

28 March 2019

Getting It Right For Every Child

Practice Development Panel

Final Report

Professor Ian Welsh OBE, Chair

1 Background

1.1 The Children and Young People (Scotland) Act 2014

On 27 March 2014, the Children and Young People (Scotland) Act 2014 (the “2014 Act”) became law.

Part 4 of the 2014 Act concerned the Named Person service.

In the context of the 2014 Act, the role of a Named Person was to promote, support or safeguard the wellbeing of a child or young person and to;

- advise, inform or support the child or young person, or a parent of the child or young person,*
- help the child or young person, or a parent of the child or young person, to access a service or support, or*
- discuss, or raise, a matter about the child or young person with a service provider or relevant authority, where the named person considered it appropriate to do so to promote, support or safeguard the wellbeing of the child.*

In order to facilitate the Named Person service, Part 4 also included information sharing provisions which required information related to wellbeing concerns to be shared with and by the Named Person service.

Part 5 of the 2014 Act introduced the requirement for a Child’s Plan if a child has a wellbeing need that can only be met by a targeted intervention i.e. services that were not generally provided to children by the relevant local authority. The 2014 Act specified that the Child’s Plan should be prepared as soon as reasonably practicable and should include;

- the wellbeing need*
- the targeted intervention(s) required*
- a plan to deliver those interventions*
- the intended outcome in relation to the child’s wellbeing.*

1.2 The Supreme Court Challenge

The Christian Institute and others legally challenged Part 4 of the 2014 Act. The Supreme Court stated that “the aim of the Act, which is unquestionably legitimate and benign, is the promotion and safeguarding of the well-being of children and young persons”. The Court raised concerns that the provisions in Part 4, which included a ‘duty to share’ information were not “in accordance with law”. The Court noted that, without additional safeguards, those provisions were liable, in practice to result in disproportionate interference with the **Article 8 European Convention of Human Rights** rights of many children, young persons and their parents.

The Court said that additional safeguards must include requirements that children, young people and parents provide consent to the sharing of confidential information and are informed of the possibility that information will be shared.

As a result the Supreme Court upheld that element of the appeal and Parts 4 and 5 of the 2014 Act were not brought into force.

1.3 Children and Young People (Information Sharing) (Scotland) Bill (the “Bill”)

As a result of the Supreme Court’s judgment, The Children and Young People (Information Sharing) (Scotland) Bill (the “Bill”) was introduced to amend Parts 4 and 5 of the 2014 Act and address the Court’s concerns. The Bill makes changes to the information sharing provisions in Part 4 of the 2014 Act. It also makes changes to Part 5 of the 2014 Act to ensure that the information sharing provisions align. In addition, the Bill requires that a Code of Practice be produced to provide safeguards in relation to the provision of information and clarification of the interaction between the 2014 Act and other relevant areas of law.

As part of the considerations of the Bill by the Education and Skills Committee’s (the “Committee”) considerations of the Bill, the Scottish Government committed to producing an authoritative, accessible and workable Code to support information sharing in relation to Parts 4 and 5 of the 2014 Act. This commitment led to the Deputy First Minister asking Professor Ian Welsh OBE to chair The Getting It Right For Every Child Practice Development Panel (the “Panel”).

2 The Getting It Right For Every Child Practice Development Panel

2.1 Panel Membership

The Deputy First Minister, John Swinney, established the Panel in February 2018 and appointed Professor Ian Welsh OBE, Chief Executive of the Health and Social Care Alliance Scotland as its Chair. The Panel is independent and membership is made up of experts from education, health, third sector and legal professions, namely:

- Mike Burns, Social Work Scotland*
- Chris Creegan, Scottish Commission for Learning Disability*
- Eddie Docherty, Scottish Executive Nursing Directors*
- Maureen Falconer, Information Commissioner's Office*
- Lorna Greene, Royal College of Nursing*
- Juliet Harris, Together (Scottish Alliance for Children's Rights)*
- Peter Hessett, Society of Local Authority Lawyers and Administrators*
- Annette Holliday, Unite/Community Practitioners and Health Visiting Association*
- Anne Houston, Chair, Child Protection Committees Scotland*
- Brian Johnston, Police Scotland (replaced Norman Conway on 31/05/18)*
- Sally-Ann Kelly, Coalition of Care and Support Providers in Scotland*
- Jennifer King, Association of Directors of Education Scotland*
- Professor Paul Martin, Child Protection Committee Scotland*
- Joanna Murphy, National Parent Forum Scotland*
- Susan Quinn, Educational Institute of Scotland*
- Norma Shippin, Central Legal Office, NHS National Services Scotland*

The following were also invited to attend and contribute at some Panel meetings:

- Maria Galli, South Ayrshire Council and member of Together (Scottish Alliance for Children's Rights)*
- Dr Kenny Meechan, Head of Information Governance Glasgow City Council Corporate and Property Law and member of the Law Society of Scotland's Privacy Law Committee*

