A PRACTITIONER GUIDE TO INFORMATION SHARING, CONFIDENTIALITY AND CONSENT TO SUPPORT CHILDREN AND YOUNG PEOPLE’S WELLBEING

Edinburgh & the Lothians
Contents

Foreward ............................................................................................................................... 4
Practitioners Summary – Key Practice Points ................................................................. 5
  Information Sharing......................................................................................................... 5
  Confidentiality.................................................................................................................. 6
  Consent with regards to Information Sharing............................................................... 6
  Legislation ...................................................................................................................... 6
INTRODUCTION ................................................................................................................ 7
  Information Sharing, Confidentiality and Consent to Support Children and Young
  People’s Wellbeing ....................................................................................................... 7
  Children & Young People (Scotland) Act 2014 ........................................................... 8
  Wellbeing and Early Intervention ................................................................................. 8
  Child Protection ............................................................................................................. 9
  Caldicott Principles ...................................................................................................... 9
LEGISLATIVE AND POLICY CONTEXT ................................................................. 9
INFORMATION SHARING ............................................................................................ 10
  What should I consider first? ....................................................................................... 10
  What Should I Do Now? .............................................................................................. 10
  How should I share information? ................................................................................. 11
  What if I decide not to share information? ................................................................. 12
  What about sharing information pre birth? ............................................................... 12
INFORMATION SHARING SUMMARY ..................................................................... 13
CONFIDENTIALITY & CONSENT ................................................................................. 14
  Do I always need to seek consent? ............................................................................ 14
  When should consent be asked for? ............................................................................ 15
CONSENT FLOW CHART ............................................................................................... 15
  Who can give consent? .............................................................................................. 16
  What should I do if consent to information sharing is refused? ............................. 16
What if consent is withdrawn? .............................................................................................................. 16
Legislative Context - Consent .................................................................................................................. 17
APPENDIX 1 – LEGISLATION AND POLICY CONTEXT .............................................................................. 18
  Key Legislative Framework ...................................................................................................................... 18
  Key Policy Framework .............................................................................................................................. 18
APPENDIX 2 ........................................................................................................................................ 20
Appendix 3 ........................................................................................................................................... 22
Appendix 4 – Caldicott Principles ......................................................................................................... 24
Foreward

The Lothian & Borders Getting It Right For Every Child Regional Steering Group in conjunction with the Lothian Data Sharing Partnership have produced this information sharing guidance for anyone working directly or indirectly with children, young people and their families within the public, private and third/voluntary sectors across Lothian. This guidance should complement, not replace, any existing single service and/or agency information sharing, confidentiality and consent guidance.

This guidance is focussed on promoting, supporting and safeguarding the wellbeing of all children, young people and their families.

We would like to acknowledge the Perth & Kinross Child Protection Committee’s Practitioners Guidance on Information Sharing, upon which this document is based.

Signature:

Professor Alison McCallum, Director of Public Health and Health Policy, Chair of the Lothian and Borders Data Sharing Partnership

Jennifer Scott, Chair of L & B Steering Group
Practitioners Summary – Key Practice Points

Information Sharing

- The wellbeing of children and young people is everyone’s job and everyone’s responsibility;

- Doing nothing is not an option; do not delay unnecessarily – act quickly;

- Ask yourself the five key GIRFEC Questions – if the answer is no or you do not know gather information to find out;

- What is getting in the way of this child or young person’s well-being?
- Do I have all the information I need to help child or young person?
- What can I do now to help this child or young person?
- What can my agency do to help this child or young person? And
- What additional help, if any, may be needed from others?

- Adopt a common sense approach;

- Good practice is to discuss your concern with the parents/carers and child and tell them why information is being shared unless it is detrimental to the child’s wellbeing or interferes with a criminal investigation or other judicial process

- Use your professional judgment, knowledge and skills – gut feelings;

- Seek help and support in doing so – Line Manager/Supervisor or if your concern is one of safety follow the Inter-agency Child Protection Procedures Edinburgh and the Lothians (2012);

- Share what you consider to be necessary, appropriate and proportionate – on a need-to-know basis only;

- Always share your concern with the child or young person’s Named Person;

- Consider the alternatives and/or implications of not sharing information;

- Always record your decision and the reasons for it;

- Follow your agency’s policies and procedures and your professional guidelines.
Confidentiality

- Confidentiality is not an absolute right – never promise that;
- Confidentiality does not prevent you from sharing a concern about a child or young person’s wellbeing – it actually empowers you to do so;
- Be aware of the constraints and limitations of confidentiality;
- For more information see appendix 2 & 3

Consent with regards to Information Sharing

- There is no need to seek consent in situations where you are likely to share information in any case;
- Consent should only be sought when the individual has a real choice over the whether the information should be shared;
- Consent should be informed and explicit;
- Children and young people, subject to their age and developmental capacity, can provide consent, if consent is necessary;
- Consent must always be recorded.

