From: **[redacted]**

Violence Against Women and Girls
and Barnahus Justice Unit
29 August 2019

Cabinet Secretary for Justice

Data protection: Information sharing issues

Purpose

1. To provide the Cabinet Secretary with:

   a) A summary of issues raised with Scottish Government and COSLA by a number of Third Sector organisations regarding the interpretation, impact and practical application of the General Data Protection Regulation (GDPR) and other data protection legislation by Police Scotland and how this has impacted on information sharing protocols and operational practice;

   b) The Scottish Government's actions to date and detail on a Multi-Agency GDPR workshop with statutory and third sector partners that was held on 15 July; and

   c) the latest position that Police Scotland has adopted regarding information sharing protocols and operational practice.

Priority

2. Routine.

Background

3. In sharing personal data organisations must comply with:

   a) data protection law (including the Data Protection Act 1988 (DPA), the Data Protection Act 2018 and the new EU General Data Protection Regulation (GDPR)); and

   b) the Human Rights Act 1998;

4. The Europe-wide General Data Protection Regulation and UK Data Protection Act 2018 came in to force in May 2018 with the intention of reforming existing data protection law and providing safeguards to protect data into everyday practices for all individuals and organisations who process data. It updates and modernises data protection law in the UK, particularly around consent and mandatory breach reporting. Organisations must demonstrate accountability through measures which meet the principles of data protection by both design and by default.

5. Whilst there has been no official assessment of the impact of the new data protection laws on the third sector by Scottish Government, anecdotal evidence

provided by third sector organisations suggests that one consequence of the implementation is that information sharing between victims' organisations and statutory organisations such as Police Scotland has significantly changed in nature.

6. Organisations specialising in addressing violence against women and girls (VAWG) have reported a significant reduction in the volume of referrals of victims' details (and the nature of the incident) passed on to them by police. They believe that data sharing restrictions are being applied inconsistently across the country and that the reduction in the detail, where information is passed on, is causing an impact on the effectiveness of the service which they can offer to victims. More detail is provided at **Annex A**.

7. Data protection has been raised with Cabinet Ministers. On 21 January 2019 it was raised in connection to Named Person policy in the context of concerns around information sharing. Cabinet noted that the issue was wider than children and young people and an action was taken to hold further high-level discussions, in particular, the unintended consequences of increased awareness of and risk of non-compliance with data protection laws. It was agreed that it would be useful to remain focused on strategic issues, such as how to overcome general barriers to effective information sharing, rather than being diverted by specific sectoral concerns. We are mindful that solutions on a piecemeal basis to work around data protection issues may be undesirable and could set an unhelpful precedent. **Annex B** provides an overview of issues which other portfolios are facing in respect of changes to information sharing practice.

8. There have been no PQs or FMQs on data protection issues specifically in respect of information sharing and the impact on victims. However, both Scottish Labour and Scottish Conservative carried lines in a media article, dated 15 June. This article is provided at **Annex C.**

9. These issues relating to data protection have also come to the attention of the Victims Taskforce and are currently referenced under the Victim Centred Approach work stream. Victim Support Scotland have been working with Police Scotland over the last two years to ensure that the referral process for their services is compliant with data protection law but does not represent a barrier to services. This work is ongoing and may be further influenced by the response to GDPR.

Police Scotland's Position – consent based approach

10. In May 2018 COSLA were made aware that Police Scotland had advised expert third sector representatives, along with statutory VAWG organisations, that access to information following a victim referral would be significantly reduced. Police Scotland, it would appear, believed that their current data sharing arrangements, previous to and in the light of GDPR, could fall foul of compliance with relevant statutory obligations.

11. The Chief Constable wrote to the Justice Committee on 5 October 2018 and stated that "…*information sharing with non-statutory partners should as a matter of generality be predicated on consent: other than in those exceptional circumstances where it is genuinely necessary and proportionate to share the information without*

consent." Accordingly, VAWG organisations made it clear, at this stage, that this very restrictive position would impact on their ability to assess risk and exercise professional judgement regarding safeguarding decisions for vulnerable individuals.

12. On 10 July 2019 COSLA sent a letter to Scottish Government outlining concerns about information sharing in the context of violence against women and girls. The Minister for Older People and Equalities sent a response which acknowledged that COSLA and Scottish Government were holding a workshop to support discussion about how some or all of these issues could be resolved.

