

“Striking the Balance”

*Practical Guidance on the application of
Caldicott Guardian Principles to Domestic
Violence and MARACs (Multi Agency Risk
Assessment Conferences)*

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*Practical Guidance on the application of **Caldicott Guardian principles** to Domestic Violence and MARACs (Multi Agency Risk Assessment Conferences)*

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UK Council of Caldicott Guardians

*"Any fool can make things complicated, but it requires a genius
to make things simple."
E.F. Schumacher*

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Domestic Violence and abuse is a large scale national problem. This guidance is intended to assist those involved in information sharing between agencies about Domestic Violence to make decisions. In particular Caldicott Guardians and those responsible for making decisions about the appropriateness of sharing information (including sensitive health information) about individuals involved in domestic violence. It identifies the underlying ethical considerations so that tensions between confidentiality and information sharing may be resolved.

A MARAC (Multi Agency Risk Assessment Conference) is a local, multi agency victim-focused meeting where information is shared on the highest risk cases of domestic abuse between different agencies including: police, criminal justice, health, child protection, housing, IDVAs (Independent Domestic Violence Advisers) as well as other specialists from the statutory and voluntary sectors. A safety plan for each victim is then created. Within the MARAC it is important that trust is fostered. If a particular agency is not seen as trustworthy, others will feel they should not share information. In particular the development of trusting relationships between health, social services and the police are absolutely crucial to the effectiveness of the MARAC.

The legislative and ethical considerations are often complex and Caldicott Guardians in their role as Gatekeepers to individuals' records may need guidance as to the application of Caldicott principles in relation to making judgements and authorising information sharing about domestic violence.

It should be clear to all those staff involved:

- What information they CAN share and under what circumstances.
- What information they CANNOT share and under what circumstances.
- What they should do if they are NOT SURE or are challenged, who they can ask for advice and how and to whom the matter should be escalated.

Caldicott Principles

The MARAC process to be correctly implemented must comply with ALL Caldicott Principles:

1. **Formally justify the purpose** – It can be justified both in terms of individuals best interest & interests of society
2. **Identifiable information only when absolutely necessary** – It will normally be necessary to use identifiable rather than anonymised information.
3. **Only the minimum required should be used** – Use Proportional disclosure based on risk
4. **Need to know access** – MARAC “needs to know” even if some individual agencies don’t, confidentiality maintained by representatives personally signing specific confidentiality agreement.
5. **All must understand their responsibilities** – Statement read out at start of each MARAC reminding participants of their ethical, legal and cultural responsibilities. Caldicott Guardians as gatekeepers to the individual’s information should ensure that their organisation is effectively engaged with the MARAC process.
6. **Comply with and understand the law**- Caldicott Guardians should understand and authorise MARAC information sharing and delegate authority to ensure all disclosures are “Caldicott Compliant”.

The confidentiality of an individual's information is not absolute – a fact that is recognised by the Courts and by professional regulators. We expect and indeed require organisations to

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share information in child protection and similar cases. However in other cases it is not mandatory but only “permitted” which therefore inevitably means that someone (often the Caldicott Guardian) will have to make a judgement about whether to share information and if so, how much. **It cannot be “ethically” justified if we hold information that we know could prevent serious harm to others and yet knowingly decide not to share it.**

DISCLOSURE GUIDANCE FOR MARACs

MARAC's though not themselves a legal entity, involve a wide range of agencies; Acute Hospital, Mental Health, Children's services, Safeguarding, Police, Probation service, Housing, Victims support and IDVA's (Independent Domestic Violence Advisers). Whilst the principle is that all information shared within a MARAC is confidential within its confines and all those individuals attending the MARAC must sign an explicit and specific confidentiality agreement, some Caldicott Guardians are troubled by authorising the sharing of information under these circumstances. It is essential however that we find a way through this and contribute appropriately to ensure that, as best we can, vulnerable people are kept safe.

