

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



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INTRODUCTION

Purpose

Partner agencies across Grampian (Aberdeen City Council, Aberdeenshire Council, Moray Council, Police Scotland and NHS Grampian) have produced this guidance for all Practitioners and Managers working with children, young people and their families within the public, private and third sectors across Grampian. This guidance should complement, not replace, any existing single service and/or agency information sharing, confidentiality and consent guidance.

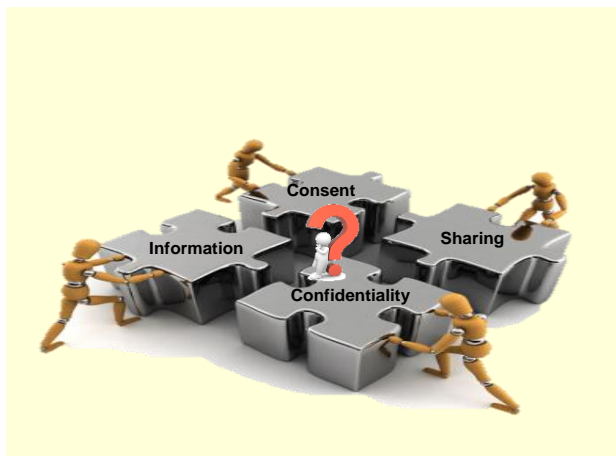
This guidance is focused on supporting and protecting the **wellbeing** of all children, young people and their families.

As a Practitioner, you may be working directly or indirectly with children, young people and their families. You may be working with them all of the time; some of the time; or only very occasionally. It is important that you understand the key role you have to play in supporting children and young people's wellbeing.

There will be occasions where you will have to share information with other Practitioners working between and across a wide range of other services and/or agencies. This could include services and/or agencies in the public, private third/voluntary sectors - including adult services.

In this guidance you will find information and advice which will empower you to do so and support your practice.

Information Sharing, Confidentiality and Consent to Support Children and Young People's Wellbeing



Most children and young people (including unborn babies) get all the help and support they need from their parents, carers and families, in addition to the universal services of education and health. However, on some occasions, some children and young people (including unborn babies) may need further help and support to promote their **wellbeing**.

Within Grampian, supporting the wellbeing of all children and young people is everyone's job and everyone's responsibility. We consider this a shared responsibility for all Practitioners and Managers working across the public, private and third/voluntary sectors.

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.

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 Wellbeing Indicators defined as - safe; healthy; achieving; nurtured; active; respected; responsible; and included; provide a common language for all Practitioners.

A focus on wellbeing ensures that all Practitioners 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. Similarly, being safe will connect with children and young people whose nurture is inadequate, or who are affected negatively by their wider world.

All Practitioners must be 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.

Child Protection

Should there be any concern that the child or young person may be at risk, it is essential that local child protection procedures are followed immediately.

If we are to get it right for every child and young person's wellbeing we need to intervene early. To achieve this we need to change the emphasis from crisis management to early identification, intervention and support (see page 15?). This will involve the appropriate and proportionate sharing of personal information and in some cases sensitive personal information.

However, 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.

This remains the overarching policy and practice approach for all matters relating to children and young people in Scotland.

Child Protection is a Getting It Right For Every Child (GIRFEC) intervention where the emphasis on keeping Safe is the main Wellbeing Indicator.

In all cases, the first and most important factor to consider is Safety.

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 and nothing whatsoever prevents you from doing so.

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

INFORMATION SHARING

What should I consider first?

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 wellbeing?**
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?**
5. **What additional help, if any, may be needed from others?**

To answer all of these questions comprehensively, there may be a need for you to share information with other Practitioners, working between and/or across a wide range of other services and/or agencies. 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.

If requesting information you should explain exactly what information you need; why you need this information; what you would be proposing to do with this information; who else it may be shared with; and how it will be handled and stored. You should be recording your request and all responses received. Information should only be shared on a need-to-know basis. You may also be asked to support this request in writing.

In trying to answer the **five** key GIRFEC questions above, it may assist you to write down the information you have; the options available to you; the likely risks of taking each option; outline your decision; and note why you have reached it. You should be recording your request and all responses received.

In practice, if you have any doubts whatsoever, or just a gut feeling that something is not quite right, then you should start by asking yourself the above five key GIRFEC questions. If in doubt, then act quickly.

Doing nothing is not an option!

Do not delay unnecessarily!