Scottish Government and COSLA led multi- agency workshop

13. Scottish Government officials engaged with COSLA, SPA, Third Sector and ICO to develop and deliver a workshop on 15 July. The workshop was titled 'Perspectives, Positions and Proposals: Information Sharing Within A Multi-Agency Context' and had 4 desired outcomes:

    - Clarity on the current positions of key stakeholders and key stakeholders understanding of data protection.
    - Looking at ways of strengthening a victim centred approach through identification of opportunities and solutions to maximises timely and effective access to appropriate support, advocacy and interventions while remaining compliant with the legislation.
    - Identification of a range of solutions to help address any gaps in accessing service provision and support.
    - Identification of next steps for:
        Individual organisations
        Collaborative stakeholder actions
        Including schedule/time line and review of progress.

14. The workshop was an opportunity for Police Scotland and the ICO to set out their most recent considerations regarding information sharing. It opened doors to further discussion about how some or all of these issues can be resolved within the existing legislative framework, with the willingness to collaborative working going forward in the short to mid-term at least.

15. The main outcome of the workshop was a collective desire from all attendees to keep discussions open and there appeared to be little appetite for pursuing a legislative solution. The workshop also helped to move the rhetoric away from legal jargon to understanding the full practical impacts of limiting data sharing. A summary of the workshop is provided at **Annex E**.

16. Officials are drafting a report which will be issued to attendees to formally record these discussions and to prompt further action, such as a focus to explore any issues which remain unresolved. There is also scope for considering the greater use of information sharing agreements.

Police Scotland's Position – public interest task approach

17. Police Scotland, as at August 2019, changed their position and there would appear to be an 'improving picture' with regard to third sector information sharing processes. Police Scotland's intention is to amend their information sharing processes when sharing wellbeing concerns with third sector support and advocacy services. They have indicated to Scottish Government officials and partners that, after concerns had been raised by some service providers, their policy has been carefully considered by Police Scotland Information Management, solicitors and the Executive team.

18. The intended position is to move towards and rely on a lawful basis of 'public task' (rather than consent), as the framework for information sharing of Wellbeing Concerns, aligned to the policing principles outlined in the Police and Fire (Reform) (Scotland) Act 2012 which are to improve the safety and wellbeing of persons, localities and communities in Scotland. This position will not, however, provide a basis for sharing information about perpetrators with third sector partners.

19. This approach is predicated on sharing with third sector or non-statutory organisations information where it is necessary for the performance of a task carried out in the public interest (article 6(1)(e)). These organisations would be required, in order to comply with GDPR and data protection law, to state what their purpose is, how it contributes to a "public interest task", and why it is necessary to have data in order for that purpose to be delivered.

20. We understand that the policy has been approved in principle and is being signed off by the legal and executive team with a view to train staff who operate/work within the 13 concern hubs across Scotland in this new process. The Information Commissioners Office (ICO) have provided positive feedback on the proposed change to policy. This is a step forward.

21. This shift in policy should improve the situation where organisations can demonstrate the necessary criteria but it would not enable Police Scotland to revert to the position pre-May 2018 whereby a discretionary flow of information about victims was exchanged with third sector organisations in a flexible manner, without a clear authorising framework.

22. Police Scotland intend to write to all third sector organisations they engage with to provide notice of the new approach. The correspondence will include a questionnaire for completion by the recipient to help Police Scotland understand the legitimate basis organisations have for receiving information and also to work out where there may be duplication of information sharing processes, such as commissioning frameworks with local authorities and the third sector.

23. Whilst this is extremely helpful, it is worth noting that, without further consultation, Police Scotland's approach is unlikely to address the full extent of the third sector's concerns with regards to information sharing. Whilst Police Scotland appear to have moved away from a consent based model, there may be organisations which are excluded from the new framework or there may be situations where information about the perpetrator might be required to ensure the safety of advocacy workers.

24. There may be a need to consider if there is a case for “approved” Third Sector organisations to be treated as if they were statutory partners, to resolve more nuanced circumstances. However, as noted in paragraph 7 above, this is complicated by the sheer number of instances across Government and beyond where personal information was previously shared for good reason, and reaching a position which would be acceptable to the ICO.