2.2 Legal Focus Group

In order to inform the Panel's considerations, a Legal Focus Group was established which had legal expertise to support the Panel's work. This included members from the Panel and various legal organisations from the public and third sectors. The members included:

- Maureen Falconer, Information Commissioner's Office*
- Peter Hessematt, Society of Local Authority Lawyers and Administrators in Scotland*
- Norma Shippin, Central Legal Office, NHS National Services Scotland*

Guest members included

- Alison Reid, Principal Solicitor and Chief Executive of CLAN Childlaw*
- Maria Galli, South Ayrshire Council and member of Together (Scottish Alliance for Children's Rights)*
- Dr Kenny Meechan, Head of Information Governance Glasgow City Council Corporate and Property Law and member of the Law Society of Scotland's Privacy Law Committee*

2.3 The Panel's Remit

The Panel was set up to develop and produce, by consensus, an authoritative draft Code of Practice for Information Sharing (the "Code"). It was also invited to 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 2014 Act, as amended by the Bill.

The Panel's objectives were to:

- ensure the draft Code and Statutory Guidance required under the 2014 Act, supported by other materials, properly reflect relevant legal requirements, are workable, comprehensive and user-friendly for children and young people, parents and practitioners*
- make sure that the information sharing experience, expertise and practical knowledge of those in public services and rights holders (i.e. children and their families) are the foundation for the development of the authoritative draft Code, Statutory Guidance and other supporting materials*

It was anticipated that the draft Code would be presented to the Deputy First Minister in October 2018, who would then forward on to the Committee, enabling resumption of Stage 1 of the Bill.

The Chair of the Panel wrote to the Deputy First Minister in October 2018 providing a progress update on developing a draft Code of Practice for Information Sharing. The update included information on the Panel's approach to the draft Code and matters which the Panel wished to consider. This approach, and the considerations of the Panel, are set out below.

3 The Panel's approach to developing a Code of Practice

3.1 The Panel's Approach

The Panel and its Legal Focus Group have met on a range of occasions since February 2018 to develop an authoritative draft Code of Practice for information sharing. Minutes of the meetings have been published, and progress updates have been provided to the Deputy First Minister, the Committee and Stakeholders, [all of which can be found on the Panel's website](#).

The Panel's objective in drafting the Code was to explain how the provisions for sharing of information relating to children and young people, by or with the Named Person service or in connection with a Child's Plan, should be lawfully applied in practice. The Panel felt it was important for the Code to bring consistency, clarity and coherence to the practice of sharing information about children and young people's wellbeing across Scotland in a way that upholds the human rights of children, young people and their families.

The Panel also discussed recommendations in relation to Scottish Ministers issuing Statutory Guidance for Parts 4 and 5 of the 2014 Act and wider support materials. The Panel was of the view that these must be made to work for front line staff and parents, children and young people themselves.

The Panel considered different approaches to structuring and presenting the draft Code. It asked supporting officials to develop these suggestions for their consideration. Consequently, several iterations of the draft Code were produced as the Panel sought to produce a workable, comprehensive and user friendly Code. The Panel was also presented with different supporting materials such as flow charts, however this quickly proved impractical due to the number of factors that would need to be incorporated.

3.2 Audience

The Panel considered who the audience for the Code of practice would be and took the view that, no matter what form the Code, guidance and other support materials took, they needed collectively to provide:

- *front line staff with the necessary confidence that information can be shared to support good practice in a legally compliant way; and*
- *parents, children and young people, with accessible and understandable information on their rights in relation to information sharing.*

Ultimately, the Panel felt that, generally, practitioners should **not** be expected to deal with the legal technicalities of information sharing.

As has been historically the case, practitioners are supported and guided in working within and applying the law through organisational systems, policies, procedures, protocols, guidance and supervision. The Panel felt that the primary audience for the Code should be Named Person service providers and responsible local authorities, as the data controllers and information governance leads.

The Panel also felt that additional work should be undertaken to make the Code as accessible as possible for secondary audiences.

To this end, it would be necessary for practitioner guidance to be provided to direct the application of the Code in practice. It was recognised at an early stage in the Panel's considerations that if it was necessary for frontline practitioners to apply the Code then it would have to be written in a language that was accessible to all and be able to be applied easily in all situations.

It was further suggested that, in addition to the Code and Guidance, there would need to be supporting training materials to support learning and development. These materials should be aimed at front line staff and should also be available to rights holders.

3.3 Status of the Code

In light of the Supreme Court's judgment, the Information Sharing Bill was designed to ensure that those with duties and powers related to sharing information under Parts 4 and 5 of the 2014 Act would be required to do so in accordance with a Code of Practice for Information Sharing. The purpose of the Code is to enhance the accessibility of the relevant legal rules, by pointing those exercising functions under Parts 4 and 5 of the 2014 Act to the rules which they must apply. As a result, this would mean that when information is shared with or by a Named Person service or in relation to a Child's Plan, failure to comply with the legally binding Code would result in a **failure to comply** with the legislation.