MARAC's are victim centred, that is to say their primary purpose is to protect the victims of domestic violence. Normally victims are told that they are to be referred to MARAC, what that means and that they should be offered the support of an IDVA. (In practice currently, IDVA coverage is not always sufficient). Consent is not asked for, because the decision has already been taken that a MARAC is needed, based on the risk to the victim. If they do not engage and do not agree to the IDVA referral, the MARAC will still go ahead although its effectiveness may be reduced. There should normally be transparency around the process of their information and potentially that of their children (if any) being shared unless this would itself increase the risk of harm. For example a victim may have been so normalised to violence or abuse that they either minimise or fail to recognise the true dangerous nature of their relationship particularly if they still believe they “love” the perpetrator. A disclosure about the MARAC from the victim to the perpetrator under these circumstance is likely to reduce the effectiveness of the measures taken to protect the victim or even seriously increase the risk of harm. Even if the victims are asked explicitly for consent to have their information shared it is possible the full extent of the issues may not be understood or that the level of information already held by agencies is not appreciated and therefore the validity of the consent may be disputed. Furthermore, the alleged perpetrators are not asked for their consent or informed about the MARAC referral as to do so might jeopardise the victims safety. **This provides a ground rule for Caldicott Guardians - all information shared about both victims and perpetrators must be in the context of the normal requirements of information sharing without consent, in this case on the basis of prevention and detection of crime or serious harm.**

It will be helpful for health representatives to have triaged in advance the information they have available to share, but they should not share information until they are convinced that it is justified to do so. Health information is frequently particularly sensitive and it is therefore suggested that it should be held back until enough other agencies have shared sufficient information for the health representative to conclude that sharing is indeed justified and proportionate. It should be noted, that the health representative will not be the only person who regards “their” information as sensitive – for example the same will be true of some voluntary sector agencies, particularly those working in a refuge setting.

This requires considerable judgement as decisions to share will often be context dependent. Information relating to attendances at A&E as a result of assault might normally be expected to be disclosed, but what about injuries resulting from falling down stairs whilst under the influence of alcohol? If, during the MARAC it became clear that the perpetrator's previous partner had died as a result of falling down stairs then details of the current victim's injuries

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may well need to be disclosed. Information relating to a particularly sensitive matter like vaginal bleeding might normally be withheld but again if it became clear that the victim had been forcibly raped then this sort of information would become relevant and appropriate to disclose.

There are other considerations too. In addition to the risks posed to the victim, information shared at MARAC's can raise significant issues of public safety, where for example a perpetrator is threatening to kill either their family or others. Some information on alleged perpetrators may justify alert “flagging” on information systems in order to protect staff. There may be tensions at times particularly when serious criminal activity is involved, and it may on occasions be prudent to remind MARAC representatives that although the process is victim focused, the rights and humanity of the perpetrators also needs to be recognised and addressed. The perpetrators remain individuals who may need the support and engagement of multiple agencies in addressing their own needs in relation to mental health, drug or alcohol abuse, housing or other issues. It should also be recognised that whilst on a drug or alcohol treatment programme a perpetrator's abusive behaviour may increase and consequently the victim may actually be at a greater risk of harm. There is a danger that because the cases being discussed are routinely extremely distressing, and represent extremes of physical and psychological human behaviour those involved in MARAC's may become normalised to the extreme.

MAKING JUDGMENTS - THE DILEMMA

“Anyone who in discussion relies upon authority uses, not his understanding, but rather his memory” **Miguel de Unamuno**

The challenge therefore for Caldicott Guardians or those with the delegated authority, is that they are the ones who carry the onerous responsibility, under certain circumstances of deciding whether or not it is appropriate to share an individual's information without their consent. **It is the Caldicott Guardian's authority that decides where to “strike the balance” between maintaining the individuals' confidentiality and privacy and wider considerations such as protection from harm, acting in what is believed to be in the individuals' best interest or setting aside the interest of the individual in the interests of third parties or society at large.** It is a contentious role and frequently challenging to find not a “right answer” but “the best possible solution under the circumstances”. One of the key elements in making a judgment is that of proportionality. Even where there is a clear justification to disclose some information we should look to satisfying the Caldicott Principle of “using the minimum amount of information”. The difficulty of course is that in a given situation it is not always clear what the minimum should be, particularly ahead of the meeting.