Justice Board - GDPR Leads Working Group

25. Police Scotland, along with other justice agencies are involved in a working group comprising of Justice Agency GDPR Leads. This was established following a direct commission from the Justice Board that sought assurance that Justice Board organisations were implementing GDPR appropriately and consistently. The group was also created to collectively consider a range of issues around GDPR in general, and information / data sharing protocols in particular. Results of the group meetings are described in **Annex D**. The Group has also engaged with the Scottish Police Authority to consider GDPR issues that were aired at the COSLA Police Scrutiny Conveners' Forum.

26. A terms of reference for the group is being drafted and will be reported back to the Justice Board, including methods of engagement with those from other sectors with an interest (the third sector, for example). We will ensure appropriate links between this Group and work on information sharing between Health and Justice being taken forward through the Health & Justice Collaborative Improvement Board.

Recommendation

27. That the Cabinet Secretary notes:

- the challenges, issues and impact of changes to practice in information sharing and accessing key information as a result of data protection legislation;

- that the Scottish Government and COSLA hosted a multi-agency collaborative workshop with criminal justice partners, Third Sector, ICO and SPA to explore information sharing and challenges around data protection on 15 July; and

- the steps being taken by Police Scotland and others to collectively address information sharing challenges through collaborative working.

[redacted]
VAWG and Barnahus Justice Unit, August 2019

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constituency Interest	General Awareness
Cabinet Secretary for Justice			X		
Minister for Community Safety					X
Cabinet Secretary for Social Security and Older People					X
Minister for Older People and Equalities			X		
Lord Advocate					X
Solicitor General					X

Director for Justice	Michael Chalmers
DG Learning, Justice and Education	[Redacted]
DG Health	[Redacted]
Chief Medical Officer for Scotland	[Redacted]
[Redacted] (Collaboration Board)	Lesley Sheppard
[Redacted]- SpAds	Mairi Macpherson
[Redacted]	Iona Colvin
[Redacted]	[Redacted]
Neil Rennick	SGLD: [Redacted] and [Redacted]
[Redacted]	
[Redacted]	
[Redacted]	
[Redacted]	
Willie Cowan	
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Annex A

Impact of GDPR Implementation on the Third Sector

The ongoing impact on data sharing as a result of the implementation of GDPR was discussed at a meeting of the National Violence Against Women Network on 5 November 2018. The purpose of the meeting was to discuss recent challenges organisations have been experiencing with sharing and accessing information and the impact this is having on meeting the safety needs of women and children affected by Violence Against Women and Girls. At that meeting, representatives from specialist domestic abuse support organisations raised a number of impacts to service provision that the approach being undertaken to information sharing by Police Scotland, in particular, was having.

ASSIST are a specialist domestic abuse advocacy and support service focused on reducing risk and improving the safety of victims of domestic abuse, covering the legacy Strathclyde force area. They noted that prior to GDPR, Police Scotland passed on all details of domestic abuse incidents, including information on perpetrators, victims, children, risk scores and crime number. However, since the implementation of GDPR, referrals to ASSIST have significantly declined, and the information provided is only the name of a victim.

ASSIST wrote to Police Scotland in December 2018 to express concerns, but have received a reply stating that the view of Police Scotland is that they are currently taking the correct approach, but are waiting to hear from the ICO. ASSIST notes that the issues outlined above remained the same.

ASSIST highlighted a number of negative impacts this change in policy has had:

- ASSIST is no longer able to provide victims with appropriate and timely safety planning
- Victims must seek out information for themselves at a time of trauma, which is challenging for them to do
- Without a co-ordinated response between Police and specialist services, risk increases
- Without perpetrator details, ASSIST is unable to gather evidence and report sufficiently to MARAC and MATAC
- ASSIST are unable to deduce whether the perpetrator is a serial offender and consider this when risk assessing
- When referrals are submitted for a male victim, it is no longer easy to deduce whether it is a male victim who is also a perpetrator
- Without perpetrator or case information, ASSIST are unable to track the status of cases
- Crown Office and Procurator Fiscal Service (COPFS) are provided with less information from ASSIST
- ASSIST is now reliant on victims providing information – this reduces ASSIST's credibility, can be re-traumatising, victims are likely to minimise incidents, and the process significantly increases the workload for ASSIST as their initial intake calls last far longer while workers gather the basic information required

- ASSIST can no longer adequately support victims before and after court appearances

Scottish Women's Aid also noted that a number of their member organisations have reported experiencing similar challenges. However, it was highlighted that there appears to be an inconsistent approach to information sharing across the country with around half Women's Aid groups reporting they've experienced minimal change since GDPR came into effect, and the other half experiencing significant changes, including declines and delays in referrals.