Legislation

- Legislation does not prevent you from sharing information – it empowers you (See Appendices 1 to 3).
INTRODUCTION

Information Sharing^1^, Confidentiality and Consent to Support Children and Young People’s Wellbeing^2^

For children and young people to do well now and in the future they have to be safe, healthy, active, nurtured, achieving, responsible, respected and included. These wellbeing indicators are central to the Getting It Right for Every Child (GIRFEC) methodology that is threaded through all existing legislation, policy, practice and systems for children and young people in Scotland. GIRFEC is the overarching approach of transformational change to improve outcomes for children and young people.

The majority of parents want to get it right for their child but at times may need additional support. Best practice is to work in partnership with the family, discussing the wellbeing of the child and sharing appropriate information with them (unless this puts the child at immediate risk).

To provide children and young people with the help they need, when they need it, for as long as they need it means moving away from crisis intervention towards early identification, intervention and support.

Effective early intervention necessitates appropriate and proportionate information sharing, as well as consideration of confidentiality and consent.

This document lays out guidance around sharing information for the benefit of the child or young person as well as the principles around confidentiality and consent to achieve best practice.

All practitioners working with children and young people must play their part in supporting the wellbeing of children and young people to ensure they are safe, healthy, achieving, nurtured, active, respected, responsible and included.

Across Scotland supporting the wellbeing of children and young people is everyone’s job and everyone’s responsibility. This is a shared responsibility for all practitioners and managers working across the public, private and third/voluntary sectors.

^1^ For the purpose of this guidance, Information Sharing should be widely defined and interpreted as sharing and/or seeking and/or exchanging personal information and/or sensitive personal information in keeping with the Schedule 2 and Schedule 3 of the Data Protection Act.

^2^ For the purpose of this guidance Wellbeing is defined as the GIRFEC 8 indicators of Wellbeing – Safe, Healthy, Active, Nurtured, Achieving, Respected, Responsible, and Included, in which all children and young people need to progress, in order to do well now and in the future.
Children & Young People (Scotland) Act 2014

In March 2014, the Children and Young People (Scotland) Act 2014 gained Royal Assent. Parts 4 and 5 of the Act include provisions specifically designed to ensure that aspects of the GIRFEC policy are covered by legislation. These parts are likely to be commenced and become mandatory from August 2016. As a result this guidance will require be reviewing and replacing by National Statutory Guidance in support of the Act. Amongst other things, the Act will introduce a legal duty to share concerns about a child’s wellbeing with their Named Person and a single planning system for all children requiring multi-agency support. As a result all areas will be introducing the Named Person role and working towards full implementation by the commencement date. You should be aware whether the role is active within your area and follow any associated policy and guidance. Where the Named Person role is implemented concerns should always be shared directly with them; where it is not then local advice will be available as to whom you should share concerns with until the role is implemented.

Wellbeing and Early Intervention

The wellbeing of children and young people is at the heart of Getting it Right for Every Child (GIRFEC).

This approach uses the eight Wellbeing Indicators in which all children and young people need to progress, in order to do well now and in the future. These eight interconnected Wellbeing Indicators are defined as: safe; healthy; achieving; nurtured; active; respected; responsible; and included; providing a common language for all practitioners.

A focus on wellbeing will support all practitioners to take a holistic view of the child or young person and ensures that all aspects of their wellbeing are supported. The Wellbeing Indicators are inter-connected. For example, it is difficult to talk about a child or young person achieving without relating this to nurture, health and/or how active they are.

GIRFEC encourages all practitioners to be more aware of the impact situations can have on other aspects of a child or young person’s wellbeing, as they may lead to long lasting and/or permanent harm. This is achieved through the use of the National Practice Model. For more information click here.
Child Protection

If we are to get it right for every child and young person’s wellbeing and intervene early enough (which will involve the appropriate and proportionate sharing of personal information\(^3\) and in some cases sensitive personal information\(^4\)) evidence suggests that early and effective intervention will reduce the need for crisis intervention.

