East Renfrewshire’s
Getting it right for every child
Framework

Information Sharing and Consent:
A Practitioner’s Guide

Revised June 2014
1.0 Introduction

1.1 Improving information sharing practice is a cornerstone of the Getting it Right for Every Child approach to improve outcomes for children and young people.

1.2 Sharing information is vital for prevention and early intervention to ensure that children and young people get the help they need when they need it. It is also essential to protect children and young people from suffering harm from abuse or neglect and to prevent them from offending.

1.3 With the development of more integrated services for children and the increasing introduction of electronic systems the range of information that may need to be shared on a regular basis is increasing. As children’s services move further towards more multi agency working it is important that practitioners are provided with guidance on when and how to share information in order to support this integrated approach.

1.4 Recognising that most decisions to share information require professional judgement, this guidance document aims to improve practice by giving practitioners across children’s services in East Renfrewshire clear direction on when and how they can share information legally about a child or young person with whom they are in contact. In the process it is designed to help staff approach this complex area with greater clarity and confidence particularly when making decisions.

1.5 In the GIRFEC approach, a child’s Named Person may have concerns about a child’s wellbeing, or other individuals or agencies may have concerns that they wish to share with the Named Person. The 6 key questions will support a practitioner’s decision making. While it is important to protect the rights of individuals, it is equally important to ensure that children’s wellbeing is not jeopardised.

1.6 Overall sharing information effectively will help agencies and organisations deliver support to children and young people that is appropriate to their needs. To be effective the information shared must be relevant and proportionate, it must be appropriately protected and secured, and exchanges must be made within the requirements of the law.

1.7 From the beginning it is crucial to clarify that staff across all agencies have the power to share personal and/or sensitive personal information about a child/young person or parent/carer to improve a child’s wellbeing and nothing prevents them from doing so. By definition wellbeing is defined by the eight Wellbeing Indicators – safe, healthy, active, nurtured, achieving, respected, responsible, included. Staff do not need to seek consent to share this information but it is good practice to inform the child and family that this is happening and to record the decision to share and with whom. This revised guide essentially reflects the Information Commissioner’s instructions in his letter dated 28 March 2013 (see appendix 1) and lowers the threshold for sharing without consent to include wellbeing concerns.

2.0 Information Sharing Protocol (ISP)

2.1 This legal agreement allows agencies across East Renfrewshire to share information about service users in a way which both satisfies the legal and professional obligations of the agencies and their staff. Based on the Scottish Executive’s Gold Standard framework the protocol is designed to ensure that the
exchange of information which is necessary to permit multi agency and multi disciplinary service provision, can proceed in a way which conforms with all applicable laws and safeguards the rights of the agencies and service users involved.

2.2 Being a high level legal document the ISP should not be referred to as an operational guidebook for practitioners. It does however inform the content of this guidance and list the agencies who are party to the protocol.

3.0 The Legal Framework

3.1 This guidance seeks to provide clarity on the legal framework for practitioners sharing information about children, young people and families. All professionals and agencies are required to keep confidential information given to them during the course of their work. Information given to professionals by their patient, client or service user should not be shared with others unless the safety or the wellbeing of a child, young person or vulnerable person is at risk, and this sharing should be appropriate and proportionate.

3.2 This general principle is enshrined in professional and ethical codes of conduct, and in human rights and data protection legislation, which acknowledge an individual's right to privacy but which also enable the disclosure and sharing of information in appropriate circumstances.

3.3 The Human Rights Act: The Human Rights Act 1998 gives effect to the provisions of the European Convention of Human Rights (ECHR) within Scots law. Article 8 of the ECHR guarantees respect for a person’s private and family life, his home and his correspondence. Disclosure of personal information would breach that right unless it is done in accordance with the law, is proportionate, and is necessary for the protection of an individual such as a child or young person or is in the public interest.

3.4 Concerns voiced regarding the wellbeing of a child would provide the lawful basis for disclosing information provided its disclosure is proportionate to the need to be addressed and is done in accordance with the framework for fair processing of information established in terms of the Data Protection Act 1998.

3.5 The Data Protection Act 1998: Disclosure of personal information is governed by the Data Protection Act 1998 (DPA). Personal data covers both facts and opinions about a living individual which might identify that person. The provisions of the DPA ensure that personal information held about any individual cannot be used without the individual’s consent or unless certain other specified criteria are met. This prevents unauthorised disclosure of a wide range of information.

3.6 In certain circumstances and subject to certain conditions, the DPA allows disclosure of personal information without the subject’s consent. Permitted in terms of these provisions are (amongst other things) disclosure of information to safeguard national security, to prevent or assist in the detection of crime, or to protect the vital interests of the person. This last provision is usually interpreted as 'protecting life and limb' and would allow the sharing of information if there were concerns about the wellbeing of a child or young person.