Specifically, it was noted that women who are assessed as being 'low-risk' cases by Police Scotland are no longer being referred to Women's Aid groups; but often cases which have been assessed as low-risk by Police Scotland are medium-high risk when assessed by specialist domestic abuse services, meaning that a lot of vulnerable women and children are missing out on support and preventing specialist services from providing early and effective support.

Scottish Women's Aid also highlighted that being unable to access information about perpetrators living arrangements, court dates and bail has also put both victims and home-visiting staff at risk.

Annex B

Impact of GDPR Implementation Across Portfolios

There are a number of similar challenges across portfolios:

Forensic Medical Services/ FMS Bill A Forensic Medical Services (Victims of Sexual Offences) Bill is likely to be confirmed in the 2019-20 Programme for Government, with a health policy focus and led by the Cabinet Secretary for Health and Sport. The February 2019 consultation paper for the legislation invited stakeholders to answer questions on data protection and high quality input has been received from the Information Commissioner's Office and others. In light of stakeholder input the Bill is likely to contain a statutory "data gateway" to provide explicit legal authority for Health Boards to transfer victim personal data to Police Scotland at the point that a police complaint is made. In the case of "self-referral" forensic medical services this could be some time after the forensic medical examination.

The Bill's provisions will underpin the work being taken forward by the Chief Medical Officer's Taskforce for the improvement of healthcare and forensic medical services for victims of rape and sexual assault. The CMO Taskforce Information Governance Delivery Group (IGDG) was established in response to GDPR and the unwarranted variation across health boards in how information in relation to victims of rape and sexual assault is shared with Police Scotland. The IGDG will shortly be consulting on a national Information Sharing Agreement (ISA) and Data Protection Impact Assessment (DPIA). The ISA and DPIA seek to deliver a Once for Scotland approach to how health board share information on victims of rape and sexual assault with Police Scotland. Following consultation and finalisation of the ISA and DPIA, it is envisaged that these resources can be utilised across the wider health and where appropriate, other portfolios, as a model to bring clarity and consistency to the sharing of personal data with justice agencies, that aligns to GDPR and data protection legislation.

Health and Justice collaboration Board

We know that there is a shared population of service users who experience high health and social inequalities and are in frequent contact with the justice system. Users expect decisions to be made to take into account their entire pathway. Often users' pathways cut across a number of agencies in both health and justice. Users can come to harm when partners fail to share information with one another, even where it is legally permissible to do so.

The Health and Justice Collaboration Board have agreed to support work to explore how to address a variety of barriers that prevent effective information sharing between services and result in harm for individuals.

The Health and Justice Collaboration Team have carried out initial consultation work with representatives from the Prison Service, Crown Office, Police Scotland, social work, ambulance Service and service users in the justice system which has begun to identify attitudes and barriers to effective information sharing. We are also

working with partners in other parts of the UK to consider how information could be shared more effectively across public services, within the limits of data protection legislation.

This work will be used by the Health and Justice Board to develop a positive vision for effective information sharing which will set out service users' reasonable expectations within existing legal frameworks.

Youth Justice

Under the Whole System Approach to offending behaviour by young people, some young people are supported through multi-agency early and effective intervention (EEI) processes.

Partners have raised concerns around some vulnerable children and young people not getting access to supports at the earliest opportunity (if at all) due to police information not being shared with statutory and other partners – especially third sector partners who deliver preventative services under agreements with local authorities. Various discussions have taken place with Police Scotland over the last year to resolve the issue around the legal framework through which information can be shared. Police Scotland have had engagement with the Information Commissioner and they reported to us informally in June that a position has now been determined enabling information to be shared with statutory partners.