It is important that we do not separate child protection, or any other intervention, from the Getting It Right For Every Child (GIRFEC) policy and practice approach. Child Protection is a GIRFEC intervention where the emphasis on keeping Safe is the main Wellbeing Indicator.

**Should there be any concern that the child or young person may be at risk of significant harm, it is essential that the Inter-agency Child Protection Procedures Edinburgh and the Lothians (2012) are followed immediately.**

Caldicott Principles

The original Caldicott Report, published in 1997, established six principles for NHS bodies (and parties contracting with such bodies) to adhere to in order to protect patient information and confidentiality. A seventh Caldicott Principle was added in the March 2013 Information Governance Review conducted by Dame Fiona Caldicott. This guidance reflects those principles (Appendix 4).

**LEGISLATIVE AND POLICY CONTEXT**

It is important that you:

- understand the legislative, policy and practice context parameters when sharing personal and/or sensitive personal information;
- understand the limitations and constraints of confidentiality and consent; and
- understand that you are empowered to share personal and/or sensitive personal information, if you are worried and/or concerned about a child or young person’s wellbeing nothing prevents you from doing so.

*This guidance has been informed by and is underpinned by a legislative and policy framework, further described at Appendix 1.*

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\(^3\) Personal Information is defined as Personal Data per Part I Section I of the Data Protection Act 1998

\(^4\) Sensitive Personal Information is defined as Sensitive Personal Data per Part I Section 2 of the Data Protection Act 1998.
INFORMATION SHARING

What should I consider first?

“While it is acknowledged that practitioners need to be sure that their actions comply with all legal and professional obligations, fear that sharing genuine concerns about a child or young person’s wellbeing will breach the Act (Data Protection Act 1998) is misplaced. Rather, the Act promotes lawful and proportionate information sharing, whilst also protecting the right of the individual to have their personal information fairly processed.”

Information Commissioners Office 26th March 2013 (appendix 3)

First and foremost, you should ask yourself the following five key GIRFEC questions:

1. What is getting in the way of this child or young person’s well-being?
2. Do I have all the information I need to help this child or young person?
3. What can I do now to help this child or young person?
4. What can my agency do to help this child or young person? And
5. What additional help, if any, may be needed from others?

To answer all of these questions comprehensively, there may be a need to collate information and/or share information with the child’s Named Person (where this role has been implemented) and other appropriate practitioners. This is particularly important where the answer to any of these questions is no; or you do not know; or you are unsure of the answer to any one of the above questions.

What Should I Do Now?

Doing nothing is not an option! Do not delay unnecessarily!

If you are concerned about a child or young person’s wellbeing then you should start by asking yourself the above five key GIRFEC questions. You may find it helpful to share and discuss your concern with a colleague and if appropriate alert your line manager, as these can be difficult issues to deal with alone.

Should there be any concern that the child or young person may be at risk of significant harm, it is essential that the Inter-agency Child Protection Procedures Edinburgh and the Lothians (2012) are followed immediately.

You should tell your Line Manager/Supervisor why you are concerned, even if this is just a gut feeling, what you have done about it and what you plan to do about it. You must always ensure that the child or young person is safe, and record your concerns and actions.
A concern relates to a child or young person’s wellbeing as defined by the eight Wellbeing Indicators. This might relate to a single event or series of events. It makes no difference. The principles are the same.

Use your professional judgement in deciding what to do and when to do it. In doing so, you should always adopt a common sense approach and on a need-to-know basis.

This approach has been further explained, supported and endorsed by Appendices 2 & 3:

- (UK) Information Commissioner’s Office (ICO) Letter of Advice 2013 – Information Sharing;
- Scottish Government GIRFEC Programme Board Letter of Advice 2013 – Information Sharing;

**How should I share information?**

In every case, you must comply with your own service and/or agency's information sharing arrangements. These may take the form of policies, procedures, protocols, guidance etc. You should know how and where to access them.

However you share information you must ensure it is done safely and securely in line with your existing information security procedures and follow safe haven principles⁵.

If you are sharing information, you should only share information on a need-to-know basis. You should record your decisions in writing.