A worry or concern can relate to a child or young person's wellbeing, defined by the eight **Wellbeing Indicators** - safe; healthy; achieving; nurtured; active; respected; responsible; and included. A worry or concern can relate to a single issue, instance or incident or from a series of such 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 share information on a need-to-know basis.

Remember, nothing whatsoever, in Scottish, UK and/or European Law and/or in the Scottish child protection legislative, policy and/or practice environments prevents you from sharing personal information and in some cases sensitive personal information where you are worried or concerned about a child or young person's wellbeing. On the contrary, you are, within certain limitations and constraints, empowered to do so.

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

- [\(UK\) Information Commissioner's Office \(ICO\) Letter of Advice 2013 - Information Sharing](#);
- [Scottish Government GIRFEC Programme Board Letter of Advice 2013 - Information Sharing](#).

In practice, if you are worried or concerned about a child or young person's **wellbeing**, you should alert your Line Manager/Supervisor within an appropriate timescale and discuss your worry or concern with him/her. In his/her absence, you may find it helpful to share and discuss your worry or concern with a Trusted Colleague (see Glossary), as these can be difficult issues to deal with alone.

You should tell your Line Manager/Supervisor (and/or Trusted Colleague) why you are worried or concerned; what the nature of your worry or concern is; 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 start to record your worries or concerns and your actions.

When should I share information?

If you are worried or concerned about a child or young person's **wellbeing**, you should share your concerns quickly, efficiently and effectively. You may decide to make more enquiries first. If you do, do so quickly and ensure you prioritise the safety of the child or young person.

Who should I share information with?

When you have decided to share information you should inform the child or young person and their families (if appropriate) of your intention before sharing with the **Named Person** (and if already appointed and/or known the **Lead Professional**). You may also wish to consider the need to share information with other Practitioners, services and/or agencies who are involved with the child, young person and/or their family (Networks of Support/Team around the Child and Family). If so, you should do so on a need-to-know basis only.

Where necessary you should alert your Line Manager/Supervisor (and/or Trusted Colleague (see Glossary)). You should fully discuss your worry or concern; agree a course of action and/or intervention; and record what has been agreed and/or disagreed.

Named Person

Getting It Right For Every Child (GIRFEC) is a national programme designed to deliver a consistent way for people to work with all children and young people in Scotland.

It provides the overarching approach to support the delivery of all other policies for children, young people and their families. The Getting It Right For Every Child (GIRFEC) approach includes the provision of a Named Person for every child, from birth (or sometimes before), until they reach 18 years of age.

The Named Person will be:

- **The Health Visitor** for children from birth until the child's first day at Primary School;
- **The Head Teacher or Senior Member of the School Management Team** from Primary 1 until the young person leaves secondary school.

Young people who leave school before their 18th birthday will be entitled to have a Named Person service, provided by the Local Authority

GIRFEC operates on the principle that it is everyone's job to prevent problems occurring and offering help at the earliest possible opportunity. All staff should intervene to support children and young people with additional support needs, sharing all wellbeing concerns about a child or young person with the child's Named Person.

If you have concerns about the SAFETY of a child always follow local child protection guidelines

What information should be shared?

You should share information which:

- helps answer the five key GIRFEC questions;
- clearly identifies the child or young person you are worried or concerned about;
- relates directly to your current worry or concern;
- although historical, you consider to be relevant to your current worry or concern;
- describes their current living and family circumstances;
- you consider being relevant.

You need to exercise professional judgement; adopt a common sense approach; **and only share on** a need-to-know basis.

Only share information that you consider relevant, necessary, legitimate, appropriate and proportionate to your worry or concern.

You may need to examine any case files and/or electronic record systems you legitimately have access to, if you are to ensure you have all the necessary and relevant information.

How should information be shared?

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 for further help, information, advice, support and/or assistance.

In practice, you may be sharing information verbally face-to-face with other Practitioners; over the telephone; in reports/assessments; and/or at meetings. If you are doing so by e-mail, you must ensure the e-mail address is secure and you must follow Safe Haven principles (see Glossary).

What should be recorded when information is shared?

When you are actively sharing information you should record this according to your organisational guidance. You should record what information you have shared; who with and why.

No matter how you are sharing information, you should ensure you are recording it accurately for future reference according to organisational policy. Good practice would be to record it in both files.

You should also be recording any circumstances where information is not being shared and the reason for that. You should also record any circumstances where there is a refusal to share information and the reason for that too.