It is the Panel's view that the practical effect of this is that the Code needs to be drafted in quite a legalistic way in order to accurately set out the relevant legal rules that must be followed.

The other requirement of the Code was that it should be authoritative. There have been a number of challenges in achieving this -

- The EU General Data Protection Regulation (GDPR) and the majority of the Data Protection Act 2018 ("DPA 2018") commenced on 25 May 2018. Legal understanding of the implications of this new legislation is still evolving and is untested by case law.*
- Data protection is reserved legislation and we are still awaiting a position on these issues from the UK Government.*
- The ICO is required by the DPA 2018 to prepare a "Data-sharing code". This is to be a code of practice which will provide guidance on how the DPA 2018 (including UK provisions for GDPR) should be applied. This guidance has yet to be published.*

Given these challenges there was a significant risk that the Panel's interpretation of the current legal position could not be considered **authoritative**.

4 Considerations by the Panel

The Panel took some initial time to discuss and become familiar with the issues that were impacting on information sharing in relation to Parts 4 and 5 of the 2014 Act. It also went on to consider the wider landscape that impacts on information sharing.

This understanding developed throughout the Panel's work.

In their meetings, the Panel discussed the term 'consent', how this is understood and, in particular, when it used to support information sharing. It also considered the Supreme Court's judgment in detail. The detailed considerations of the Legal Focus Group informed these discussions. The uncertainty around data protection law until the end of May 2018 and the change in the law from then **complicated** these discussions.

The importance of freely given consent was emphasised and there was discussion around the clarity provided through recital 43 of EU GDPR, which states that:

"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 term 'consent' and how it is understood has a **specific** meaning in data protection law. Consent is one of the many legal bases for processing that may be relied on to allow processing of data.

The Legal Focus Group highlighted that this is **not** the same as requiring consent for the purposes of reducing the risk of breaching an individual's human rights under ECHR Article 8 or their right to confidentiality under common law where that right exists.

It was the view of the Panel that even if sharing of information is not conditional on the consent of a child or its parent, that does not prevent a child having the right to say what they think about that happening, nor does it prevent their views being taken into account.

The Panel was also positive about making it clear that there is **no obligation to accept** the offer of advice or support from a Named Person. This included discussion about how rights and legal aspects of information sharing could be communicated clearly to children, young people and families.

The Panel observed that information sharing in relation to what may impact on a child's wellbeing is safeguarded and governed by a complex framework of European, UK and Scots law, standards, policies and guidance. However, the Panel had confidence that this is made accessible and workable for practitioners and the public through a wide range of general and targeted systems, policies, procedures, protocols, codes of practice, guidance and communication materials.

Its view was that this framework generally works for the public, third sector and private services and has been supporting the delivery of services that support children and families for decades. The application of the system is well understood in the large number of different contexts in which it is applied and has proven to be resilient and responsive to changes in legislation, public attitudes, technology and practice.

The Panel recognised that although certain key law is commonly discussed in relation to information sharing i.e. human rights, data protection and the law in relation to confidentiality, there are many other areas of law that also govern information sharing e.g. law in relation to child welfare, health and law and order. The information sharing provisions in Parts 4 and 5 of the 2014 Act would add to this framework of law.

The Panel acknowledged that these laws may **interact** with each other.

Often underpinning this structural framework is human consideration where professional judgement will consider, amongst other things, necessity, proportionality, risks, the will of the individual, ethical issues, best interest of the individual and expediency.

Panel members and its Legal Focus Group explored the opportunity to learn from legislation, codes of practice, codes of conduct and guidance that explained how information sharing operated in **other** contexts. These provided advice and guidance for organisations and certain individuals on information sharing. However, they did not find a directly comparable context that set out how information sharing must be applied within the wide framework of law as is required of **this** Code.

The Panel and its Legal Focus Group developed several iterations of an evolving draft Code, scrutinising and evaluating these against their remit.

As the thinking of the Legal Focus Group developed, it came to the conclusion late in October 2018 that for the proposed Code to be effective in providing the safeguards looked for in the Supreme Court ruling, these safeguards would need to be placed **directly** into the draft Code.

In other words, the draft Code would need to be **detailed** in terms of how data protection law, human rights law, the law in relation to confidentiality and other areas of law interacted with the information sharing provisions in Parts 4 and 5 of the 2014 Act.

The Legal focus group shared its thinking with the Panel which came to the view that this level of detail would result in a Code being produced that would be viewed as complicated and difficult to apply in practice. This would be contrary to a desire for the developing draft Code to be simpler, more concise and accessible and, as a result, the information sharing landscape could become more complex and confusing for practitioners.

The Panel's view was that the likely **unintended** consequence would be to stifle the consideration and process of sharing relevant, necessary and proportionate information sharing, which, in turn, would lead to reduced opportunities to offer support to children and families.