**What should I be recording when I share information?**

When you are actively sharing information it is important you record this in the child or young person’s case file notes and/or any electronic system. The following should be recorded

- What information you are sharing
- Why you are sharing it
- Who you are sharing it with

Where you are requesting information, you should record

- What information you need

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⁵ Safe Haven is a term used to explain an agreed set of arrangements that are in place in an organisation to ensure person identifiable information (e.g. clients and staff information) can be communicated safely and securely. Safe Haven Principles act as a safeguard for confidential information which enters or leaves an organisation, whether this is by facsimile (fax), verbal communication or other means, for example, email.
• Why you need this information
• What you would be proposing to do with this information
• Who else it may be shared with

No matter how you are sharing information, you should ensure you are recording it accurately for future reference. This could be in a hard copy case file and/or in an electronic file. You should be recording your request and all responses received.

**What if I decide not to share information?**

You should also be recording any circumstances where information is *not being* shared and the reason for that. If you have requested and then been refused information you need to discuss this with your Line Manager/Supervisor. You should also record any circumstances where there is a refusal to share information and the reason for that too. You should ensure that you record this clearly, accurately and concisely to prevent any misunderstanding and/or confusion on your part; on the other practitioner's part; and for future reference. You should ensure that all this information is kept safe, secure and that there is no unauthorised access to this information.

If you decide **not to** share information, then you must ask yourself the following three key questions:

- What are my reasons for deciding not to share information?
- What harm could result if I do not share information? And
- What are the implications for the child or young person, for me and/or my service, agency and/or organisation if I decide not to share information?

This decision **not to** share information should be properly recorded, in hard copy case files and/or in an electronic file, for future reference.

**What about sharing information pre birth?**

You may be concerned about the wellbeing of an unborn child. Sharing information about an unborn child presents additional challenges.

Where you have concerns about the unborn child you should share information.

Practitioners should always consider the adults around a child and how their condition, behaviour or lifestyle impacts on the wellbeing of the unborn child.

Best practice is to involve the parents-to-be in decisions about sharing information, unless this would increase the risks to the unborn child.

**INFORMATION SHARING SUMMARY**

A useful summary of the key considerations for all practitioners when considering when to share information:

<table>
<thead>
<tr>
<th>When to share</th>
<th>Share information when concerned about a child or young person's wellbeing</th>
<th>Wellbeing: Safe, Healthy, Achieving, Nurtured, Active, Respectable, Responsible and Included</th>
</tr>
</thead>
<tbody>
<tr>
<td>When to share</td>
<td>Share Information quickly, efficiently and effectively</td>
<td>Always use your professional judgement/instincts; Adopt a common sense approach</td>
</tr>
<tr>
<td>What to share</td>
<td>Share information which is relevant, necessary, appropriate and proportionate</td>
<td>Share information relating only to your concern - reduce or remove unnecessary information or data</td>
</tr>
<tr>
<td>Who to share with</td>
<td>Share information on a need to know basis only</td>
<td>Share information with your line manager/supervisor or a colleague; Named Person/Lead Professional or other key workers</td>
</tr>
<tr>
<td>How to share</td>
<td>Share information verbally, face to face, at meetings, written reports or assessments</td>
<td>Share Information by secure methods. Always follow Safe Haven Principles</td>
</tr>
<tr>
<td>What to record</td>
<td>When sharing - what information you are sharing; why you are sharing; who are you sharing it with</td>
<td>When requesting - What information you need; why you need it; what you are going to do with it; who else you will be sharing it with</td>
</tr>
</tbody>
</table>
CONFIDENTIALITY & CONSENT

Not all information is confidential. Confidentiality is not an absolute right.

It is accepted that where there is a risk to a child or young person’s wellbeing, which may lead to harm, that all confidential information in the best interests of the child or young person and/or in the public interest will be shared.

Any sharing of information should be relevant, necessary, appropriate and proportionate and go no further than the minimum necessary to achieve the public interest objective of protecting a child or young person’s wellbeing.

Do I always need to seek consent?

Recent advice from the (United Kingdom) Information Commissioner's Office has clarified what has been a misconception held by many in relation to the Data Protection Act 1998 and lawful processing.

Extract:

“Where a practitioner believes, in their professional opinion, that there is risk to a child or young person that may lead to harm, proportionate sharing of information is unlikely to constitute a breach of the Act in such circumstances.

It is very important that the practitioner uses all available information before they decide whether or not to share. Experience, professional instinct and other available information will all help with the decision making process as will anonymised discussions with colleagues about the case. If there is any doubt about the wellbeing of the child and the decision is to share, the Data Protection Act should not be viewed as a barrier to proportionate sharing”.