All decision making processes should be recorded and documented. If an organisation holds information about an individual that could be shared appropriately to protect either the individual or others from harm it becomes an ethical dilemma; as any decision to withhold information, may then become a contributory factor to harm being caused. Decisions should therefore be proactively taken. In practice this may mean that under certain circumstances (and this happens already in child protection cases) it is recognised that both organisations and individuals have a professional responsibility to share information and that this duty outweighs the duty of confidentiality owed to the individual.

ASSESSING RISK OF HARM

The concept of harm is nebulous; it may include physical, emotional, financial, sexual abuse or neglect factors or a combination. The severity of harm may be categorised in retrospect but

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organisations should seek to prevent harm proactively. In terms of proportionality, the more serious the harm the greater the imperative to prevent it and the greater the justification for sharing information without consent. It is difficult but important to try and quantify or measure the risk of potential harm. One way of doing this (in cases of domestic abuse) is to use the CAADA check list (see appendix 1). This process asks the individual victim 24 key questions, the responses are recorded. This process formalises the risk assessment process and provides key evidence in terms of justification when it comes to information sharing with other agencies. It is important to recognise that the check list doesn't definitively measure risk but it can help indicate it. Some victims may not answer certain questions, or disclose the truth to particular agencies. The checklist does not show any real scale of abuse - this is captured in the 'severity of abuse grid' that is attached to the IDVA version of the checklist. Thus, someone might be separated and suffering extreme levels of stalking and tick fewer questions, but be at greater risk than another person who ticks more. The principle is that if the “score” exceeds 14 out of 24 the case should go to MARAC because of the percentage of cases where there are multiple forms of severe abuse and the abuse is escalating. There is not a linear relationship between the number of ticks and the severity of risk. Rather it gives agencies a basis for defensible decision making in relation to information sharing.

Most importantly it records the risk factors, at a particular point in time. It is then possible to repeat the process several months later to see if the risk of harm to the individuals is reducing or increasing. Although unlikely in the vast majority of cases, it remains possible that information sharing leading to some interventions may actually increase risk of harm. Being able to assess risks this way helps to minimise any future risks, for example if an organisation fails to implement any interventions it had agreed to undertake. However, although a check list is a useful mechanism it does not entirely replace professional judgment. **The opinion of professionals who believe that the risk factors in an individual case are in their professional opinion much higher than reflected in the check list assessment should be considered as relevant justification for MARAC referral and information sharing.**

CONCLUSION

The MARAC process to be correctly implemented must comply with ALL Caldicott Principles:

Formally justify the purpose – It cannot be “ethically” justified if we hold information that we know could prevent serious harm to others and yet knowingly decide not to share it.

Identifiable information only when absolutely necessary – It is clearly necessary to use identifiable information to support MARAC processes.

Only the minimum required should be used – Disclosures must be proportionate and based on risk and relevance.

Need to know access – MARAC “needs to know” even if some agencies don't, confidentiality maintained by representatives personally signing specific confidentiality agreement.

All must understand their responsibilities – A statement should, and generally is, read out at start of each MARAC reminding participants of their ethical and legal responsibilities. Health representatives should understand and draw on this and other guidance referenced below. Caldicott Guardians as gatekeepers to the individuals information should ensure that their organisation is effectively engaged with the MARAC process.

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Comply with and understand the law- Caldicott Guardians should understand and authorise MARAC information sharing appropriately and where authority is delegated they should retain oversight to ensure all disclosures are “Caldicott Compliant”.

There are a range of guidance materials available to support health representatives involved in MARAC processes. These include:

Confidentiality: NHS Code of Practice

Supplementary Guidance: Public Interest Disclosures

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_122031.pdf

Information sharing: Guidance for practitioners and managers

<https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DCSF-00807-2008>

Co-ordinated Action Against Domestic Abuse (CAADA) is a national charity supporting a strong multi-agency response to domestic abuse. CAADA provides practical tools, training, guidance, quality assurance, policy and data insight to support professionals and organisations working with domestic abuse victims. The aim is to protect the highest risk victims and their children – those at risk of murder or serious harm