Finally, you should ensure that you record keeping is clear, accurate and concise 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 information is kept safe, secure and that there is no unauthorised access to it.

If you are in any doubt about sharing information, you should seek further help, advice, support and/or assistance from your Line Manager/Supervisor (and/or Trusted Colleague (see Glossary)) or from your Information Governance or Data Protection Officer.

What if I decide not to share information?

You should be actively sharing information with the child or young person's Named Person (and if already appointed and/or known the Lead Professional). You may also be sharing information with certain other Practitioners, services and/or agencies involved with the child, or young person and their family. However, in some circumstances, you may decide not to share information, albeit this would be the exception, as opposed to the rule.

In deciding not to share information, then you must ask yourself the following four key questions:

- What are my reasons for deciding not to share information?
- What harm could result if I do not share information?
- 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?

8.

- Do I need to discuss with my Line Manager/Supervisor whether or not to share information?

The decision not to share information must be properly recorded as per organisational policy in both hard copy case files and/or in an electronic file, for future reference.

Remember - It is a common misconception that data protection legislation prevents you from sharing personal information and in some cases sensitive personal information where you are worried or concerned about a child or young person's wellbeing. It does not. It actually empowers you.

CONFIDENTIALITY

If you are worried or concerned about a child or young person's wellbeing, there will be a need for you to share information. You need to be aware of the limitations and constraints of confidentiality and consent.

Practitioners must work within the limitations and constraints of confidentiality. This approach has been further explained, supported and endorsed by Appendices 2 and 3:

- [\(UK\) Information Commissioner's Office \(ICO\) Letter of Advice 2013 - Information Sharing](#);
- [Scottish Government GIRFEC Programme Board Letter of Advice 2013 - Information Sharing](#)

All Practitioners working within the public, private and third/voluntary sectors in Scotland are subject to a [Common Law and Statutory Obligations of Confidence](#) and must abide by this.

The duty of confidentiality only applies to personal identifiable information. You may also be subject to your own Professional Codes of Conduct and/or your own service and/or agency procedures. You should know how and where to access them for further help, advice, support and/or assistance.

The circumstances making the sharing of confidential information lawful are:

- where the individual to whom the information relates has consented;
- where disclosure is in the public interest/function; and
- where there is a legal duty to do so.

Where there is a risk to a child or young person's wellbeing, which may lead to harm, then it is acceptable to share confidential information in the best interest of the child or young person and/or in the public interest.

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

Information that is considered confidential is usually of some sensitivity; is neither lawfully in the public domain nor readily available from another public source; and is shared in a relationship, where the person giving the information understood that it would not be shared with others.

The duty of confidentiality requires that, unless there is a statutory requirement to use information that has been provided in confidence or a Court orders the information to be disclosed, it should only be used for the purposes that the subject (child or young person) has been informed about and has consented to.

However the duty of confidentiality is not absolute but should only be overridden if you, as the holder of the information, can justify the information being shared as being in the public interest (e.g. to protect **wellbeing** and/or others from harm).

What should be considered when deciding to share information given to me in confidence?

In deciding whether it is justified, or not, to share information given in confidence, you should first consider the harm that might result from failing to disclose the information against the harm that could result from a breach of confidence.

Any sharing of information should be **relevant, necessary, legitimate, 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.

CONSENT

Do I need to seek consent?

Recent advice from the (UK) Information Commissioner's Office has clarified, what has been a misconception held by many re the [Data Protection Act 1998](#) and lawful processing.

- [\(UK\) Information Commissioner's Office \(ICO\) Letter of Advice 2013 - Information Sharing.](#)

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."

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.

It is necessary to record that decision in the child or young person's case file notes and/or in an electronic file detailing what information has been shared and with whom.

The Law of Scotland does not set out in detail, how the need for confidentiality should be balanced, against the need to share information to protect the public interest. 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.

The following indicators may help you decide not to seek consent:

- where there is a perceived risk to a child or young person's **wellbeing**, which may, if not addressed, lead to harm;
- when a child or young person is believed to have been abused or at risk of harm;
- when there is evidence of serious public harm or risk of harm to others;
- where there is evidence of a serious health risk to the child or young person;

- for the prevention, detection or prosecution of crime;
- when instructed to do so by the Court; and
- where there is a statutory requirement, e.g. where information is required by a Children's Reporter as part of their investigation of a child or young person referred to them.