3.7 The Data Protection Act also allows sharing of information without consent when necessary to exercise any statutory function/obligation. As Dr Ken Macdonald Information Commissioner stated on 28 March 2013:
“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.”

3.8 Common Law: Under the common law duty of confidentiality there is a duty to act reasonably and in a manner that is proportionate to the aim. There are situations where practitioners will be entitled to disclose information without consent even though it is subject to the duty of confidence, for example to help in the detection of crime or to prevent harm to a child. This is in line with the guidance issued by organisations such as the General Medical Council (GMC) and Royal College of Paediatricians.

If there is reasonable concern that a child may be at risk of harm this will always override a professional or agency requirement to keep information confidential. All professionals and service providers have a responsibility to act to make sure that a child whose safety or wellbeing may be at risk is protected from harm. They should always tell parents/carers this.

4.0 Confidentiality

4.1 One of the key principles of the Getting it right for every child approach is that it provides a process which actively promotes the involvement of children and their families. Taking this approach ensures that families have the opportunity to actively participate in the process and are informed of what is happening at every stage.

4.2 Confidentiality is an important factor in enabling service users to engage confidently and honestly with agencies. All agencies should respect the need for other professionals and agencies to protect their relationship with a service user and support the requirement to maintain confidentiality as far as possible. Sometimes professionals will need to share specific information with staff in their agency or other professionals in order to provide support, treatment or other forms of help.

4.3 Keeping children and parents updated on the content and volume of information gathered about them is crucial to enabling them to participate in decisions about how this information is shared and used. Agencies should tell service users about the kinds of situations where they may have to share information. For example, a GP may need to discuss a child’s medical progress with a physiotherapist or the Named Person in a school. Services working with adults must also inform their service users or patients that they require to share information with children’s services if they identify concerns over a child’s situation.

4.4 Agencies and services should give some indication of why, and with whom, they may need to share information as this will save time, misunderstandings and potential conflict later.

4.5 If there are worries about a child’s care, development or wellbeing, professionals in touch with the family must co-operate to enable proper assessment of the child’s circumstances, provide any support needed and take action to reduce risk to the child. This will normally require them to share relevant information. Guidance from professional bodies emphasises that the child’s wellbeing is the paramount consideration when deciding what they should do in such circumstances.
4.6 The need to ensure proper protection for children requires that agencies share information promptly and effectively when necessary. Ethical and statutory codes for each agency identify those circumstances in which information held by one professional group may be shared with others to protect the child.

5.0 Asking for and giving information

5.1 When any professional or agency approaches another to ask for information they should be able to explain:

- What kind of information they need
- Why they need it
- What they will do with the information
- Who else may need to be informed if concerns about a child’s wellbeing persist.

5.2 It is not helpful to contact another professional and ask for everything they know about a family, because you are worried about a child. If staff are not sure what kind of information the other agency may have or what they might need to know, they should explain the task so that the other person may better understand how they may help.

5.3 If a professional or agency is asked to provide information they should never refuse solely on the basis that all information held by their agency is confidential. On receiving answers to the above questions they should consider:

- What information the service user has already given
- Whether there are any wellbeing concerns in relation to a child which would warrant breaking confidentiality;
- Whether they have relevant information to contribute – that is, information which has, or may have, a bearing on the issue of the child’s wellbeing, which would enable another professional to offer appropriate help, which may assist access to other services, or help determine whether any other action is necessary to reduce the risk to the child;
- Whether that information is confidential, already in the public domain or could be better provided by another professional or agency, or the parent directly
- How much information needs to be shared to improve the child’s wellbeing

5.4 Any professional uncertain about what information they may share should seek advice from a senior staff member in their agency with responsibility for child protection. Each NHS Board has a designated guardian of patient information, called a Caldicott Guardian who is responsible for the way the organisation handles and protects patient identifiable information and all other agencies should have a person who can advise on these matters. If advice is not readily available within their agency, or further advice is needed, they should seek advice from one of the agencies responsible for child protection enquiries; the social work service, the Reporter or the police.

5.5 The professional should consider carefully all potential consequences for the child’s wellbeing before making a final decision about whether or not to provide information asked for. They should record the information that has been shared, with whom and the reasons for the decision carefully. The professional or agency may subsequently have to justify their disclosure, or refusal to share relevant information, to a court, children’s hearing, professional body or other forum.
6.0 Consent

6.1 Staff working within the context of the Getting it right for every child will work through a process of informing children/young people and parents/carers where possible that they intend to share information for the purposes of protection or acting to improve wellbeing. If it may cause harm the decision to share will be withheld from the child or parent. The following extract from the ICO Letter of Advice 2013 clarifies this further -

“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.”

6.2 As staff may be asked to justify their decisions not to seek consent at a later date, best practice dictates that they record their decisions and reasons in the child’s file and notes.

