



**ALLIANCE**

HEALTH AND SOCIAL CARE  
ALLIANCE SCOTLAND  
people at the centre

Deputy First Minister / Cabinet Secretary for Education and Skills  
The Scottish Government  
St. Andrew's House  
Regent Road  
Edinburgh  
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Dear Deputy First Minister,

I am writing to inform you of the Practice Development Panel's progress to date and to share some of the Panel's current thinking.

You will be aware that the Panel was set up to develop and produce, by consensus, an authoritative draft Code of Practice for information sharing. It was also invited to provide recommendations on Statutory Guidance and other materials required to support commencement of Part 4 (Provision of Named Persons) and Part 5 (Child's Plan) of the Children and Young People (Scotland) Act 2014 ('the 2014 Act').

The Panel has met on multiple occasions since February 2018 to develop a draft Code of Practice for information sharing. Our objective in drafting the code was to explain how the provisions for sharing of information relating to children and young people, by or with the named person service or in connection with a child's plan, should be lawfully applied in practice. The Code was intended to bring consistency, clarity and coherence to the practice of sharing information about children and young people's wellbeing across Scotland.

The Panel took the view that the Code and guidance needed to work for front line staff and be accessible and understandable by parents, children and young people. To that end we have worked to ensure that the information sharing experience, expertise and practical knowledge of those in public services and rights holders (i.e. children and their families) were the foundation for the development of the authoritative draft Code of Practice, Statutory Guidance and other supporting materials.

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## **The Work of the Panel**

Work on an authoritative draft Code of Practice has progressed significantly over the year. Key issues which the Panel have considered include:

- *Who the Code of Practice is for*
- *How the Code of Practice can provide clarity and safeguards in relation to information sharing*
- *How the language of the Code of Practice can be made as accessible as possible*
- *How can it be authoritative in the light of changing understanding of the law and with developing guidance from statutory authorities*
- *How can it be a promoter rather than an inhibitor of good professional practice*

The Panel have considered the legal basis for information sharing in the context of the developing legal landscape. Our initial thinking was that, in relation to data protection law, where a child or parent consensually engages to use a service or agrees to a referral for a service, then the legal basis for sharing the necessary information to access or deliver the service was likely to be the fulfilment of a "public task".

During the process of developing the draft Code, the UK Government issued updated guidance on "*Information Sharing: Advice for practitioners providing safeguarding services to children, young people, parents and carers*". While this does not apply in Scotland, the Panel, together with its Legal Focus Group considered the UK Government's guidance further to understand what, if any, implications it may have for the deployment of a more detailed Code of Practice. This consideration has also included a detailed study of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 in the context of sharing information in relation to a child or young person's wellbeing.

### **The Panel's current view is that:**

For the proposed Code to be effective in providing the safeguards looked for in the 2016 Supreme Court ruling, these safeguards would need to be placed directly into the draft Code. The Panel have found it challenging to achieve this without making the draft Code detailed and complicated. This runs contrary to a desire for the current draft Code to be simple, concise and accessible. The Panel are concerned that a complicated Code of Practice could make the information sharing landscape more complex and confusing, with the consequence of stifling relevant, necessary and proportionate information sharing, which, in turn, would lead to reduced opportunities to offer support to children and families.

The Panel's current thinking is:

- *GDPR and the new Data Protection Act provide new and more explicit safeguards to support proportionate sharing of necessary information. Once clarified through forthcoming guidance and case law, these will assist information sharing practice;*

- *the refreshed GIRFEC Policy and practice guidance provides an opportunity to explain how information sharing practice could generally be delivered and signposted to relevant further guidance as appropriate;*
- *explaining how different parts of law interact in a statutory Code would be detailed and complex and unlikely to be an easy read for practitioners or the public.*

In view of this the Panel consider that:

- *An overly complex Code of Practice would not be user friendly and could inhibit good professional practice*
- *In light of recent changes to the legal landscape, GDPR and the Data Protection Act 2018 could assist in providing the legal framework and necessary safeguards to support proportionate and necessary information sharing within a GIRFEC approach;*

### **Next steps**

The Panel now intend to have a short period of targeted engagement in early 2019 to consider:

- *what would be most helpful for children, young people and their families to better understand the legislative position on information sharing; and*
- *the development of practitioner advice, support and guidance to explain how information sharing works in practice within the new legal landscape, including more detailed guidance on sharing information in a range of specific circumstances*

The Panel will report its conclusions to the DFM as soon as practicable after this engagement has concluded.

Yours Sincerely



Prof. Ian Welsh OBE