It is important that the basis for sharing information **or not** sharing information is recorded and noted in the child or young person's case file notes and/or electronic file and that the child or young person (and if appropriate their parent/carer/guardian) is informed of the decision.

In general, if it can be shown that the requirements of the Data Protection Act 1998 and the Human Rights Act 1998 have been taken into consideration when deciding whether it is appropriate to share and/or seek and/or exchange information, then the requirements of Scottish Common Law and other statutory obligations will also be met.

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. The conditions for processing which may be relevant for sharing confidential information are:

PERSONAL INFORMATION ¹ Schedule 2 Conditions	SENSITIVE INFORMATION ² Schedule 3 Conditions
<ul style="list-style-type: none"> • With the person's consent; • Where there is a legal obligation; • To protect the vital interests of the person; • For the administration of justice; • For the exercise of any functions conferred under any enactment; • For the exercise of any function of a public nature exercised in the public interest. 	<ul style="list-style-type: none"> • With the person's explicit consent; • Where there is a legal obligation; • To protect the vital interests of the person; • In connection with legal proceedings, obtaining legal advice or defending legal rights; • For the administration of justice; • To protect the person from dishonesty, misconduct or unlawful conduct and in the substantial public interest.

Should any one of these circumstances apply, then it is lawful to share information.

Consent should only be sought when the individual has a real choice over the matter. If you have a genuine, professional concern in relation to a child or young person's wellbeing that you believe must be shared with another service, agency and/or Practitioner with or without consent, there is no requirement to seek consent and you should rely on one of the other conditions for processing as outlined above.

¹ Personal Information is defined as Personal Data per Part I Section I of the Data Protection Act 1998.

² Sensitive Personal Information is defined as Sensitive Personal Data per Part I Section 2 of the Data Protection Act 1998.

If you are working with a child, young person and/or their family and you do not have any concerns about a child or young person's wellbeing, you may feel it appropriate to rely on consent, as a condition to allow you to share information.

Consent is most likely required where:

- confidential information is to be shared, without a clear legal basis; and/or
- individuals may be expected to object.

What types of consent should be considered?

There are **two key principles** involved in consent, as it applies to information sharing between Practitioners, services and/or agencies.

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

In such cases, it is essential to record the granting of consent, when and why it was supplied, in both hard copy case files and/or in an electronic file, for future reference. Details of refused or withdrawn consent should also be recorded; together with subsequent reviews of consent.

Implied Consent simply means that the individual (child or young person and if appropriate their parent/carer) has not explicitly said they do not agree to their information being shared; so it is inferred that they do agree to their information being shared. **Implied Consent** is not sufficient for this type of information sharing.

Who can give consent for information sharing?³

Children under the Age of 12

Where the child or young person is under the age of 12, 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 12 to have the capacity to understand **informed consent**, and where there is difficulty in relationships with their parents/carers, then a request by the child or young person that consent should not be sought from their parents/carers should be respected, wherever possible.

³ See the [Age of Legal Capacity \(Scotland\) Act 1991](#).

Children From the Age of 12 to 15

Children and young people from the age of 12 are presumed to have the full mental capacity to give **informed consent** and to take decisions in their own right. Children and young people aged 12 to 15 are presumed to have a sufficient level of understanding of the nature of consent and its consequences and you should seek their consent.

However, if this is not the case, or you are in any doubt, you should seek advice from your Line Manager.

Children From 16 to 18

Children over 16 years old have a legal right to consent or withhold consent on their own behalf.

Parental rights and responsibilities largely cease when a child is aged 16. The exception to this is a parent/carer's responsibility to continue to provide guidance to their child from age 16 to 18. In these circumstances, you should seek to keep their parent/carer or guardian involved in issues affecting their child or young person, but only to the extent that this is compatible with the rights and autonomous choices of the child or young person.

How should I ask for, obtain and record consent?

Where you decide it is appropriate to seek consent to share information, you should make sure that consent is given on an **informed basis** by explaining:

- the purpose for which the information is to be shared;
- what information is to be shared; and
- with whom it is to be shared.

You should obtain the consent of the child or young person (and if appropriate their parent/carer) to share their information when seeing them for the first time, or when you decide that another Practitioner, service and/or agency input is required.

The child, young person, parent or carer should be provided with information and advice leaflets on information sharing, confidentiality and consent and on the role of the Named Person, which are clear, accurate and concise. You should explain the contents of the leaflets and ensure that the child, young person, parents or carers understands it.