<http://www.caada.org.uk/>

General Medical Council Guidance

http://www.gmc.uk.org/guidance/ethical_guidance/confidentiality.asp

EXTRACT FROM CAADA CHECKLIST

<p>Please explain that the purpose of asking these questions is for the safety and protection of the individual concerned.</p> <p>Tick the box if the factor is present <input checked="" type="checkbox"/>. Please use the comment box at the end of the form to expand on any answer.</p> <p>It is assumed that your main source of information is the victim. If this is <u>not the case</u> please indicate in the right hand column</p>	Yes (tick)	No	Don't Know	State source of info if not the victim e.g. police officer
<p>1. Has the current incident resulted in injury? (Please state what and whether this is the first injury.)</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>2. Are you very frightened? Comment:</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>3. What are you afraid of? Is it further injury or violence? (Please give an indication of what you think (name of abuser(s)...) might do and to whom, including children). Comment:</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>4. Do you feel isolated from family/friends i.e. does (name of abuser(s)) try to stop you from seeing friends/family/doctor or others? Comment:</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>5. Are you feeling depressed or having suicidal thoughts?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>6. Have you separated or tried to separate from (name of abuser(s)....) within the past year?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>7. Is there conflict over child contact?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>8. Does (.....) constantly text, call, contact, follow, stalk or harass you? (Please expand to identify what and whether you believe that this is done deliberately to intimidate you? Consider the context and behaviour of what is being done.)</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>9. Are you pregnant or have you recently had a baby (within the last 18 months)?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

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10. Is the abuse happening more often?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11. Is the abuse getting worse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
12. Does (.....) try to control everything you do and/or are they excessively jealous? (In terms of relationships, who you see, being ‘policed at home’, telling you what to wear for example. Consider ‘honour’-based violence and specify behaviour.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tick box if factor is present. Please use the comment box at the end of the form to expand on any answer.	Yes (tick)	No	Don't Know	State source of info if not the victim
13. Has (.....) ever used weapons or objects to hurt you?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
14. Has (.....) ever threatened to kill you or someone else and you believed them? (If yes, tick who.) You <input type="checkbox"/> Children <input type="checkbox"/> Other (please specify) <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
15. Has (.....) ever attempted to strangle/choke/suffocate/drown you?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
16. Does (.....) do or say things of a sexual nature that make you feel bad or that physically hurt you or someone else? (If someone else, specify who.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
17. Is there any other person who has threatened you or who you are afraid of? (If yes, please specify whom and why. Consider extended family if HBV.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
18. Do you know if (.....) has hurt anyone else? (Please specify whom including the children, siblings or elderly relatives. Consider HBV.) Children <input type="checkbox"/> Another family member <input type="checkbox"/> Someone from a previous relationship <input type="checkbox"/> Other (please specify) <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
19. Has (.....) ever mistreated an animal or the family pet?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
20. Are there any financial issues? For example, are you dependent on (.....) for money/have they recently lost their job/other financial issues?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

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21. Has (.....) had problems in the past year with drugs (prescription or other), alcohol or mental health leading to problems in leading a normal life? (If yes, please specify which and give relevant details if known.) Drugs <input type="checkbox"/> Alcohol <input type="checkbox"/> Mental Health <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
22. Has (.....) ever threatened or attempted suicide?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
23. Has (.....) ever broken bail/an injunction and/or formal agreement for when they can see you and/or the children? (You may wish to consider this in relation to an ex-partner of the perpetrator if relevant.) Bail conditions <input type="checkbox"/> Non Molestation/Occupation Order <input type="checkbox"/> Child Contact arrangements <input type="checkbox"/> Forced Marriage Protection Order <input type="checkbox"/> Other <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
24. Do you know if (.....) has ever been in trouble with the police or has a criminal history? (If yes, please specify.) DV <input type="checkbox"/> Sexual violence <input type="checkbox"/> Other violence <input type="checkbox"/> Other <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Total 'yes' responses				

CAADA provides practical tools, training, guidance, quality assurance, policy and data insight to support professionals and organisations working with domestic abuse victims. The aim is to protect the highest risk victims and their children – those at risk of murder or serious harm.

<http://www.caada.org.uk/>