The Panel shared its emerging thinking with the Deputy First Minister in December 2018:

- *The General Data Protection Regulation and the new Data Protection Act 2018 provide new and more explicit safeguards to support proportionate sharing of necessary information. Once clarified through forthcoming guidance (and potential case law) these would assist information sharing practice;*
- *Refreshed Getting It Right For Every Child ("GIRFEC") Policy and practice guidance could be an opportunity to explain how information sharing practice could generally be delivered and sign post to guidance on more complex situations;*
- *Any Code that could be produced under the Bill would be detailed and viewed as complex in explaining how different parts of law interact and difficult for practitioners and the public to understand. This would result in a non-user friendly Code, which could inhibit good professional practice; and*
- *That these points together challenge the necessity for and achievability to provide a draft Code that meets the Panel's remit.*

4.1 Changes in the Legal landscape

GDPR

Since the introduction of the Bill, and the Committee's initial considerations at Stage 1 of the Parliamentary Bills process, the legal landscape in relation to data protection law has changed. GDPR has now come into force. The ICO has also finalised its guidance on the interpretation of GDPR. In addition, European guidance has now been published. These finalised documents have provided greater clarity on the interpretation of new data protection legislative changes. The Data Protection Act 2018 ("DPA 2018") is also now in force and GDPR needs to be read alongside that Act.

DPA 2018

When the Data Protection Bill (which later became the DPA 2018) was debated by the UK Parliament, the issues around information sharing and safeguarding concerns (including wellbeing) were highlighted.¹ In particular, the importance of putting in place common safeguards to spot important patterns of behaviour was specifically noted. It was also noted that there is still uncertainty about what personal data can be processed for safeguarding purposes. As a result, amendments were introduced, which made specific provision around the safeguarding of children and of individuals at risk.

Guidance documents

The UK Government has produced cross-agency and cross-governmental guidance called "*Working Together to Safeguard Children*"², which places the responsibility of safeguarding children on all relevant professionals who come into contact with children and families.

In addition, the UK Government recently issued updated guidance entitled "Information Sharing: Advice for practitioners providing safeguarding services to children, young people, parents and carers"³.

ICO Data Sharing Code

The ICO is required by the DPA 2018 to prepare a "Data-sharing code". This is to be a code of practice which will provide guidance on how the DPA 2018 (including UK provisions for GDPR) should be applied. This document, together with further advice, once published, should help clarify expectations around information sharing practice.

¹ [https://hansard.parliament.uk/Commons/2018-03-13/debates/0714412b-9b1d-4c1c-b0c5-c6aee4c48612/DataProtectionBill\(Lords\)\(SecondSitting\)](https://hansard.parliament.uk/Commons/2018-03-13/debates/0714412b-9b1d-4c1c-b0c5-c6aee4c48612/DataProtectionBill(Lords)(SecondSitting))

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729914/Working_Together_to_Safeguard_Children-2018.pdf

³ See <https://www.gov.uk/government/publications/safeguarding-practitioners-information-sharing-advice>

5 Engagement

The Panel sought to carry out its work in a transparent, inclusive and engaged way. Panel members were encouraged to actively engage with their stakeholder network on considerations and the Chair of the Panel met with a range of stakeholder groups throughout the process to test out emerging thinking on developing a Code of Practice for Information Sharing and hear their views on what would be helpful in terms of guidance and other support materials. The Panel also provided a website where Panel papers, minutes of meetings and letters were made available.

The Chair of the Panel had updated the Deputy First Minister in June 2018 on progress with the remit and had requested the consideration of a process to refresh the policy context in which GIRFEC was operating. This was agreed and a separate but related engagement process with professionals and other stakeholders was initiated.

When the Panel had defined its emerging conclusions, it carried out a targeted engagement of stakeholders in January and February 2019 to test its thinking and gather views on:

- what would be most helpful for children, young people and their families to better understand the legislative position on information sharing; and*
- the development of practitioner advice, support and guidance to explain how information sharing works in practice within the new legal landscape, including more detailed guidance on sharing information in a range of specific circumstances.*

The Panel's summary of the output from **that** engagement is set out in **Annex A**.

Key messages from the engagement were that:

- stakeholders accepted the Panel's emerging conclusion that it was unlikely to be possible to produce an authoritative draft Code that properly reflects the relevant legal requirements, is workable, comprehensive and user-friendly for children and young people, parents and practitioners.*
- the need for guidance on sharing wellbeing concerns, risks and needs to provide clarity as far as possible for practitioners and build confidence in their practice.*
- the need for specific guidance on information sharing e.g. where there was a question of neglect, where the information related to adults and where the sharing of information was to be with the third sector.*
- guidance, communication, learning and development materials should as far as possible be tailored so that they best enhance the understanding for families and practitioner practice. Use should be made of scenarios to explain how safeguards are applied and choice and decision making is managed in different situations.*

- *guidance should help practitioners to understand better how to work with families through consensual agreement; where they actively engage with services and only the necessary information is shared for them to get the services they wish. Families should be empowered and where possible decision making should be person-led as well as person-centred.*