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

If you have decided that there is a need to seek consent and/or that the situation is not one where information can be shared under any of the other criteria stipulated in Schedule 2 or Schedule 3 of the Data Protection Act 1998, you should not share that information without consent.

You may in the future re-visit this decision if there are changes to the child or young person's wellbeing situation or if risk is present. Consent is most likely required where:

- confidential information is to be shared, without a clear legal basis; and/or
- individuals may be expected to object.

In some cases, the child or young person (and if appropriate their parent/carer) may refuse to give consent. If consent is refused then, unless there are other factors about the child or young person's ability to understand the implications of refusal, or risk exists, then in the first instance, the child or young person's right to refuse must be accepted and recorded.

Where there is doubt about the child or young person's capacity and understanding, or risks exists, you should weigh up the balance between the child or young person's right to privacy and their **wellbeing**. In these circumstances, you should consider whether there remains a need and/or justification to share information without consent, despite permission to share being withheld.

What if consent is withdrawn?

Children and young people (and if appropriate their parent/carer) have the right to withdraw consent for information sharing. If they withdraw their consent to sharing their information, the considerations about sharing without consent still apply.

In these circumstances, you should:

- fully explain the consequences to the child or young person (and if appropriate their parent/carer);
- advise your Line Manager/Supervisor if appropriate;
- record the decision in the child or young person's case file notes and/or electronic file;
- advise any other Practitioner, service and/or agency receiving information that consent has been withdrawn and that they should cease processing the information from that point onwards unless one of the other statutory conditions apply.

A child or young person (and if appropriate their parent/carer) cannot withdraw consent retrospectively. If wrong information has been shared, the child or young person has the right to ask for that wrong information to be corrected. The receiving Practitioner, service and/or agency should be notified accordingly and the information should be corrected.

What if someone is unable to provide informed consent?

If a child or young person (and if appropriate their parent/carer) cannot give consent to share information you should ask yourself the following four basic questions:

- Does the child or young person (and if appropriate their parent/carer) understand the nature of consent and its consequences?

- Is there a legitimate need to share information?
- Will failure to share mean that assistance and support will not be provided?
- Will the child or young person be at risk?

Where the child or young person (and if appropriate their parent/carer) is deemed not to have capacity, you should also record the following in the child or young person's case file notes and/or electronic file:

- Why the decision was made;
- Who was involved;
- The purpose of sharing the information; and
- What information was shared, with whom and the date.

You should inform the recipient of the information on what basis the decision to share information was made. You should always endeavour to ensure that anyone lacking capacity to consent to share their information understands the implications of their information being shared.

The parent/carer should also be informed, unless this might place the child or young person at greater risk of harm and/or abuse, e.g. the parent/carer is a factor in such concerns.

What about sharing information pre-birth?

Occasionally, you may also be worried or concerned about the wellbeing of an unborn child however the sharing of information about an unborn child can present additional challenges.

In these circumstances, you should try to involve the parents-to-be in decisions about sharing information, unless this would increase the risks to the unborn child.

Where you have a worry or concern about foetal development; or the mother's health; or the future wellbeing of the child when born; you should share information. This includes sharing information prior to the birth of a child to ensure planning during the pregnancy, which will inform protective planning from the moment of birth.

Practitioners caring for a pregnant woman should always consider if the unborn child may be endangered, or its future wellbeing harmed by, the adult's condition, behaviour or lifestyle.

If a decision is taken to share information about an unborn child, the pregnant woman should be informed and this decision should always be recorded. The recipient of the information should also be informed of why it was decided to share the information.

In these circumstances, the Multi-Agency Child Protection Pregnancy Protocol on Page 18, NESPCPC Child Protection and Parenting Capacity Guidance should be followed. www.nescpc.org.uk

PRACTITIONERS SUMMARY - KEY PRACTICE POINTS

Information Sharing

- Always involve and consider the views of the child/young person and their families in any decision to share information unless it is not in their best interest to do so.
- The wellbeing of children and young people is everyone's job and everyone's responsibility; doing nothing is not an option:
- Keep your focus on the wellbeing of the child or young person;
- Ask yourself the five key GIRFEC questions - if the answer is no or you do not know - find out;
- Adopt a common sense approach;
- Use your professional judgment, knowledge and skills - listen to your gut feelings;
- Do not delay unnecessarily - act quickly;
- Seek help and support in doing so if appropriate
- Share what you consider only to be necessary, legitimate, appropriate and proportionate - on a need-to-know basis only;
- Always share your worry or concern with the child or young person's **Named Person**;
- Consider the alternatives and/or implications of not sharing information;
- Where consent to share information has been obtained this will need to be revisited;
- Follow your own service/agency information sharing guidance;
- Always record your decision and the reasons for it.

