

**Legal Focus Group – 31 October 2018, Scottish Government, Victoria Quay, Edinburgh**

In attendance

Chair, Prof Ian Welsh OBE (Chair of GIRFEC Practice Development Panel) (IW)

Maureen Falconer (Information Commissioner's Office & GIRFEC Practice Development Panel) (MF)

Peter Hessett (Society of Local Authority Lawyers and Administrators in Scotland & GIRFEC Practice Development Panel)

Norma Shippin (Central Legal Office, NHS National Service Scotland & GIRFEC Practice Development Panel)

Prof Paul Martin CBE (South Ayrshire Council & GIRFEC Practice Development Panel) (Guest) (PM)

Scottish Government Officials

Welcome and approval of minutes from meeting held 17 July 2018

IW introduced himself, welcomed everyone to the meeting, and asked those in attendance to introduce themselves.

IW informed the group that he was attending and had invited Panel member PM to hear first-hand the group's considerations on developing the draft Code.

IW suggested that he would Chair the meeting and this was agreed.

Minutes of the previous meeting (17 July 2018) were circulated via email. It was suggested that, as the minutes from this meeting were only circulated one day ago, it may be helpful to await response from all that attended before agreeing minutes. The secretariat will recirculate the minutes once all who attended have had a chance to respond. It was agreed that the minutes of the meetings would, in the usual manner, be an overview of what has been discussed at the meeting.

The implications of the recent UK government advice to practitioners providing safeguarding services on sharing information

IW reconfirmed the objective of the legal focus group is to address the challenge of ensuring that the draft Code properly reflected relevant legal requirements, was workable, comprehensive and user-friendly for children and young people, parents and practitioners.

He repeated the ask from the previous Panel meeting on the 4<sup>th</sup> October that the group should consider the new UK advice to practitioners providing safeguarding services on sharing information and any implications for the draft Code. He was also aware that the Group were continuing their considerations of the new data protection regime, particularly how the UK government were interpreting the General Data Protection

Regulation through the 2018 Data Protection Act, supporting codes of practice and guidance.

Following the feedback received from Panel members during the Panel meeting of 31 July 2018, the Chair asked for the sections in the draft Code on consent and data protection law to be further refined.

IW asked the group if they could perhaps outline any implications for the development of the draft Code. The group noted that this guidance is for a different regime, as it is directed towards England and Wales and relates to safeguarding services. MF noted that her understanding is that, during the consultation process, ICO provided a response and raised the issue of consent.

The group moved to an open discussion surrounding the current status of the draft Code. The group discussed the legal status of the Code as a statutory code of practice. Group members emphasised the need for something that sets out how information is to be provided in accordance with complicated legislation in a way that is easily understood and applied in practice.

There was some further discussion on how a code could/should bring together the various pieces of legislation such as the new DPA, the GDPR and the effect of the Information Sharing Bill. The group reiterated the difficulties of balancing the needs of practitioners, who want clear concise practical guidance, and the need to make a statutory code of practice water tight.

The group discussed the Supreme Court judgment and noted the Panel remit to produce a draft Code that reflected relevant legal requirements, was workable, comprehensive and user-friendly for children and young people, parents and practitioners. Members of the group commented on the challenge of making the Code accessible to the public and practitioners while meeting the other requirements. They also commented that this challenge was compounded by the low volume of guidance and case law on how the new data protection regime should be applied and how it interacts with other law.

Due to these further considerations, the group felt that producing a draft Code that met their brief was increasingly challenging. As a result, the group felt that it was appropriate to refer the matter back to the Panel for further advice.

The Chair asked the group to provide the Panel with a briefing on the challenges being faced in finalising a draft Code. This briefing will assist the Panel in considering the best way forward with the anticipated public consultation.

**ACTION: The Legal Focus Group to provide the Panel with a briefing on the challenges being faced in finalising a draft Code of Practice for Sharing Information.**