6 Conclusions

Given all of the above, the Panel's conclusions are that;

- *professional codes, policies, procedures and guidance on GDPR and the DPA 2018 **can**, in the Panel's view, provide the legal framework and safeguards that are needed to support proportionate and necessary information sharing within a GIRFEC approach.*
- *accordingly, it is neither necessary nor desirable to have a detailed statutory Code to govern and direct practitioner information sharing when delivering a Getting It Right For Every Child approach under current policy.*
- *It would be possible to produce a draft Code of Practice for Information Sharing to support progress of the Information Sharing Bill that properly reflects the relevant legal requirements. However, the detail that such a Code would require means it would **not** be user friendly to apply in practice*
- *in addition, the absence of case law and guidance on the interpretation of the GDPR and the DPA 2018 means that the Panel could not be confident in delivering an authoritative draft Code.*

The Panel's prime recommendation is that Ministers should not pursue a binding Code for Information Sharing in relation to information sharing under Part 4 (Provision of Named Persons) of the Children and Young People (Scotland) Act 2014.

Additional Recommendations

The Panel recommends that Scottish Government consider the following measures to improve knowledge, understanding and practice in relation to sharing information to promote, support and safeguard the wellbeing of children and young people and delivery of the GIRFEC approach:

1. An updated **policy statement** on the Getting It Right For Every Child approach. This statement should clarify the Scottish Government's expectations in relation to delivering a Named Person service and the framework for planning for individual children and young people.
2. **Measures** that support transparency of information sharing and increase the public's understanding and confidence in the GIRFEC approach to promote, support and safeguard children and young people's wellbeing - which includes:
 - *a summary of the rights, principles and values that govern information sharing, which should be accessible and understandable for children, young people and parents.*
 - *an emphasis on the rights of children and young people as individuals, their entitlement to support and benefits of engaging with services that are available to support them*
3. A **refresh** of the suite of practice guidance and learning and development materials that support organisations and practitioners to develop the culture, systems and practice that delivers the GIRFEC approach. This should include:
 - a. *co-production of guidance for practitioners on sharing information that could promote, support or safeguard a child or young person's wellbeing. The production of this guidance should involve the public (children, parents, young people) statutory and non-statutory service providers, rights promoting organisations, professional organisations, unions, regulatory bodies, Information Commissioner's Office and others as appropriate.*
 - b. *guidance on sharing information without the agreement of those to whom it relates when there is a suspected risk of harm, potential risk of harm, risk of harm or actual harm to a child. This guidance should include specific reference to when the harm is related to neglect. The guidance should also provide advice on how and when chronologies are created, who contributes and who they are shared with.*
 - c. *general guidance on information sharing in relation to wellbeing concerns, risks and needs in the whole population.*
4. There should be **additional multi-year investment** in multi-agency training and development supporting common purpose and collaborative working in relation to sharing information and the delivery of the GIRFEC approach.

Annex A

Below is a summary of key findings from each discussion theme explored in the Panel's engagement events and from written submissions.

Theme 1: Do you have any comments or views on the Panel's emerging thinking?

- The Panel's emerging thinking was set out in the Chair's letter to the Deputy First Minister, papers to support engagement and communicated at engagement meetings. The Panel's key objective was to produce an authoritative draft Code of Practice for information sharing that could be applied at all times when considering sharing information by and with the Named Person service and in relation to Child's Plans. This draft Code must comprehensively present the legal framework in a way that is accessible to families and practitioners and workable in everyday practice. The critical emerging view of the Panel is that it was unlikely to be possible to create a Code that met all of these criteria. Stakeholders questioned and tested the rationale behind the emerging views with all accepting that the Panel had thoroughly examined ways to achieve the goal but ultimately it had not been possible for it to deliver this.
- A number of those engaged with said that they had held the view for some time that it would be too complicated for a mandatory Code to present the clear legal framework in a jargon free way that practitioners could follow.
- It was acknowledged that the Code is necessary to support addressing the Supreme Court's concerns related to Parts 4 and 5 through the Information Sharing Bill. However, it was suggested that as practitioners become more familiar with applying the new data protection regime within the wider framework supporting information sharing that a detailed statutory Code that must be followed may well be unnecessary and unhelpful when applying the GIRFEC approach within a policy context. It was proposed by some that a requirement to adhere to a complex Code may well be a disincentive to consideration of information sharing and, as the Panel suggests, clear guidance would be more appropriate and that this should be targeted and shaped to the context that practitioners and families are within.
- Some questions were raised about whether Parts 4 and 5 would be repealed

Theme 2: What do you/your organisation consider is needed to better support the consideration and sharing of information in relation to Named Persons, Child's Plans and the wider GIRFEC approach?