Confidentiality

- Confidentiality does not prevent you from sharing a worry or concern about a child or young person's wellbeing - it actually empowers you to do so;
- Confidentiality is not an absolute right - never promise that;
- Be aware of the constraints and limitations of confidentiality;
- Keep in mind your duty of care;
- Acting in the public interest can be a defence to an accusation of breach of confidence - but this must be justified (See Appendices 2 and 3);

- [\(UK\) Information Commissioner's Office \(ICO\) Letter of Advice 2013 - Information Sharing;](#)
- [Scottish Government GIRFEC Programme Board Letter of Advice 2013 - Information Sharing;](#)

Consent

- Do not seek consent in situations where you will share information in any case - Consent should only be sought when the individual has a real choice over the matter;
- Consent should be informed and explicit - implied consent is not enough;
- If consent is necessary children and young people, subject to their age and developmental capacity, can withhold or provide consent;
- Consent must always be recorded.

Legislation

- Legislation provides you with a legal framework within which information can be shared;
- Personal Information is defined as Personal Data per [Part I Section 1 of the Data Protection Act 1998](#);
- Sensitive Personal Information is defined as Sensitive Personal Data per [Part I Section 2 of the Data Protection Act 1998](#);
- [Schedule 2](#) and [Schedule 3](#) of the [Data Protection Act 1998](#) describes clearly in what circumstances you can share information;

POINTS TO REMEMBER

- Record;
- Record the reasons why you are sharing information and/or not sharing information;
- Record with whom you have shared the information and when you did so;
- Keep all information safe and secure at all times;
- Always identify the person you are communicating with;
- Do not give verbal information where you can be overheard;
- Do not leave information on answering machines or voicemail;
- Be aware of your service/agency's e-mail policy - always use secure e-mail; do not use fax.

INFORMATION SHARING IN CHILD PROTECTION: GENERAL PRINCIPLES

National Guidance for Child Protection in Scotland 2010⁴

- The safety, welfare and well-being of a child are of central importance when making decisions to lawfully share information with or about them;
- Children have a right to express their views and have them taken into account when decisions are made about what should happen to them;
- The reasons why information needs to be shared and particular actions taken should be communicated openly and honestly with children and, where appropriate, their families;
- In general, information will normally only be shared with the consent of the child (depending on age and maturity). However, where there are concerns that seeking consent would increase the risk to a child or others or prejudice any subsequent investigation, information may need to be shared without consent;
- At all times, information shared should be relevant, necessary and proportionate to the circumstances of the child, and limited to those who need to know;
- When gathering information about possible risks to a child, information should be sought from all relevant sources, including services that may be involved with other family members. Relevant historical information should also be taken into account;
- When information is shared, a record should be made of when it was shared, with whom, for what purpose, in what form and whether it was disclosed with or without informed consent. Similarly, any decision not to share information should also be recorded; and
- Agencies should provide clear guidance for Practitioners on sharing information. This should include advice on sharing information about adults who may pose a risk to children, dealing with disputes over information sharing and clear policies on whistle-blowing.

⁴ Extracted from the [National Guidance for Child Protection in Scotland 2010 \(Scottish Government 2010\)](#). At the time of publication, this guidance is being refreshed and/or reviewed by the Scottish Government.

INFORMATION SHARING IN CHILD PROTECTION: POLICY PRINCIPLES

Protecting Children and Young People: Framework for Standards⁵

- Published on 2004, the Framework for Standards translates key messages from the Children's Charter into child protection practice for all Practitioners, services and/or agencies, by providing **eight** high level generic practice statements, all supported by additional narrative/text. Standard 4 relates directly to information sharing, confidentiality and consent;
- Agencies* and professionals * share information about children where it is necessary to protect them;
- Professionals discuss any concerns and relevant information about a child or their circumstances with those other professionals or agencies with statutory responsibilities for the protection of children when it is in the child's best interests to do so;
- The needs of each child are the primary consideration when professionals decide how best to share information. All decisions and reasons for them are recorded;
- Agencies actively manage and support the sharing of information recognising that confidentiality does not prevent sharing information where a child is in need of protection;
- Professionals ensure that parents and children are made aware of, and check it is understood, what information:
 - agencies hold;
 - how it is stored;
 - with whom it may be shared; and
 - under what circumstances information may be shared with others without their consent;
- Professionals identify what information each child and their parents are content to share freely;
- Professionals take account of each child and their parent's views when deciding when to share information without their consent and can provide reasons and explain to them when they have shared information without consent; and
- Agencies and professionals store information securely.