(UK) Information Commissioner’s Office (ICO) Letter of Advice 2013 – Information Sharing (Appendix 3)

In such cases, where information will be shared, consent should not be sought, as to do so would give the subject (child or young person and/or their parents/carers) a false belief that they can control the decision, which they cannot.

In such circumstances, the child, young person and/or their parents/carers should be informed of the intention to share information and the reasons why, unless by doing so would further expose the child or young person to risk or hamper a police investigation.

You may be asked to justify that decision later; so best practice would be to record this in the child or young person’s case file notes and/or in an electronic file.

Acting in the child or young person’s best interest and/or in the public interest is a defence to an accusation of breach of confidentiality, provided it can be demonstrated that the information shared was necessary and proportionate.
When should consent be asked for?

*Consent should only be sought when the individual has a real choice over the matter.*

There may be times when you are working with a child, young person and/or their family and you feel it necessary to share information. If this information does not relate to a concern about a child or young person’s wellbeing it may be appropriate to obtain consent to share.

### CONSENT FLOW CHART

1. **Are you concerned about a child or young persons’ wellbeing?**
   - **YES**
     - Do I need to consent to share information about this child or young person?
       - **NO**
         - Good practice (unless there is good reason not to) is to advise the family that you are going to share information, explaining what and why.
       - **SHARE INFORMATION**
   - **NO**
     - Do I need to obtain consent to share information about this child or young person?
       - It is possible to still share information using other conditions (see table on lawful conditions for sharing information page 17)
Consent should be:

- **Informed** – the individual (child or young person and if appropriate their parent/carer) must understand what is being asked of them and must give their permission freely. Information should be provided of the possible consequences of withholding information;

- **Explicit** – the individual (child or young person and if appropriate their parent/carer) positively gives their consent for their information to be shared.

**Who can give consent?**

**Children under the Age of Twelve**

In most circumstances where the child or young person is under the age of twelve, consent for information sharing should be sought from a parent/carer. However, the child or young person has a right to be kept informed and to participate in the process if possible.

In circumstances where you consider a child or young person under twelve to have the capacity to understand *informed consent* then a request by the child or young person that consent should not be sought from their parents/carers should be respected, wherever possible.

**Children from the age of Twelve to Fifteen**

Children and young people from the age of twelve are presumed to have the full mental capacity to give *informed consent* and to take decisions in their own right.

If this is not the case, or you are in any doubt, you should seek consent from their parent/carer or other person with legal authority to act on behalf of the child or young person unless to do so would place the child at further risk.

**Children from Sixteen to Eighteen**

Parental rights and responsibilities largely cease when a child is aged sixteen. Parent/carers still have a responsibility to provide guidance to their child from age sixteen to eighteen.

**What should I do if consent to information sharing is refused?**

Do not share and record the reason why.

**What if consent is withdrawn?**

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6 See the Age of Legal Capacity (Scotland) Act 1991.
A child or young person (and if appropriate their parent/carer) cannot withdraw consent retrospectively. If incorrect information has been shared, the child or young person has the right to ask for that incorrect information to be corrected. The receiving practitioner, service and/or agency should be notified accordingly and the information should be corrected.

Legislative Context - Consent

The Data Protection Act 1998 provides specific conditions for processing personal information and sensitive personal information respectively.

At least one criterion from the left hand column below **must be met** before processing personal information and at least one from each column for sensitive personal information.

### LAWFUL – CONDITIONS FOR PROCESSING DATA (Data Protection Act 1998)

<table>
<thead>
<tr>
<th>Personal Data:</th>
<th>Sensitive Personal Data:</th>
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</thead>
<tbody>
<tr>
<td>• Consent</td>
<td>• Explicit consent</td>
</tr>
<tr>
<td>• Contract</td>
<td>• Employment law</td>
</tr>
<tr>
<td>• Legal Obligation</td>
<td>• Vital interests</td>
</tr>
<tr>
<td>• Vital Interests</td>
<td>• Not-for-profit</td>
</tr>
<tr>
<td>• Administration of Justice</td>
<td>• TU/religious/political/philosophical groups</td>
</tr>
<tr>
<td>• Public function in the public interest</td>
<td>• Already in public domain</td>
</tr>
<tr>
<td>• Legitimate interests of the data controller and third part but not prejudicial to individual</td>
<td>• Legal proceedings/advice</td>
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<tr>
<td></td>
<td>• Administration of justice</td>
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<td>• Functions conferred by enactment</td>
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<td></td>
<td>• Anti-fraud activity</td>
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<td>• Medical purposes</td>
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<td></td>
<td>• Equal opportunities monitoring</td>
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<td></td>
<td>• Substantial public interest</td>
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APPENDIX 1 – LEGISLATION AND POLICY CONTEXT