The wider concern is now in relation to Police Scotland sharing information directly with non-statutory partners such as the third sector, and the legal framework revolves around the use of explicit consent. This position remains subject to Police Scotland consultation. Some areas have reached a solution, by going through statutory partners, yet, this adds an additional layer to the process and delays the support which the young person receives.

This may also have significant ramifications for the implementation of the Age of Criminal Responsibility (Scotland) Act. Safe implementation depends on the police's ability to exchange information with local authorities to ensure that a child below the age of 12 receives the appropriate support.

Caledonian System

Prior to 2018 local authorities delivering the Caledonian men's programme received full information on previous police callouts relating to a particular perpetrator with whom we are working either to assess his suitability for the programme post-conviction or to assist us in our risk management role once he is subject to a statutory order. Since the introduction of GDPR and the Data Protection Act the provision of that information has become less consistent with some Police Scotland concern hubs giving much reduced information or taking more time to do so which has affected our ability to write reports for sentencing Diets.

We have worked closely with Police Scotland to produce an Information Sharing Agreement which is almost ready sign off by Police Scotland and the local authorities which, when enacted, will solve these problems and crucially will allow

the sharing of information relating to domestic abuse call-outs which may not have resulted in an offence. The key articles governing the permission to share information about the perpetrator are:

- GDPR Article 6(1)(e) Processing is necessary for the performance of a task carried out in the public interest
- GDPR Article 9(g) Processing is necessary for the reasons of substantial public interest.
- DPA Schedule 1, Part 2 section 7 Administration of Justice.
- In relation to data subject to GDPR Article 10 (Personal data relating to criminal convictions and offences), the following DPA Schedule 8 conditions will be engaged:
- Section 2 Administration of justice
- These conditions are engaged on the basis that the perpetrator has been convicted of a criminal offence and is subject to a court mandated order to participate in the Caledonian System.

The information which can be shared in relation to the victim of the index offence under the terms of the ISA but is limited to names, addresses and telephone numbers.

Child Protection

The Minister for Children and Young People wrote to Chairs of Child Protection Chief Officer's Groups, local authority and NHS Board Chief Executives and Police Scotland Divisional Commanders on 10 September 2018 about the impact of GDPR on sharing of information in cases where there is a child protection concern. This letter shared advice on the position from the Information Commissioner's Office:

> "It is important that those whose work brings them into contact with children and young people continue to share child protection concerns in the same way as they did previously. Child protection matters at the *significant harm* level equate to sharing/processing being *necessary to protect the vital interests of the child* where reliance on consent may be prejudicial to that purpose. The same lawful purposes are provided for in Articles 6:1(b) and 9:2(c) of the GDPR for personal and special category data so nothing has changed at that level.
>
> Where the matter is still a child protection matter but does not meet the significant harm bar, other legal bases exist in the GDPR and the Data Protection Act 2018 that data controllers may be able to rely on depending on the circumstances of any given case. At the Chief Officer leadership events held earlier this year, I outlined my view that strong leadership is key to effective child protection. Information sharing is a complex area and local leadership on this issue is essential in supporting staff to continue to undertake their roles with confidence."

The Minister notes the role of senior leaders in providing their employees with guidance on information sharing, including providing staff with assurances that they will be supported by their particular agency if they have shared information using their professional judgment. The Minister's letter includes the following link

to a letter issued in January 2018 by Fife's Chief Officers Public Safety Group to staff, as an example of such an approach:

http://publications.fifedirect.org.uk/c64_FinalCOPSInformationSharingLetter18.01.20181.pdf

Her letter urged leaders to provide guidance and assurance to their staff about sharing information where there are child protection concerns if they had not already done so, to ensure that staff have confidence about their role in supporting children and families, and how and when to share information.

Annex C

Scots police data dread 'endangering women'

Gordon Blackstock
June 16 2019, 12:01am, The Sunday Times

Charities say GDPR is hampering prosecutors' ability to pursue domestic violence cases

Police Scotland's take on new data laws is putting women and children in danger, domestic abuse campaigners have warned.

Leading charities say police officers are now "scared" to share vital information at meetings set up to help domestic abuse victims for fear of falling foul of European-wide GDPR rules introduced to give people more control over the data collected on them.