6.3 If a practitioner is working with a child, young person and their family and they do not have any concerns about the child’s wellbeing they may still require to share information and in such cases they may feel it appropriate to seek consent to share. However consent to share should only be sought when the child or family has a real choice over the matter.

7.0 How to seek consent

7.1 All practitioners will use the same procedure for requesting consent. The assessment and plan leaflets will assist with this task.

7.2 Although the leaflets are available to support the process they should not replace interpersonal communication with children and parents / carers. Appropriate language or alternative forms of communication must be used to fully explain and ensure understanding of the information sharing process.

8.0 Seeking consent from the child or young person only

8.1 The primary factor in this decision is what is in the best interests of the child. Where there is a trusting and open relationship between the child and the parents /
carers, practitioners may be discussing the issue of consent with both the child and the parents / carers at the same time and consent will be requested from both.

9.2 The United Nations Convention on the Rights of the Child, to which the United Kingdom is a party, makes clear that children have a right to express their views and to have them taken into account when decisions are made about what should happen to them. They have a right to information about themselves, if it is not damaging to them or for others to see it.

9.3 The Data Protection Act 1998 states that children over the age of 12 years are presumed to have sufficient age and maturity to give consent to share information in their own right. Given that this is merely a presumption, it is not absolute and judgement may be required to establish a particular child’s capacity in this regard, whether above or below this age. Young persons ie 16 or over have absolute rights under the Data Protection legislation. Where a child is expressing difficulty in relationships with parents / carers, their desire not to request consent from parents / carers must be respected.

9.4 Children under the age of 12 also have rights to be kept informed and participate in the process of requesting consent. This means that they must be involved and where practitioners consider children to have the capacity to understand informed consent and who express difficulty in relationships with parents / carers, their desire not to request consent from parents / carers should be respected wherever possible.

9.5 Where a child or indeed a parent has a learning disability it should not be assumed that they do not have capacity to consent to information sharing and practitioners must make a professional judgement as to their capacity to understand and participate in informed consent using relevant forms of communication.

9.6 Sharing of information in relation to an “unborn child” presents some challenges to practitioners. Where there is a concern about the foetal development and its impact on the child when born or the mother’s state of well being, practitioners should try to secure consent from the mother to share information with relevant professionals. However if this is not possible and the practitioners concerns are related to wellbeing then the information should be shared.

10.0 If consent is refused or withdrawn

10.1 If a child, young person, or parent/carer informs an agency that they wish to withdraw consent previously agreed this decision and the reasons for it should be recorded. Individuals should be informed that decisions regarding sharing of information may still takes place if the wellbeing of the child is being compromised.

10.2 If a child or parent / carer refuses consent for information to be shared this must be recorded and clearly marked on the agency case file. So far as possible, the practitioner to whom this refusal of consent was given shall record the reasons for this, if the child and or parent / carer has given reasons. Individuals should be informed that decisions regarding sharing of information may still takes place if the wellbeing of the child is being compromised.

10.3 A refusal of consent should be over-ridden if information comes to the attention of practitioners that would indicate the child is at risk of harm or their wellbeing is being unmet.
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;
- Keep your focus on the wellbeing of the child or young person – the SHANARRI Wellbeing Indicators
- Ask yourself the six key GIRFEC Questions - refer to your Girfec Guidance Manual
- Adopt a common sense approach;
- Use your professional judgment, knowledge and skills – gut feelings;
- Do not delay unnecessarily – act quickly;
- Seek help and support in doing so and actively discuss with your Line Manager/Supervisor
- 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 and if they have one the Lead Professional
- Consider the alternatives and/or implications of not sharing information;
- Follow your own service/agency information sharing guidance; and 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 and the Common Law and Statutory Obligations of Confidence;
- Acting in the public interest can be a defence to an accusation of breach of confidence – but this must be justified
- (UK) Information Commissioner’s Office (ICO) Letter of Advice 2013 – Information Sharing helps with this (see appendix 1 below)
- Scottish Government GIRFEC Programme Board Letter of Advice 2013

**Consent**

• Do not seek consent in situations where you are likely to share information in any case – wellbeing of a child or young person;

• Consent can be difficult and it 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;

• 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

• Personal Information is defined as Personal Data per Part I Section I 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;

• (UK) Information Commissioner’s Office (ICO) Letter of Advice 2013 – see appendix 1 below

• Legislation helps you to weigh up the benefits and risks;

**Methods**

• Share and exchange information in a working relationship – built on mutual trust and respect;

• Record the reasons why you are sharing information and/or not sharing information;

• Keep all information safe and secure at all times;

• Always identify the person you will be 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 if at all possible. If you have to and there is no alternative,
make sure the recipient is standing by to collect the fax.
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.

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