



ChildProtection
Perth & Kinross

Practitioner's Aide Memoire

**Information Sharing, Confidentiality
and Consent to Support Children and
Young People's Wellbeing**

**Getting it Right
in Perth and Kinross**
Helping children be the best they can be



Key Practice Points

1. *What is getting in the way of this child or young person's wellbeing?*
2. *Do I have all the information I need to help this child or young person?*
3. *What can I do now to help this child or young person?*
4. *What can my agency do to help this child or young person?*
5. *What additional help, if any, may be needed from others?*



Information Sharing

- The **wellbeing** ⓘ of children and young people is everyone's job and everyone's responsibility.
- Doing nothing is not an option.
- Keep your focus on the **wellbeing** ⓘ of the child or young person.
- Ask yourself the five key GIRFEC Questions - if the answer is no or you do not know, find out.
- Adopt a common sense approach.
- Use your professional judgment, knowledge and skills - gut feelings.
- Do not delay unnecessarily - act quickly.
- Seek help and support in doing so - Line Manager/Supervisor or Trusted Colleague or the **Child Protection Duty Team** ⓘ.

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- *Share what you consider only to be necessary, legitimate, appropriate and proportionate - on a need-to-know basis only.*
- *Always share your worry or concern with the child or young person's **Named Person** ⓘ.*
- *Consider the alternatives and/or implications of not sharing information.*
- *Follow your own service/agency information sharing guidance.*
- *Always record your decision and the reasons for it.*

Confidentiality

- *Confidentiality does not prevent you from sharing a worry or concern about a child or young person's **wellbeing** ⓘ - it actually empowers you to do so.*
- *Confidentiality is not an absolute right - never promise that.*
- *Be aware of the constraints and limitations of confidentiality.*
- *Keep in mind your duty of care and the **Common Law and Statutory Obligations of Confidence** ⓘ.*
- *Acting in the public interest can be a defence to an accusation of breach of confidence - but this must be justified.*

Consent

- Do not seek consent in situations where you are likely to share information in any case - **wellbeing** ⓘ of a child or young person.
- Consent should only be sought when the individual has a real choice over the matter.
- Consent should be informed and explicit – implied consent is not enough.
- Children and young people, subject to their age and developmental capacity, can provide consent, if consent is necessary.
- Consent must always be recorded.

Legislation

- Legislation does not prevent you from sharing information - it empowers you.
- Legislation provides you with a legal framework within which information can be shared.
- Legislation helps you to weigh up the benefits and risks.
- Legislation is based upon common sense principles.

Methods

- Share and exchange information in a working relationship - built on mutual trust and respect.
- Record the reasons why you are sharing information and/or not sharing information.

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- *Keep all information safe and secure at all times.*
- *Always identify the person you will be communicating with.*
- *Do not give verbal information where you can be overheard.*
- *Do not leave information on answering machines or voicemail.*
- *Be aware of your service/agency's email policy - always use secure email.*
- *Do not use fax if at all possible. If you have to and there is no alternative, make sure the recipient is standing by to collect the fax and follow **Safe Haven Principles**¹.*

Remember:

- **(UK) Information Commissioner's Office (ICO) Letter of Advice 2013 - Information Sharing** ⓘ

¹ **Safe Haven** is a term used to explain an agreed set of arrangements that are in place in an organisation to ensure person identifiable information (eg clients and staff information) can be communicated safely and securely. Safe Haven Principles act as a safeguard for confidential information which enters or leaves an organisation, whether this is by facsimile (fax), verbal communication or other means, for example, email.

Information Sharing in Child Protection: General Principles

National Guidance for Child Protection in Scotland 2014²

- *The wellbeing of a child is of central importance when making decisions to lawfully share information with or about them.*
- *Children have a right to express their views and have them taken into account when decisions are made about what should happen to them.*

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- *The reasons why information needs to be shared and particular actions taken should be communicated openly and honestly with children and, where appropriate, their families.*
- *In general, information will normally only be shared with the consent of the child (depending on age and maturity). However where there is a risk to a child's wellbeing, consent should not be sought and relevant information should be shared with other individuals or agencies as appropriate.*
- *At all times, information shared should be relevant, necessary and proportionate to the circumstances of the child, and limited to those who need to know.*
- *When gathering information about possible risks to a child, information should be sought from all relevant sources, including services that may be involved with other family members. Relevant historical information should also be taken into account.*
- *When information is shared, a record should be made of when it was shared, with whom, for what purpose, in what form and whether it was disclosed with or without informed consent. Similarly, any decision not to share information and the rationale should also be recorded.*
- *Agencies should provide clear guidance for practitioners on sharing information for example, the GMC guidance on Protecting Children and Young People. This should include advice on sharing information about adults who may pose a risk to children, dealing with disputes over information-sharing and clear policies on whistle-blowing.*
- *It is not necessary to seek consent when there is legislative requirement to share information; for example when making a referral to the Children's Reporter, or the prevention and detection of crime.*

² Extracted from the **National Guidance for Child Protection in Scotland 2014** 
(Scottish Government 2014).