Organisations have also said GDPR is hampering prosecutors' ability to pursue domestic abuse perpetrators.

The problems centre on Multi-Agency Risk Assessment Conferences (MARACs), which are held across Scotland. They meet on a regular basis to discuss women, men and children at risk from the most serious levels of harm and violence.

Typically, the case meetings — which last between 12 and 15 minutes each — see police, social services, the NHS and domestic abuse charities discuss potential victims of abuse and how to help them.

Women's Aid say some Police Scotland officers are no longer sharing information, such as intelligence on and offending history of perpetrators, at the meetings.

Chief executive Marsha Scott said: "Women's Aid groups have said the sharing of critical information to them by police varies from area to area because of interpretations by police on GDPR laws.

"There's a reluctance for some officers at MARACs to share information now. There seems to be concerns with some officers scared to share the information they did previously. There's an element of inconsistency that is causing us concern."

She added: "MARACs have ultimately been set up to protect vulnerable women and children and we shouldn't have situations where information is not being shared in one area but is in another."

Glasgow is one of the areas where problems have been highlighted since GDPR took effect in 2018. A report by Glasgow Violence Against Women Partnership to the city council, which was discussed on Thursday, said the number of MARAC referrals has risen "significantly" this year with 90 in March alone[1].

[1] The article stated that GDPR is affecting prosecutors' ability to pursue domestic violence cases and that police officers are no longer able to share information such as intelligence and offending history of perpetrators at MARACs (Multi-Agency Risk Assessment Conferences). Referrals to MARACs were reported as dropping over the last year. Whilst this information is accurate, MARAC national data cannot confirm that this is due to GDPR, as in the second quarter of 2018, when GDPR was introduced, 5 new MARACS were added to the data set that quarter – all with relatively low number of cases per 10,000 – which likely contributed to a decrease in the average referrals around that time.

But it adds: “Following the changes in data protection that came into force in May 2018, Police Scotland no longer share information on the same basis with partner organisations.”

The report warns the GDPR problem is being replicated “nationally”.

It adds: “The changes have reduced service users’ confidence in the partnership approach, which it is believed will have an impact on prevention. This reduction in Glasgow’s co-ordinated response increases the risk to some victims.”

MARACs were first used in Cardiff in 2001. Currently, 27 out of Scotland’s 32 local authorities hold the meetings, according to domestic abuse organisation Safelives. Under GDPR rules organisations and companies which lose data or share it without permission face a fine of up to £20m by the regulator, the Information Commissioner’s Office (ICO).

Last year, Police Scotland cited GDPR rules for part of its refusal to reveal identities of Scottish criminals who are on the run from justice. It said it would breach laws on “personal data”.

Scottish Labour equalities spokeswoman Pauline McNeill MSP intends to raise the matter with the Scottish government. She said: “Co-ordination and sharing of information between services is vital to the safety of women who are at risk of violence. I will be pressing the justice secretary for reassurances over the position of Police Scotland and what can be done to rectify this situation.”

Scottish Conservative MSP Donald Cameron said GDPR “shouldn’t be used as an excuse by organisations to suppress or refuse to share vital information with those who need it”.

Assistant chief constable Gillian MacDonald of Police Scotland said the force is “committed to keeping people safe and working with partners to ensure that the threat of risk and harm is minimised across all of our communities”.

She added: “Police Scotland divisional concern hubs assess and share relevant and proportionate information with partners to enable appropriate interventions and support in compliance with statutory requirements, national guidance and GDPR.

“We are currently developing an approach specific to services provided by our third sector partners, including on domestic abuse, that maximises access to support, advocacy and interventions while remaining compliant with the legislation and GDPR.”

> The Scottish government said: “We expect partner agencies to maintain good working relationships and meet GDPR obligations when sharing appropriate information

Annex D

Justice Board GDPR Leads Meeting Outputs

The Justice Board GDPR Leads meeting draws membership from the following organisations:

Scottish Government
Scottish Prison Service
Scottish Children's Reporter Administration
Scottish Courts and Tribunal Service
Scottish Fire and Rescue Service
Police Scotland
Scottish Legal Aid Board
Parole
Crown Office and Procurator Fiscal Service

The group was established following a commission from the Justice Board that sought assurance that Justice Board organisations were implementing GDPR appropriately and consistently across justice. The group was also created to collectively consider a range of issues around GDPR in general, and information / data sharing protocols in particular.

