**Annex B**

**GETTING IT RIGHT FOR EVERY CHILD (GIRFEC) PROGRAMME BOARD**

**Meeting with the Assistant Information Commissioner(ICO) for Scotland, Friday 23rd November 2012.**

**INFORMATION SHARING:**

**DISCUSSION PAPER**

**1. Context**

The following is presented as an aid to discussion with the ICO.

*Getting it right for every child* is founded on 10 Core Components, which can be applied in any setting and in any circumstance. Core Component 2 deals with consent.

* **A common approach to gaining consent and to sharing information where appropriate**

Information sharing requirements therefore are not in response to a crisis or serious occurrence but are constant throughout the development and progression to adulthood for every child. *Getting it right for every child* is focused on early intervention and aims to cover each and every child by ensuring that all children have a ***Named Person*** – the *Named Person* may have concerns about the child’s well-being that suggest further action is needed. Other individuals or agencies may have concerns about the child’s well-being that they wish to bring to the attention of the *Named Person*.

**2. Consent**

Whilst it is important to protect the rights of individuals, it is equally important to ensure that our children are protected from risk of harm. There appears to be an amount of confusion in practice over when it is permissible to override consent. This paper is designed to generate debate and offer a view that the Data Protection Act 1998 is designed to assist information sharing by offering a series of steps a practitioner must consider prior to sharing personalised information.

**3. Risk of Significant Harm**

It is generally accepted that consent can be overridden when a child is suspected of being at risk of significant harm. The meaning of ‘at risk of significant harm’ needs to be analysed and a common understanding shared amongst all who work with children or with adults who have significant access to children.

In many cases a risk to well-being can be a strong indication of the child or young person being at risk of significant harm if the matter is not addressed. In other cases a slight risk to well-being may be regarded as less serious. In such cases it is important that the practitioner uses all available information prior to reaching a decision to share or not.

In reaching a decision to share or not without consent the practitioner must consider a number of issues:

* Is the issue affecting the child’s well-being likely to lead to significant harm should it go unaddressed?
* Has the pathway to harm commenced i.e. is the child already at risk of harm?
* Can I prevent the risk to well-being by any other means i.e. without sharing the necessary information?
* What are the potential consequences to the child if I don’t share information?
* What is the likely collateral impact of my sharing information i.e. will others not the subject of sharing be impacted, will confidences be betrayed? In such circumstance a degree of sanitisation may be required prior to information being shared.
* What will the impact of my sharing information be on the child and or family? (In most cases sharing a concern will only enhance the information held by the Named Person and not be viewed in isolation.)
* What will the likely impact of not sharing information be?

In many cases the information leading to a concern about a child’s well-being would be received in circumstances that would lead to no expectation of confidentiality i.e. Police or Fire Service attending an incident.

In cases where a duty of confidentiality was expected by an individual, sharing of the personalised information may nevertheless be justified by the compelling public interest factors: Safeguarding and Protecting Children, Prevention of crime or the Children (S) Act 1995[[1]](#footnote-1), United Nations Convention on the Rights of the Child (UNCRC) Article 19.

The questions a practitioner must ask are:

* Would there be any expectation of confidentiality?
* If so can I promote the child welfare, safeguard and protect him/her without sharing information?
* If I don’t share information what is the risk to the child?

In all cases it is accepted good practice for the practitioner to record the decision and the options considered in reaching it.

**Q – What are the views of the Information Commissioner on the position that risks to well-being can lead to a child being on a pathway to significant harm?**

**Q - Whilst each case requires to be judged and decisions made on an individual basis what would the Information Commissioner’s view be on the GIRFEC Programme Board supporting and communicating that view to practice?**

**Granular Consent** – This term is often used to describe how consent can be broken into many different variations of what can be shared and with whom. It would therefore be possible to consent to share information with agency 1 but not with agency 2 and further it may be permitted to share only part of the information with agency 3.

The general advice is not to promise a service user any service that cannot be guaranteed. In this respect the complex process of information management will impose a significant burden on agencies and may lead to confusion and an unmanageable situation for the Named Person or Lead Professional as the information is shared with some but not all partners to a plan. Whilst the offer of granular consent is one for each partner to this agreement to consider, the risk of not being able to deliver is significant and should only be considered if the offer can be guaranteed.

**Q – Does the Information Commissioner support this position?**

**Children who fail to attend or keep appointments / Unseen Child**

Many services have detailed guidance on staff practice should children or young people fail to turn up for or keep appointments. Practitioners working for organisations with specific policies should at all times adhere to them. It is important that the practitioner considers a variety of facts before making a decision to share information or not. Often there will be additional information available such as:

* Has the child/parent/family notified that the appointment will not be kept?
* If so is the reason given plausible?
* What other background information is available about the child/family?
* Have they failed to attend previous appointments

**Q – Following the tragic case of [redacted text] many areas are adopting strict protocols about children who fail to attend arranged appointments, what advice can the Information Commissioner give on this complex matter?**

**Consent where a concern for well-being is raised due to a third party influence.**

Whilst the GIRFEC principle is one based on consent, concerns for a child’s well-being are frequently raised due to the involvement or introduction of a third party to a child’s life. There are occasions where adults influence a child and the result of that influence (both good and bad) can impact a child’s well-being. In these situations it would be normal practice to discuss the influence and any resulting decision to share information with the child (if capable of consent) or the parent. It is unlikely that the concerned practitioner would approach the third party directly and ask for their consent, equally it is unlikely that in many cases consent would be granted. A typical scenario would be the child’s mother taking a new boyfriend, the mother noticing a poor behaviour pattern coinciding with his presence and sharing the fact with her alcohol/drugs support worker. Whilst the worker may ask the mother for consent to share that concern with the child’s Named Person, they would not necessarily ask the new boyfriend for consent.

**Q – What are the Information Commissioners views on such scenarios?**

**Q- Does the need for consent differ depending on whether the individual’s details are shared or a more general statement was shared that didn’t disclosed the individual’s details?**

**Children and Young Peoples Bill**

The Children and Young Peoples bill proposes to legislate that every child in Scotland will have a Named Person and that the Named Person will work to ensure that the well-being of children and young persons is safeguarded and promoted. It will further place a duty on specified Public Bodies to cooperate to improve well-being which will require them to share concerns about any risk to a child’s well-being with the Named Person.

**Q – What barriers does the Information Commissioner see in respect of compliance with the Data Protection Act 1998, and can be done to support this aim and early and effective intervention?**

**[redacted text]**

Information Sharing Lead

21 November 2012

1. Children (S) Act 1995, Sec. 19 - The duty to safeguard and promote the welfare of children in need falls upon the local authority as a whole, and embraces social work services, education, housing and any other relevant services required to safeguard and promote the welfare of such children. [↑](#footnote-ref-1)