- In each event there was a request for clear and coherent guidance for practitioners on information sharing in relation to wellbeing needs, concerns and risks.
- More specific requests included requests for guidance in relation to information sharing where:
 - there was a concern in relation to neglect

- the impact on the wellbeing of the child was from an adults behaviour condition or circumstance
 - the sharing was between statutory services and third sector
- Some stakeholders asked for a tiered and/ or a targeted approach to the guidance on information sharing; technical guidance for information governance leads; more accessible guidance for managers; and tailored and accessible guidance and learning materials for frontline practitioners.
 - There should be information for parents not only to help them understand information sharing but also to inform them and make accessible to them the guidance practitioners and services are relying on for their direction.
 - Of those who expressed a view on using legislation to support information sharing the view was that if it was not possible to provide a workable statutory Code that could be applied and was workable in all circumstances then we needed to move on from pursuing a legislative solution and focus on guidance to increase confidence and consistency in practice.
 - Guidance should help practitioners to understand better how to work with families through consensual agreement; where they actively engage with services and only the necessary information is shared for them to get the services they wish. Families should be empowered and where possible decision making should be person led as well as person centred.
 - Recognising that it may be necessary to share information without the knowledge of and/ or agreement of the individual to whom it relates, this is actually very uncommon for most practitioners in every day practice. The vast majority of practice that necessitates information sharing is done with the knowledge and agreement of those to whom it relates. When considering whether someone is freely agreeing/ consenting to information being shared to enable access to a service we need to consider the value of “meaningful conversations”.
 - The guidance should promote relationship based practice and encourage courageous and open conversations with families.
 - Guidance for practitioners should include case studies and examples – including specific scenarios that help them understand when information can/ should be shared without an individual’s knowledge and/ or agreement and when it cannot.
 - Guidance for practitioners should emphasise that sharing information about families should be undertaken in a way that respects their rights and that particular consideration should be given to any vulnerabilities that may result in or intensify any power imbalance. Only necessary, relevant and proportionate information should be shared. Guidance should have a focus on what can be shared rather than what shouldn’t be shared. We need to listen to young people and make them feel empowered.

- It was suggested that to achieve support and utilisation of the guidance, professional and regulatory organisations should be involved in its development and it should be aligned to existing professional standards and guidance where possible. These organisations should be asked to provide clear support for this guidance at launch and ongoing use by promoting it through professional guidance and continuing professional development opportunities.
- Practitioners need to be aware of how any power imbalance may affect an individual's decision to engage with a service and their agreement to share the associated necessary information. They must be confident in applying fair processing principles and in explaining to children, young people and parents their rights in a way that gives them true choice while not creating unnecessary anxiety/ suspicion in relation to why they are doing this.

Theme 3: Do you have any views on how to improve children, young people and parents understanding of information sharing?

- Stakeholders suggested that a public awareness campaign in relation to data processing and information sharing with a specific strand relating to information sharing associated with the wellbeing of children and young people would be helpful. It was commented that scope of what may affect the wellbeing of children is wide and can relate to an equally wide range of individuals within and outwith families.
- Stakeholders often emphasised that the challenges in enhancing the public's understanding of information sharing was far wider than that in relation to just the Named Person and Child's Plan and services for children and families.
- There was a general consensus that there is a place for material for families that is accessible and user-friendly, however it was often suggested that the best way to improve understanding is for practitioners to talk this through with children, young people and parents within the context of the task/activity to which information-sharing is applied.
- Children, young people and parents should be made aware of their rights and how these can be exercised in a way that gives them true choice. This should be done through a mixture of approaches that will embed rights related to information sharing and data processing more widely. It is timely to do this as GDPR and the media have raised awareness of data processing where the individuals are being given more explicit choice about whether to opt in and out of data bases, advertising and given choices as to their preferences in relation to what happens to their online data.

Theme 4: Do you have any views on the Bill or development of a statutory Code of Practice?

- Stakeholders who expressed a view stated that a statutory Code of Practice which is fit for purpose appears to be unlikely to be achievable and if this is so then they did not feel it would be helpful to continue to pursue a further legislative/ statutory route for information sharing in relation to wellbeing information, Named Persons and Child's Plan if it would protract uncertainty for practitioners. They understood the implications for the Bill and hence the potential knock on that the statutory basis for the Named Person service and Child's Plan would be in question. The priority from stakeholders was clarity as soon as possible for both information sharing and wider GIRFEC policy.
- Stakeholders frequently emphasised that there is a need to build confidence in the value of promoting necessary and proportionate information sharing to support and improve children's wellbeing. This would mean recovering from current fears and some defensive practice.
- A statutory Code may also be open to more and ongoing legal challenge which will further prohibit practitioners from being confident and competent as regards information sharing.

Theme 5: Do you wish to provide any comment on the legislation, updating of the policy and what guidance or materials would support service providers, operational managers and practitioners in delivering the GIRFEC approach?