Information Sharing, Confidentiality and Consent are underpinned by a UK Government and/or Scottish Government, Legislative and Policy Framework. Practitioners may find the following key electronic links useful:-

Key Legislative Framework

- Children and Young People (Scotland) Act 2014
- Civil Contingencies Act (Scotland) 2004
- The Social Work (Scotland) Act 1968
- The Age of Legal Capacity (Scotland) Act 1991
- The Children (Scotland) Act 1995
- The Human Rights Act 1998
- The Data Protection Act 1998
- The Freedom of Information (Scotland) Act 2002

Key Policy Framework

- Common Law and Statutory Obligations of Confidence (2004)
- Scottish Executive’s Audit and Review Report (2002) entitled “It’s everyone’s job to make sure I’m alright
- HMIe Services for Children Unit (2006): Self Evaluation and Quality Indicators Framework: How well are children and young people protected and their needs met?
- HMIe Services for Children Unit (2009): How good are we now? How well do we protect children and meet their needs? How good can we be? Self Evaluation Using Quality Indicators

National Guidance for Child Protection in Scotland 2010

Getting it Right for Every Child

(UK) Information Commissioner’s Office (ICO) Letter of Advice 2013 – Information Sharing

Scottish Government GIRFEC Programme Board Letter of Advice 2013 – Information Sharing

Scottish Government GIRFEC Bulletin Issue 1 2013 – Information Sharing

Pan Lothian and Borders Partnership General Protocol for Information Sharing 2012

Individual Professional Guidance i.e. GMC, SSSC, RCN, HPC

Getting it Right for Children and Families affected by parental problem alcohol and drug use: Guidelines for agencies in Edinburgh and the Lothian’s (2013)
APPENDIX 2

Directorate for Children & Families
Children’s Rights & Well Being

T: 0131-244 5320  F: 0131-244 5320
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All Community Planning Partnership Managers

08 April 2013

Dear CPP Managers

Information sharing between services – guidance and clarity

The GIRFEC Programme Board recently met with Ken Macdonald, Assistant Commissioner for Scotland with the (UK) Information Commissioner’s Office (ICO). Information sharing in response to wellbeing risks and the matter of consent was discussed. To provide clarity the ICO has produced the attached advice, which specifically relates to information sharing where a child’s wellbeing is at risk and the concern is less than that required to trigger child protection procedures. The GIRFEC approach promotes engagement with the child and family at all stages during which practitioners will want to keep them informed and seek their views obtaining consent to the disclosure of information as appropriate. But where circumstances exist such that consent may not be appropriate or required, the Data Protection Act 1998 provides conditions to allow processing to proceed. Importantly the advice dispels the common misconception that the Act is a reason not to share information.

The advice will be important reading for:
  • Professionals who work with children and young people
  • Professionals who work with adults who impact on the lives of children and young people
  • Senior managers and data controllers

Information sharing between services is vital to ensure that our children’s life chances are maximised and that Scotland is the best place to grow up in.
Whilst the ICO in its capacity as a regulator does issue substantial penalties for breaches of the Data Protection Principles, Ken Macdonald emphasises that these penalties are aimed at systemic failures and not practitioners making good faith decisions to share information in the best interests of children.

Please circulate the attached advice around chief officers, within your Community Planning Partnerships.

If you need further advice, please contact Boyd McAdam, Head of the Better Life Chances Unit at the Scottish Government on 0131 244 5326.