At the November 2018 meeting, Willie Cowan presented a discussion paper outlining some of the particular problems with the approach taken in some areas to GDPR and information sharing with the third sector. The group recognised that there was clearly a legal consent conundrum in which third sector organisations are not listed statutory bodies – the existing law means that there will inevitably be challenges when non-listed bodies are seeking to receive and share information.

The group agreed that there is a need to look at the statutory framework, and the ability to rely on existing statute (Section 32 of the Police and Fire Reform Act 2012). The 2012 Act provision sets out the policing principles. The first principle, set out in section 32(a), is that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland. Section 32(b) states that the second principle is that the Police Service, working with others as appropriate, should seek to achieve that purpose by carrying out its functions in a way that (i) engages with, and is accessible to, local communities and (ii) promotes measures to prevent crime, harm and disorder.

The most recent meeting, held on 12th April 2019, noted a proliferation of groups with very similar membership and issues, and proposed streamlining consideration of issues within the Justice sector in response.

Actions include:

- Arranging a session mid-2019 (now the workshop described above) at which representatives of Police Scotland, Scottish Government, criminal justice partners, ICO and Third Sector organisations can discuss a number

of issues, including live information sharing protocols, data challenges and the involvement of the third sector alongside criminal justice agencies.

- Producing a Terms of Reference for the group which will be reported back to the Justice Board, including methods of engagement with those from other sectors with an interest (the third sector, for example).

Annex E

‘Perspectives, Positions and Proposals: Information Sharing Within A Multi-Agency Context’ Workshop

On 15th July 2019 a workshop was held in Edinburgh, bringing together representatives from:

- COSLA
- Crown Office and Procurator Fiscal Service
- Information Commissioners Office
- Local Authorities
- Police Scotland
- Scottish Government
- Scottish Police Authority
- Third Sector (Scottish Women’s Aid, SafeLives, Victims Support Scotland, ASSIST, Sacro)

The key aim of the workshop was to examine how these agencies collaborate and work together, within a multi-agency context, to collectively explore information sharing issues and challenges.

Speakers included:

- ASSIST,
- The National Co-ordinator for Caledonian System,
- Police Scotland,
- The Information Commissioners Office
- COSLA

SafeLives delivered a table top exercise designed to encourage participants to think about the issues in the broadest context, and from a range of professional perspectives. Groups were encouraged to discuss the following questions:

1) Reflecting on the day so far, and on your own experience (individually or as a representative of your organisation) what are the key issues or barriers that GDPR presents.
2) Improving our information sharing processes is a long term project; what ‘quick wins’ might we work towards in the shorter term to make a difference?
3) Ideally, what would a truly joined-up, multi-agency, collaborative approach to information sharing look like, and what further action would you like to see to take us there?

Discussions around issues and barriers highlighted third sector concerns around drops in referrals numbers and content, service-generated risk relating to that, and the potential for re-traumatisation. Other agencies spoke of concerns around understanding of the legislation, the need to identify what information could and should be shared, and above all noted high levels of risk aversion.

The proposed solutions for the issues raised were wide-ranging, in terms of focus, responsibility and resource required. There was broad agreement across a number of groups that data protection approaches should be linked to desired organisation

outcomes, including a focus on specifically what information is required to achieve those outcomes, and how it would need to be shared. A very positive development was the interest in all agencies to develop ongoing multi-agency contact with the aim of sharing best practice, and potentially developing information sharing agreements.

The ICO provided a helpful overview of data protection law and alluded to Codes of Conduct in development which may be helpful to organisations seeking to apply the law. The ICO also signposted workshop delegates to the ICO consultation (closes on 9 September 2019) on the draft data sharing code of practice. As required by the Data Protection Act 2018, ICO are working on updating their data sharing code of practice, which was published in 2011. The updated draft code of practice will explain and advise on changes to data protection legislation where these changes are relevant to data sharing. It will address many aspects of the new legislation including transparency, lawful bases for processing, the new accountability principle and the requirement to record processing activities.

A detailed report on the workshop is currently in preparation, and will be made available to attendees shortly.