⁵ [Protecting Children and Young People: Framework for Standards](#) (Scottish Executive 2004)

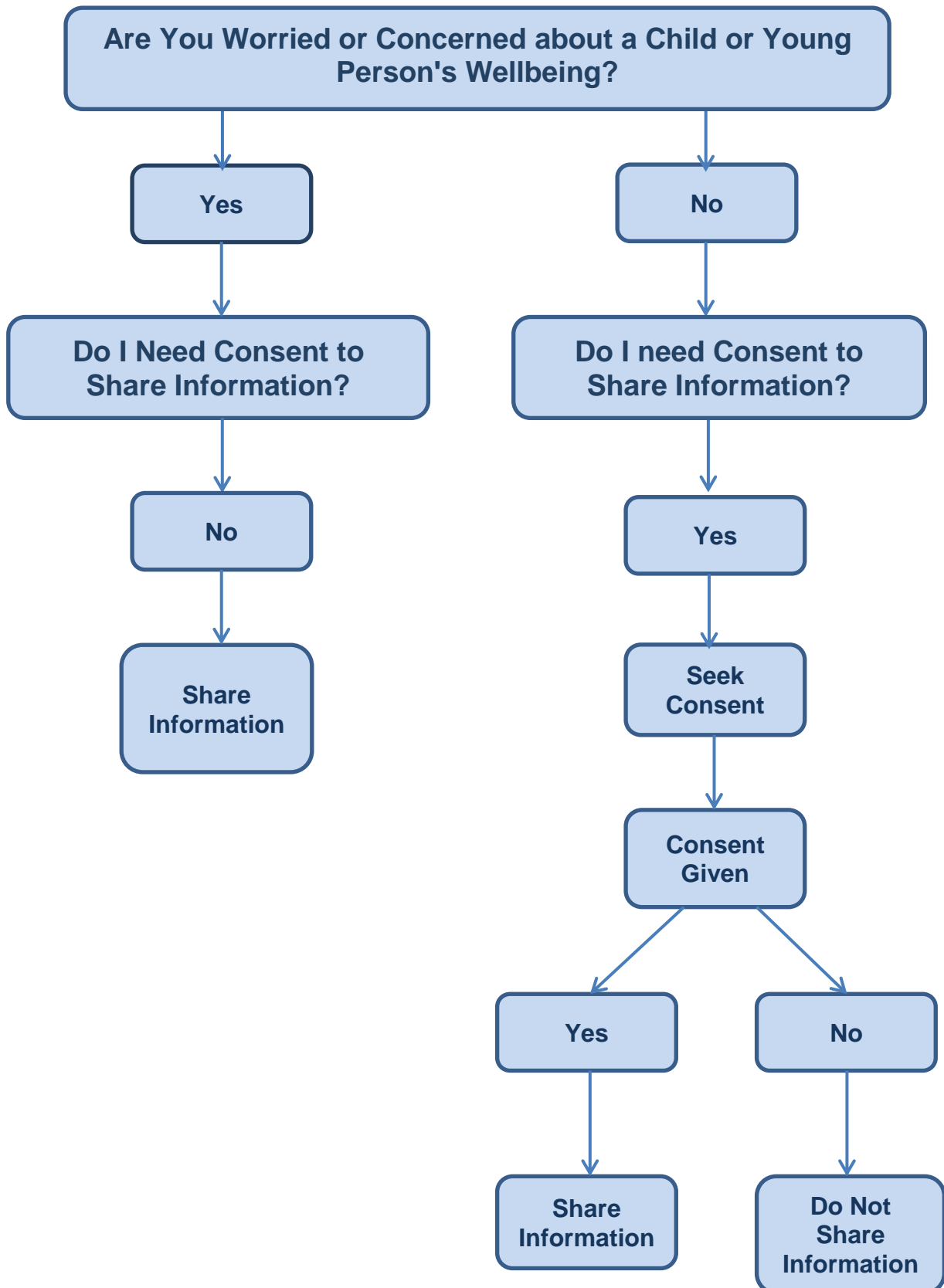
INFORMATION SHARING SUMMARY

A useful summary of the key considerations for all Practitioners when considering when to share information; what information to share; who to share with; and how to share information.