Yours sincerely

Martin Crewe
Deputy Chair of the Getting it Right for Every Child Programme Board
C/o Life Chances Unit, Children’s Rights and Well Being
The Scottish Government,
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EDINBURGH
EH6 0QQ

Attached – Information Sharing Advice from ICO
Appendix 3

Information Sharing Between Services in Respect of Children and Young People

The Information Commissioner’s Office (ICO) is contacted regularly by practitioners seeking advice and guidance on whether they can share professional concerns about their clients/patients and, if so, what level of information may be shared. Often, the Data Protection Act 1998 (the Act) is viewed as preventing such sharing and it can be fear of non-compliance that becomes a barrier, even though there may be a concern about a child’s or young person’s wellbeing. While it is acknowledged that practitioners need to be sure their actions comply with all legal and professional obligations, fear that sharing genuine concerns about a child’s or young person’s wellbeing will breach the Act is misplaced. Rather, the Act promotes lawful and proportionate information sharing, while also protecting the right of the individual to have their personal information fairly processed.

Most practitioners are confident about appropriate and necessary sharing where there is a child protection risk. The problem can be where the circumstances do not yet reach the child protection trigger yet professional concerns exist, albeit at a lower level. Getting It Right For Every Child (GIRFEC) introduced eight indicators of wellbeing: safe, healthy, achieving, nurtured, active, respected, responsible and included (SHANARRI). In many cases, a risk to wellbeing can be a strong indication that the child or young person could be at risk of harm if the immediate matter is not addressed. As GIRFEC is about early intervention and prevention it is very likely that information may need to be shared before a situation reaches crisis. In the GIRFEC approach, a child’s Named Person may have concerns about the child’s wellbeing, or other individuals or agencies may have concerns that they wish to share with the Named Person. While it is important to protect the rights of individuals, it is equally important to ensure that children are protected from risk of harm.

Where a practitioner believes, in their professional opinion, that there is risk to a child or young person that may lead to harm, proportionate sharing of information is unlikely to constitute a breach of the Act in such circumstances.

The Act requires that an individual’s data be processed fairly and lawfully and that specific conditions/justifications for processing are met. The Act provides
several conditions/justifications for processing, only the first of which rely on consent and, where required, it should be fully informed and freely given. However, the issue of obtaining consent can be difficult and it should only be sought when the individual has real choice over the matter. Where circumstances exist such that consent may not be appropriate, for example where an assessment under the SHANARRI principles raises concerns, the Act provides conditions to allow sharing of this information, such as ‘for the exercise of any other functions of a public nature exercised in the public interest by any person’ or ‘in the legitimate interests of the data controller or the third party to whom the data are disclosed so long as it is not prejudicial to the child’, and procedures should be clear about those circumstances which may necessitate processing without consent.

It is vital that data controllers put appropriate and relevant protocols in place and that they are conveyed to practitioners to provide them with a support mechanism for the decision making process. It is also vital that a recording process is included in the protocol so that the decision – including the rationale behind making it – is formally recorded. Such protocols will assist in providing confidence to practitioners in the event the decision is challenged.

It is very important that the practitioner uses all available information before they decide whether or not to share. Experience, professional instinct and other available information will all help with the decision making process as well as anonymised discussions with colleagues about the case. If there is any doubt about the wellbeing of the child and the decision is to share, the Data Protection Act should not be viewed as a barrier to proportionate sharing.

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Appendix 4 – Caldicott Principles

**Principle 1 - Justify the purpose(s)**

Every proposed use or transfer of patient-identifiable information within or from an organisation should be clearly defined and scrutinised, with continuing uses regularly reviewed by an appropriate guardian.

**Principle 2 - Don’t use patient-identifiable information unless it is absolutely necessary**

Patient-identifiable data items should not be used unless there is no alternative.

**Principle 3 - Use the minimum necessary patient-identifiable information**

Where use of patient-identifiable information is considered to be essential, each individual item of information should be justified with the aim of reducing identifiably.

**Principle 4 - Access to patient-identifiable information should be on a strict need to know basis**

Only those individuals who need access to patient-identifiable information should have access to it, and they should only have access to the information items that they need to see.

**Principle 5 - Everyone should be aware of their responsibilities**

Action should be taken to ensure that those handling patient-identifiable information, (both clinical and non-clinical staff) are made fully aware of their responsibilities and obligations to respect patient confidentiality.

**Principle 6 - Understand and comply with the law**

Every use of patient-identifiable information must be lawful. Someone in each organisation should be responsible for ensuring that the organisation complies with legal requirements.

The Information Governance Review, April 2013 (known as Caldicott 2), added a 7th Principle:

**Principle 7 - The duty to share information can be as important as the duty to protect patient confidentiality**

Health and social care professionals should have the confidence to share information in the best interests of their patients within the framework set out by these principles. They should be supported by the policies of their employers, regulators and professional bodies.