- Refreshed GIRFEC policy and practice guidance, including guidance on how information sharing should be managed, would be welcomed by services/agencies. Reference should be made to the importance of ethical and defensible recording as central to anyone's practice, not only in relation to information sharing but wider in relation to what information is held and processed. A strong emphasis should be put on transparency with families. This would reduce the risk of challenge while also providing the documented justification for sharing information and recording of how this was carried out fairly.
- It was often stated that there is a need to build confidence not only in practitioners to share information but also in the public's confidence that doing so will benefit the family. Families should feel confident to proactively share information to seek out and secure help. Equally they should feel confident and empowered to decline services they feel are unnecessary.
- Scenario based training would be welcomed by practitioners in order to explain the person centred contextual aspects of decision making in relation to what information is necessary to share with whom and for what purpose.
- Policy and guidance should help ensure that people who need services are at the centre, that people understand their rights and choices, that practitioners support people to freely engage with services giving them choice where that is possible and promoting person led information sharing.

- Some stakeholders highlighted the importance of shared single agency and interagency chronologies while also highlighting the lack of consistency in practice in relation to how and when chronologies are created, who contributes and who they are shared with.
- Many stakeholders said that to re-establish confidence in information sharing and advance multi-disciplinary working there is a need for an extensive learning and development programme that should bring together local services and agencies including the third sector to develop common norms.
- Some questions were raised about the timescale for the delivery of refreshed practice guidance

Theme 6: Do you wish to provide any other comments on Information Sharing in the context of the GIRFEC approach?

- Some stakeholders suggested that delivering GIRFEC and the associated information sharing must become just “part of the day job” and equally well understood and supported by the public.
- Some stakeholders voiced particular concerns about their experience of a lack of coherence and coordination relating to the provision of services for children and young people who are transitioning from children’s services to adult care arrangements.
- A number of stakeholders raised concerns that if there was no legislation in relation to Child’s Plans then the variation in practice would continue and may even diversify further.
- Stakeholders from the education sector said that there was a greater understanding of what impacts on the wellbeing of children and how this affects attainment and longer term outcomes. There was a general willingness and often enthusiasm from Guidance Teachers to assist in addressing wellbeing needs but they need time to do this and more accessible and responsive help from other services that can help.
- Some stakeholders from the education sector said that Guidance Teachers not only required additional guidance, training and resources but also required additional capacity to support information sharing and delivering the GIRFEC approach. Some suggested that being a Guidance Teacher should be a dedicated role and that the responsibility of the role should be recognised.
- A few stakeholders questioned the continued use of the term Named Person as there had been so much confusion about it. Some others were concerned about the scope of the functions of a Named Person and/ or the powers of a Named Person Service provider.

- Some stakeholders highlighted a lack of confidence from organisational leadership and a risk adverse default position in relation to information sharing that left practitioners exposed and reduced confidence in sharing between different services and organisations, particularly with the third sector.

Annex B

The following organisations, from across the sector were invited to take part in the Panel's engagement process

National Implementation Support Group 17 January 2019

Highland Council
Children in Scotland
NHS Lanarkshire
NHS Health Scotland
Barnardos
Council of Scottish Local Authorities
Police Scotland
Care Inspectorate
National Parent Forum Scotland

GIRFEC Lead Officers Meeting 22 January 2019

Aberdeenshire Council	Inverclyde Council
City of Edinburgh Council	East Dumbarton Council
Dundee City Council	Stirling Council
East Renfrewshire Council	Midlothian Council
Comhairle nan Eilean Siar	Moray Council
Fife Council	East Ayrshire Council
Glasgow City Council	Fife Council
North Ayrshire Council	Argyll & Bute Council
North Lanarkshire Council	Dumfries and Galloway Council

Orkney Council	Clackmannanshire Council
Renfrewshire Council	Angus Council
Scottish Borders Council	East Lothian Council
Shetland Council	Aberdeen City Council
South Ayrshire Council	Perth & Kinross Council
South Lanarkshire Council	Falkirk Council
West Dunbartonshire Council	Education Scotland
West Lothian Council	

GIRFEC Third and Independent Sector Stakeholder Meeting 23 January 2019

Quarriers	Association of Real Change
Scottish Council for Independent Schools	Play Scotland
Children 1st	Scottish Spina Bifida Association
Action for Children	The charity for families with disabled children
Early Education Trust	British Association of Social Work
National Parent Forum Scotland	Education Through Care Scotland
National Day Nursery Association	Young Scot
Voluntary Health Scotland	Parenting Across Scotland
Children in Scotland	Mindroom
Barnardos	CLAN Childlaw
Aberlour	Home-Start
Scottish Council on Deafness	Generations Working Together

Foetal Alcohol Spectrum Disorder Scotland	Includem
Promoting A More Inclusive Society	One Parent families Scotland
Capability Scotland	befriending networks
Arthritis Care	Scottish Women's Aid
National Deaf Children Society	Youth Scotland
Out of School Care	Together Scotland
Crossreach	Christian Action Research and Education
Children in Scotland	LGBT Youth
Social Work Scotland	Hope for Autism
People First Scotland	Counselling in Scotland
Epilepsy Scotland	UP-2-US
National Deaf Children Society	Early Years Scotland
Carers Scotland	Edinburgh Voluntary Organisations Council
The Fostering Network	Who Cares Scotland
Voluntary Action South Ayrshire	Scottish Childminding Association.
National Autistic Society	Achievement Bute
Perth and Kinross Association of Voluntary Service	Council of Voluntary Organisations East Ayrshire

National Parent Forum Scotland 26 January 2019

National parental representatives who work in partnership with all education authorities across Scotland.