When to share	Share information when worried or concerned about a child or young person's wellbeing.	Wellbeing - (making sure children are safe, healthy, achieving, nurtured, active, respected, responsible and included)
What to share	Share information which is relevant, necessary, legitimate, appropriate and proportionate.	Share information relating only to your concern or worry - reduce or remove unnecessary data. Always use your professional judgement /instincts; adopt a common sense approach.
Who to share with	Share information on need to know basis only, eg named person, lead professional.	Discuss sharing information with your Line Manager/Supervisor if you are unclear. (See 'Practitioner's Guide to information sharing, confidentiality and consent to support children and young people's wellbeing in Grampian).
How to share	Share information verbally by telephone, or face to face at meetings, written reports or assessments or by secure email systems.	Share information quickly efficiently effectively and securely. Follow Safe Haven principles.

CONSENT FLOWCHART

A Practitioners' Flowchart on seeking consent, having decided to share information.



GLOSSARY

Information Sharing - For the purposes 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 1998.

Wellbeing - For the purposes of this guidance, [Wellbeing](#) is defined as the [GIRFEC Eight Indicators of Wellbeing \(SHANARRI\)](#) - Safe; Healthy; Achieving; Nurtured; Active; Respected; Responsible; and Included, in which all children and young people need to progress, in order to do well now and in the future

Safe Haven - 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 (eg 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.

Agencies - For the purposes of this guidance, agencies is widely defined and interpreted as meaning all services and agencies across the public, private and third/voluntary sectors.

Professionals - For the purposes of this guidance, is widely defined and interpreted as meaning all Practitioners, paid or unpaid, working directly with or occasionally with children, young people and their families.

Data Controller - For the purpose of this guidance Data Controller means ... a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.
http://ico.org.uk/for_organisations/data_protection/the_guide/key_definitions

Data Processor - In relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller.
<http://www.legislation.gov.uk/ukpga/1998/29/section/1>

Trusted Colleague - an appropriate and experienced colleague.

LEGISLATIVE AND POLICY CONTEXT

Information Sharing, Confidentiality and Consent is 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

- [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](#)
- [The Children and Young People\(Scotland\) Act 2014](#)

Key Policy Framework

- [UN Convention on the Rights of the Child](#)
- [Common Law and Statutory Obligations of Confidence](#)
- [Scottish Executive's Audit and Review Report \(2002\) entitled "It's everyone's job to make sure I'm alright"](#)
- [Protecting Children and Young People: Children's Charter](#)
- [Protecting Children and Young People: Framework for Standards](#)
- [HMle Services for Children Unit \(2006\): Self Evaluation and Quality Indicators Framework: *How well are children and young people protected and their needs met?*](#)
- [HMle 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](#)
- [Scottish Government \(2010\) National Guidance: Under-Age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns](#)
- [National Guidance on Child Protection in Scotland \(May 2014\)](#)
- [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](#)
- [The Caldicott Guardian - Principles into Practice - Caldicott Guardians](#)
[https://www.knowledge.scot.nhs.uk/caldicottguardians/caldicott-guardian--- principles-into-practice.aspx](https://www.knowledge.scot.nhs.uk/caldicottguardians/caldicott-guardian---principles-into-practice.aspx)

Useful Links - Key Local Guidance

- [NESCPC Child Protection and Parenting Capacity Assessment](#)
- ['Sharing Information about you'- A Guide for Children, Young People, Parents and Carers leaflet\)](#)
- [Memorandum of Understanding 2011 - Grampian Data Sharing Partnership](#)

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

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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 5320.

Yours sincerely

A handwritten signature in black ink that reads "Martin Crewe". The signature is written in a cursive style with a small flourish at the end.

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,
2B North, Victoria Quay, Leith
EDINBURGH
EH6 6QQ

Attached –Information Sharing Advice from ICO

28 March 2013

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 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.

**Dr Ken Macdonald
Assistant Commissioner Scotland & Northern Ireland
Information Commissioner's Office**