



**To: Children and Young People Thematic Board**

**On: 31<sup>st</sup> March 2016**

**Report by:  
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**CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014  
GETTING IT RIGHT FOR EVERY CHILD (GIRFEC), INFORMATION  
SHARING PRACTITIONER GUIDANCE**

**1. Summary**

- 1.1 The Children and Young People (Scotland) Act 2014 introduces new duties in relation to the Getting It Right for Every Child approach. GIRFEC is the national approach to improving the services that support the wellbeing of children and young people in Scotland. It is an approach that has several principles at its core:
- puts the wellbeing of the child or young person at the heart of decision making;
  - takes a holistic approach to the wellbeing of a child or young person;
  - works with children, young people and their families on ways to improve wellbeing;
  - advocates preventative work and early intervention to support children, young people and their families; and
  - supports professionals working together in the best interests of the child.
- 1.3 The approach underpins the Children and Young People (Scotland) Act 2014, the Early Years Framework, Curriculum for Excellence and a range of programmes to support improvements in services. GIRFEC is being threaded through all existing policy, practice, strategy and legislation affecting children, young people and their families.
- 1.4 The GIRFEC approach should lead to early and effective intervention at any point in a child's life where it is necessary to improve wellbeing outcomes. By acting to support wellbeing as soon as needs or concerns are identified and well before crisis points are reached, the approach ensures that every child is supported in a timely and proportionate way.
- 1.5 The Act has put into statute some key aspects of the GIRFEC approach. It sets out a definition of 'wellbeing'. It formalises the role of the Named Person ensuring that a Named Person will be available for every child from birth to 18 (or older if still in school) and it makes provision for a statutory Child's Plan to coordinate support for those children who may require additional help. The Act also provides a framework

for information sharing between professionals to support the functions of the Named Person and the operation of the Child's Plan.

- 1.6 The current information Sharing Practitioners Guidance was approved in 2014 with a view to further update and review as part of the full implementation of the information sharing duties from 31<sup>st</sup> August 2016 . Feedback from practitioners and the Children's Services Inspection Report (December 2015) indicated that this was valuable guidance for staff.
- 1.7 The Guidance is supported by interagency information sharing briefing sessions delivered by the Council information Governance team alongside a practitioner. This training has been revised as part of the GIRFEC implementation plan and future training incorporates details relating to the new duties. All education Named Persons have been prioritised for this training and further inter agency sessions are planned through to March 2017 as part of the inter agency training calendar.
- 1.8 Additional content will be added to the Guidance with detailed information about contact details of the Named Person Service when this is finalised in the near future.

## **2. Recommendations**

- 2.1 To approve the updated Information Sharing Practitioner Guidance for implementation from 31<sup>st</sup> August 2016 (document attached)
- 2.2 To agree to minor amendments to the Guidance once specific contact details on the Named Person service are available.



**RENFREWSHIRE CHILDREN'S  
SERVICES PARTNERSHIP**



## **Children and Young People (GIRFEC) Practitioner's Guide to Information Sharing**

Implementation date	31 <sup>st</sup> August 2016
Review date	August 2019

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## **INFORMATION SHARING**

**Nothing in Scottish, UK and/or European Law and/ or in the Scottish child protection legislative, policy and/or practice environments prevents you from sharing personal information and in some cases sensitive personal information where you are worried or concerned about a child or young person's wellbeing.**

**If you are worried or concerned about a child or young person's wellbeing, concerns should be shared quickly, efficiently and effectively.**

**If a child is considered to be at risk of harm, relevant information must always be shared for their protection and child protection procedures followed.**

## KEY MESSAGES

- The **wellbeing** of children and young people is everyone's job and everyone's responsibility. Keep your focus on the **wellbeing** of the child or young person
- **Relevant information must always be shared if a child is considered to be at risk of harm (or if it is considered that it might be necessary for a compulsory supervision order to be made).** Legislation does not prevent you sharing information where you are concerned about a child or young person's wellbeing.
- Consider the alternatives and/or implications of not sharing information. Doing nothing is not an option. Do not delay unnecessarily – act quickly
- Share what you consider only to be **necessary, legitimate, appropriate and proportionate – on a need-to-know basis only.**
- Take all reasonable steps to ensure that information is accurate and up to date before you share it.
- Always ensure you follow your agency guidance on recording information
- Keep all information safe and secure at all times
- If in doubt - seek help and support in doing so – from a Line Manager/ Supervisor.

