

GETTING IT RIGHT FOR EVERY CHILD (GIRFEC) PROGRAMME BOARD

INFORMATION SHARING: RISK TO WELLBEING LEADING TO SIGNIFICANT HARM

1. Context

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 wellbeing 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 wellbeing 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 wellbeing 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 wellbeing 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 wellbeing 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.)

In many cases the information leading to a concern about a child's wellbeing 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 1995¹, 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.

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 from the Information Commissioner 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 Lead Professional as the

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.

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.

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

Conclusion

It is vitally important that concerns about a child's wellbeing are shared with the child's Named Person, current practice may not be considering risks to wellbeing as risks of significant harm and as a result failing to share where consent is not given.

The GIRFEC Programme Board is asked to support the concept that a risk to wellbeing can result in a significant risk of harm if not resolved and support the promulgation of that approach to front line staff.

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