Information Sharing Flowchart

A useful summary of the key considerations for all practitioners when considering when to share information; what information to share; who to share with; and how to share information.

When to Share

Share information when worried or concerned about a child or young person's wellbeing.

Wellbeing - safe; healthy; achieving; nurtured; active; respected; responsible and included.

What to Share

Share information which is relevant; necessary; legitimate; appropriate and proportionate.

Share information relating only to your worry or concern - reduce or remove unnecessary information or data.

Always use your professional judgement/instincts; adopt a common sense approach.

Share information quickly; efficiently and effectively.

Who to Share With

Share information on a need-to-know basis only.

Share information with your Line Manager/Supervisor or a trusted colleague; Named Person; Lead Professional or other Key Workers.

Share information verbally, face-to-face, at meetings, written reports or assessments.

Share information by secure methods. Always follow Safe Haven Principles.

Ensure you record information sharing accurately.

Consent Flowchart

A Practitioner's Flowchart on Seeking Consent

Are you worried or concerned about a child or young person's wellbeing?

Yes

Do I need consent to share information?

No

Share Information

No

Do I need consent to share information?

Yes

Seek Consent

Consent Given

Yes

Share Information

No

Do Not Share Information

(UK) Information Commissioner's Office (ICO) Letter of Advice 2013 - Information Sharing



Upholding information rights

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Information Sharing Between Services in Respect of Children and Young People

The Information Commissioner's Office (ICO) is contacted regularly by practitioners seeking advice and guidance on whether they can share professional concerns about their clients/patients and, if so, what level of information may be shared. Often, the Data Protection Act 1998 (the Act) is viewed as preventing such sharing and it can be fear of non-compliance that becomes a barrier, even though there may be a concern about a child's or young person's wellbeing. While it is acknowledged that practitioners need to be sure their actions comply with all legal and professional obligations, fear that sharing genuine concerns about a child's or young person's wellbeing will breach the Act is misplaced. Rather, the Act promotes lawful and proportionate information sharing, while also protecting the right of the individual to have their personal information fairly processed.

Most practitioners are confident about appropriate and necessary sharing where there is a child protection risk. The problem can be where the circumstances do not yet reach the child protection trigger yet professional concerns exist, albeit at a lower level. Getting It Right For Every Child (GIRFEC) introduced eight indicators of wellbeing: safe, healthy, achieving, nurtured, active, respected, responsible and included (SHANARRI). In many cases, a risk to wellbeing can be a strong indication that the child or young person could be at risk of harm if the immediate matter is not addressed. As GIRFEC is about early intervention and prevention it is very likely that information may need to be shared before a situation reaches crisis. In the GIRFEC approach, a child's Named Person may have concerns about the child's wellbeing, or other individuals or agencies may have concerns that they wish to share with the Named Person. While it is important to protect the rights of individuals, it is equally important to ensure that children are protected from risk of harm.

Where a practitioner believes, in their professional opinion, that there is risk to a child or young person that may lead to harm, proportionate sharing of information is unlikely to constitute a breach of the Act in such circumstances.

The Act requires that an individual's data be processed fairly and lawfully and that specific conditions/justifications for processing are met. The Act provides

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Information Commissioner's Office

several conditions/justifications for processing, only the first of which rely on consent and, where required, it should be fully informed and freely given. However, the issue of obtaining consent can be difficult and it should only be sought when the individual has real choice over the matter. Where circumstances exist such that consent may not be appropriate, for example where an assessment under the SHANARRI principles raises concerns, the Act provides conditions to allow sharing of this information, such as 'for the exercise of any other functions of a public nature exercised in the public interest by any person' or 'in the legitimate interests of the data controller or the third party to whom the data are disclosed so long as it is not prejudicial to the child', and procedures should be clear about those circumstances which may necessitate processing without consent.

It is vital that data controllers put appropriate and relevant protocols in place and that they are conveyed to practitioners to provide them with a support mechanism for the decision making process. It is also vital that a recording process is included in the protocol so that the decision – including the rationale behind making it – is formally recorded. Such protocols will assist in providing confidence to practitioners in the event the decision is challenged.

It is very important that the practitioner uses all available information before they decide whether or not to share. Experience, professional instinct and other available information will all help with the decision making process as will anonymised discussions with colleagues about the case. If there is any doubt about the wellbeing of the child and the decision is to share, the Data Protection Act should not be viewed as a barrier to proportionate sharing.

**Dr Ken Macdonald
Assistant Commissioner Scotland & Northern Ireland
Information Commissioner's Office**

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