## 1. Introduction

- 1.1 The Scottish Government introduced *Getting it right for every child* (GIRFEC) as a national approach to apply across all children and adult, public and voluntary sector services to improve the use of resources and achieve better outcomes for children and young people .
- 1.2 The GIRFEC approach ensures that services are brought together more effectively to provide help and support for children, young people and their parents when they need it. The approach supports children and young people's rights, involving children and young people whenever possible in any decisions that affect them and helping services to support parents while respecting their rights and responsibilities. The approach creates a single system of service planning and delivery across services for children. It is rooted in cooperation between services with the child at the centre, encourages streamlining and collaboration, and prevents services working in isolation from each other.
- 1.3 The Children and Young People (Scotland) Act 2014 provides a legislative basis for key elements of GIRFEC. *This guidance should be read in conjunction with the Children and Young People (Scotland) Act Statutory Guidance 2016.*
- 1.4 This guidance places information sharing within the context of the national [GIRFEC approach](#). The GIRFEC duties in the Children and Young People (Scotland) Act 2014 will be put into force on **31<sup>st</sup> August 2016**. This guidance will be implemented from 31<sup>st</sup> august 2016
- 1.5 This guidance should be read in conjunction with Renfrewshire Children's Services Partnership (RCSP) GIRFEC policy and single and multi agency child protection procedures and guidance
- 1.6 The key principles of the GIRFEC approach are outlined in the [RCSP GIRFEC policy](#). The policy also outlines the role of the [Named Person](#) and the [Lead Professional](#).
- 1.7 **Sharing appropriate information is an essential component of child care and child protection activity. If a child is considered to be at risk of harm, relevant information must always be shared for their protection.**
- 1.8 Sharing information that is *relevant* and *proportionate* about children who are at risk of harm is fundamental to keeping children safe. The GIRFEC approach focuses on early intervention and prevention, recognising that it is very likely that information may need to be shared before a situation reaches crisis.
- 1.9 The Data Protection Act 1998 (DPA) outlines how personal information must be handled, but the DPA is not a barrier to information sharing. In some cases consideration should be given to the risks of *not sharing* information. Data Protection is about information rights and the protection of people's information. Although there are inevitable tensions between information sharing and data protection, the DPA should not be regarded as conflicting with individual rights.

**The circumstances making the sharing of information lawful are:**

- where the individual to whom the information relates has **consented**;
- where disclosure is in the **public interest**; or
- where there is a **legal duty** to do so.

1.10 Any sharing of information should be

- **Relevant**;
- **Necessary**;
- **Legitimate**;
- **Appropriate**;
- **Proportionate** and
- Go no further than the **minimum necessary** to achieve the public interest objective of protecting a child or young person's **wellbeing**.

The wellbeing of children and young people is at the heart of the GIRFEC approach, but the key here is that the approach supports families and professionals to work *together* to consider a child's wellbeing. Different services may be able to support one aspect of wellbeing more than another, but it is important that they are aware of all aspects.

1.11 It is important that data protection is not seen as an obstacle to effective information sharing, especially when this is necessary to protect individuals. Penalties are aimed at systemic failures and not practitioners making good faith decisions to share information in the best interests of children.

**1.12 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 DPA.**

1.13 When deciding whether to share information, the potential risks and benefits to either individuals or society must be considered. It is also important to consider the risks of **not** sharing the information. Misunderstanding of what information can and cannot be shared can disadvantage service users.

1.14 The GIRFEC approach promotes engagement with the child and family at all stages during which practitioners will want to keep them informed and seek their views and obtain consent to the sharing of information where appropriate.

1.15 There are some circumstances where it is not necessary to seek consent, for example where an assessment using the wellbeing indicators (SHANARRI) raises concerns or there is a child protection issue, the DPA 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 practitioners should be clear about those circumstances which may necessitate sharing information without consent.

- 1.16 If there is any doubt about the wellbeing of the child and the decision is to share, the DPA should not be viewed as a barrier to proportionate sharing.**
- 1.17 Respect for privacy does not necessarily mean that there should be unnecessary restrictions imposed on the use of information. It does, however, require transparency. In the interests of openness, individuals should be made aware of how their information will be used if it is appropriate to do so.
- 1.18 Agencies should tell children and young people and their parents about the kinds of situation in which they may have to share information. This will always be based on the assumption that, by sharing information the child and young person and their parents will receive a better, supportive and comprehensive service. Agencies and services will agree why and with whom they need to share information at the earliest stage of the assessment process and seek the consent of the child/young person and parent to do so.
- 1.19 Good practice indicates that where possible consent will be sought for the sharing of information and, parents, carers and young people will be given an explanation about the concerns the agency has and information about the duties and responsibilities of agencies towards children in need.
- 1.20 If you are in any doubt about sharing information, you should seek further help, advice, support and/ or assistance from your Line Manager/ Supervisor or from the Information Governance Team in your service or agency.**

