, a Schedule 3 condition. It should be remembered though that even where a condition or conditions for processing can be met this will not on its own ensure that the processing is fair or lawful. These issues need to be considered separately.

It is also worth briefly looking at the issue of "consent" To us "consent" means just that. For example someone is asked if their information can be used in a certain way. If they agree then fine, but if they refuse their consent, then in our view, their wishes should be respected and the information should not be used. What we dislike is where "consent" is sought, it is refused but the data controller goes ahead anyway. That does not fit with how we view consent nor does it meet the Act's fair processing requirements.

In addition it needs to be remembered that in data protection terms "consent" is but one condition that could be relied on to process personal and sensitive personal data. There are several other conditions that it may be possible to rely on depending on the purpose of the processing (and which are set out in Schedule 2 and in Schedule 3).

In terms of meeting a Schedule 2 condition there are two that could be relied on. In the circumstances of the "troubled families" initiative these are:

5. The processing is necessary –

> (d) for the exercise of any other functions of a public nature exercised in the public interest
> by any person.

or

6. – (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

Meeting a Schedule 3 condition is more difficult (and which is the way it should be). However in these circumstances we consider that a condition provided for in SI 417 (2000) could be met, namely:

The processing –

(a) is in the substantial public interest;
(b) is necessary for the discharge of any function which is designed for the provision of confidential counselling, advice, support or any other service; and
(c) is carried out without the explicit consent of the data subject because the processing –

> (iii) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the provision of that counselling, advice, support or other service.

What will be important is the provision of fair processing information to the individuals involved, with more information being required where the data sharing is more extensive. Such material

should make it clear to individuals about how their information is being used and where they can find out more about the processing and/or object to the processing (the latter point covering s10 of the DPA).

It is also important to ensure that the other DP principles are complied with eg the information shared needs to be relevant and not excessive, it must be accurate and kept up to date, not kept for longer than necessary and kept secure.

Finally further information about sharing information can be found in our statutory Data sharing code of practice and a link to the relevant page on the ICO website is set out below:

http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/data_sharing.aspx

Additional information about fair processing and privacy notices can be found in our Privacy Notices Code of Practice. The link below goes to the relevant page of the ICO website:

http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/privacy_notices.aspx

If we receive complaints about the processing of personal data in these circumstances then we will take it into account where the processing has been carried out in accordance with the recommendations made in the respective codes of practice.