

Getting It Right For Every Child Practice Development Panel

The draft Code of Practice for information sharing

Background:

The Scottish Government established the Panel in February 2018. I was appointed as Chair of the Panel by the Deputy First Minister to ensure the Panel meet their objectives and fulfil the Terms of Reference. The Panel is independent and membership is made up of individuals from the education, health, third sector and legal professions.

A Legal Advisory Group has been established alongside the Panel to provide legal insight into the Panel's work. This Legal Group includes members from the Panel and various legal organisations from the public and third sectors.

The Panel was set up to develop and produce, by consensus, an authoritative draft Code of Practice for information sharing and 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').

Progress and the Panel's proposed approach:

The Panel in conjunction with their Legal Focus Group have met multiple times since February 2018 to develop a draft Code of Practice for information sharing as part of the Children and Young People Information Sharing Bill. The Legal Focus Group (which includes legal members from the Panel) and Panel members are preparing the draft code for consultation. The drafting of the code addresses information sharing when considering and sharing information under Parts 4 and 5 in line with the current legal framework. The drafting of the code intends to emphasise key aspects of the law in relation to data protection, human rights and confidentiality.

The Legal Focus Group and the Panel have been considering the implications of recital 43 of EU GDPR <http://www.privacy-regulation.eu/en/recital-43-GDPR.htm>:

"In order to ensure that consent is freely given, consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority and it is therefore unlikely that consent was freely given in all the circumstances of that specific situation."

The Panel have recommended that the Code should be used by those who are responsible for exercising the functions in relation to provision of named persons and child's plan. This responsibility lies with the named person service provider, and relevant authorities under Part 4 of the 2014 Act and relevant authorities under Part 5 of the 2014 Act, and not the individual named person or individuals exercising functions in relation to child's plans.

This includes responsibility for the lawful collection, processing and sharing of information as the 'data controller'. As such, this Code of Practice is primarily for the data protection officers, legal advisers and the relevant head of service of those organisations that have duties under Parts 4 and 5 of the 2014 Act, namely:

- health boards;
- local authorities;
- the owners and managers of independent and grant-aided schools and secure accommodation services;
- the Scottish Ministers (of which the Scottish Prison Service forms part);
- the bodies and persons listed in schedules 2 and 3 to the 2014 Act; and
- the third sector commissioned to deliver duties.

Communication and stakeholder engagement

I want to ensure the widest possible engagement with the work of the Panel and will shortly launch a consultation and engagement process on the draft Code of Practice. To ensure that everyone with an interest can fully engage - and ensure that the Panel has sufficient time to consider properly responses and feedback shared - I wrote to the Deputy First Minister on 05 July asking that the time available for the completion of the Panel's work be extended into the Autumn. The Deputy First Minister agreed to my request.

I want this consultation and engagement process to be an open conversation on the Panel's proposed authoritative draft Code of Practice and on wider matters relating to the implementation of Getting It Right For Every Child policy to inform the recommendations the Panel will make to the Deputy First Minister.

The Panel have suggested various engagement opportunities and these are being organised with the support of SG officials.

Next Steps:

The Panel will launch a consultation paper, providing an opportunity for everyone with an interest to respond. This consultation has been developed and will launch as soon as practicably possible.

During this period, Panel members and I will host a number of engagement events providing opportunities for face to face discussion and the sharing of views. We have commissioned the Scottish Government to co-ordinate and support us in delivering these events.