Education Scotland 28 January 2019

Staff grouping (education inspectors and quality assurance officers).

Association of Directors of Education in Scotland 31 January 2019

Representatives of all 32 local authorities for education with specific responsibility for support for learning.

Medical Organisation Meeting 5 February 2019

British Medical Association
Royal College of General Practitioners
General Medical Council
Royal College of Paediatrics and Child Health
Royal College of Psychiatry
Caldicott Guardians
Public Health Consultants

Dental Organisation Meeting 5 February 2019

General Dental Council	General Dental Practitioners
British Dental Association	Chief Dental Officer
Childsmile	Paediatric Dental Consultants
Dental Public Health	Public Health Dental Consultants
Public Dental Service	

Nursing and Midwifery Meeting 5 February 2019

UNITE The Union
Community Practitioners and Health Visiting Association
Royal College Of Nursing
Unison
Royal College of Midwives
Nursing and Midwifery Council
Scottish Executive Nurse Directors

Convention of Scottish Local Authorities 8 February 2019

Convention of Scottish Local Authorities
Children and Young People Board

GIRFEC Health Leads (CEL 29) and Child Health Commissioners 12 February 2019

NHS Highland	NHS Lanarkshire
Orkney	NHS Glasgow City
NHS Fife	NHS Shetland
NHS Forth Valley	NHS Tayside
Health Improvement Scotland	NHS 24
NHS Education For Scotland	Police Scotland
NHS Health Scotland	NHS Western Isles
NHS Greater Glasgow and Clyde	NHS Borders
Directorate of the chief medical officer	NHS City of Edinburgh

Scottish Ambulance Service	NHS Dumfries and Galloway
NHS National Services Scotland	NHS Grampian
NHS Ayrshire and Arran	Scottish Borders

Social Work Services Strategic Forum 22 January 2019

Scottish Social Services Council
Care Inspectorate
Institute for Research and Innovation in Social Services (IRISS)
Social Work Scotland (SWS)
Convention of Scottish Local Authorities (COSLA)
Representative of the Society of Local Authority Chief Executives
Scottish Care
Coalition of Care and Support Providers in Scotland (CCPS)

Disabled Children and Young People Advisory Group 13 February 2019

NHS Fife	Scottish Funding Council
Action for Real Change Scotland	In Control Scotland
Child Poverty Action Group	Education Scotland
Family Fund	For Scotland's Disabled Children
Royal National Institute for the Blind	Shared Care Scotland
Sense Scotland	Children in Scotland
The Yard	Glasgow Disability Alliance

Convention of Scottish Local Authorities	The Health and Social Care Alliance
ENABLE	Care Inspectorate
National Deaf Children's Society	Advisory Group for Additional Support for Learning and Govan Law Centre
Association of Directors of Social Work	Managed Clinical Network for Children with Exceptional Healthcare Needs
Royal College of Speech and Language Therapists	

Children's Hearing Improvement Partnership and Youth Justice Improvement Board 14 February 2019

Police Scotland	Scottish Courts
The Centre for Youth & Criminal Justice	Children's Hearing Scotland
Scottish Social Service Council	Crown Office
Scottish Children's Reporter Administration	Convention of Scottish Local Authorities
Society of Local Authority Chief Executives	

Chairs and Lead Officers of Child Protection Committees 14 February 2019

Aberdeenshire Council	Inverclyde Council
City of Edinburgh Council	East Dumbarton Council
Dundee City Council	Stirling Council
East Renfrewshire Council	Midlothian Council
Comhairle nan Eilean Siar	Moray Council

Fife Council	East Ayrshire Council
Glasgow City Council	Fife Council
North Ayrshire Council	Argyll & Bute Council
North Lanarkshire Council	Dumfries and Galloway Council
Orkney Council	Clackmannanshire Council
Renfrewshire Council	Angus Council
Scottish Borders Council	East Lothian Council
Shetland Council	Aberdeen City Council
South Ayrshire Council	Perth & Kinross Council
West Dunbartonshire Council	West Lothian Council
South Lanarkshire Council	Falkirk Council

Teaching Associations and Unions

EIS	Association of Headteachers and Deputies in Scotland (AHDS)
School Leaders Scotland (SLS),	Voice
The National Association of Schoolmasters Union of Women Teachers (NASUWT)	Scottish Secondary Teacher' Association (SSTA)
Scottish Guidance Association	

No 2 Named Person 18 February

Campaign group who oppose the Named Person policy



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