## 2. Legislative Context

- 2.1 The handling, storage, processing, sharing, and retention of information by all service providers, relevant authorities and those providing services on their behalf must be legal. This also means keeping a proper record about decision making (in relation to sharing information) and about what information is shared with whom. Practice suggests that most of the information that must be shared under the Children and Young People (Scotland) Act 2014 is already being shared within the existing legal framework. The legislation does not change the type of information being shared, but will increase consistency in practice and that is likely to mean that more information is shared with and by Named Person service providers and relevant authorities.
- 2.2 **Legislation does not prevent you from sharing information, if you have concerns over a child or young person's wellbeing. Relevant information must always be shared if a child is considered to be at risk of harm.**
- 2.3 It is important that you understand the current legal framework around information sharing, confidentiality and consent; however it is crucial that you understand that you are empowered to share personal and/or sensitive personal information if you are worried and/or concerned about a child or young person's wellbeing and the legislation does not prevent you from doing so.
- 2.4 The laws relating to confidentiality and consent underline the child's right to privacy as well as the duty of confidentiality all staff have towards children they work with, but also stresses that sharing information is justifiable as long as the information shared is necessary and proportionate. There is also emphasis on the imperative of informed, explicit consent where possible and appropriate.
- 2.5 In general, if it can be shown that the requirements of the DPA and the Human Rights Act 1998 have been taken into consideration when deciding whether it is appropriate to share and/or seek and/or exchange information, then the requirements of Scottish Common Law and other statutory obligations will also be met.
- 2.6 The DPA provides specific conditions for processing personal information and sensitive personal information respectively. At least one criterion from the Schedule 2 conditions must be met before processing personal information and at least one from each column for sensitive personal information (see below).
- 2.7 Organisations processing sensitive personal information, for example information about a person's health, will need to satisfy a further, more exacting condition. It is important to be clear that meeting a condition for processing will not in itself ensure that the sharing of personal information is fair or lawful. These issues need to be considered separately.
- 2.8 Schedule 2 and Schedule 3 of the DPA describes clearly in what circumstances you can share information.

Schedule 2 Conditions	Schedule 3 Conditions
With the person's consent	With the person's consent
Where there is a legal obligation*	Where there is a legal obligation*
To protect the vital interests of the	To protect the vital interests of the person

person	
For the administration of justice	In connection with legal proceedings, obtaining legal advice or defending legal rights
For the exercise of any functions conferred under any enactment	For the administration of justice
For the exercise of any function of a public nature exercised in the public interest	To protect the person from dishonesty, misconduct or unlawful conduct and in the substantial public interest.

\*A legal obligation could include, for example, the duty to refer to Scottish Children's Reporter Administration (SCRA) if it might be necessary for a compulsory supervision order to be made in relation to a child.

**2.7 Remember, nothing whatsoever, in Scottish, UK and/or European Law and/or in the Scottish child protection legislative, policy and/or practice environments prevents you from sharing personal information and in some cases sensitive personal information where you are worried or concerned about a child or young person's wellbeing. On the contrary, you are, within certain limitations and constraints, empowered to do so.**

## **2.8 Children and Young People (Scotland) Act 2014**

Information sharing is dealt with throughout the Children and Young People (Scotland) Act 2014. The duties will be put into force on **31st August 2016**. The main sections to be aware of are as follows:

**Section 23** specifies how communication and the transfer of information should be managed at the points when the Named Person service provider changes.

**Section 25** sets out the duty on service providers and relevant authorities to respond to a Named Person service provider to assist the Named Person in exercising their functions.

**Section 26** is the main section on information sharing and sets out the duties and powers in relation to information sharing, and provides a framework to support the appropriate and proportionate sharing of information by the Named Person and others in support of the Named Person functions.

**Section 27** gives more detail about what to do if information is shared in breach of a duty of confidentiality.

Appendix (J) outlines the duties within the Act.

## The Named Person

Access to a Named Person is an entitlement for children and young people from birth to 18 years, or beyond if still in school. The Named Person has various statutory responsibilities set out in the Children and Young People (Scotland) Act 2014. The Named Person will be available to listen, advise and help a child or young person and their family, providing direct support or helping them to access other services. They can help families address their concerns early and prevent them becoming more serious. They can also respond to requests for assistance from other services in situations where this may support the child's or young person's wellbeing.

While the Named Person will be available to offer advice and support, children, young people and parents will continue to access advice and support from a range of services as they currently do without reference to the Named Person. It will be for other services or practitioners to consider whether there is a wellbeing need and whether there is relevant information that they ought to share with the Named Person service.

Where necessary, the Named Person should be able to call upon professional support and advice from their own or other services to carry out an assessment. In all cases where the Named Person has information which indicates a possible child protection concern, local child protection procedures should be followed without delay. The Children and Young People (Scotland) Act 2014 does not change guidance and policy in relation to responding to a child protection concern.

### 3. Information Sharing

- 3.1 If you are concerned about a child you should seek all the information you need to inform your assessment, including engagement with the child to obtain their view. Relevant information must always be shared if a child is considered to be at risk of harm.
- 3.2 You are expected to identify and consider the child or young person's needs, share information and concerns with other agencies and work collaboratively with other services (as well as the child or young person and their family) to improve outcomes for the child or young person.
- 3.3 If you are worried or concerned about a child or young person's wellbeing, you should share your concerns quickly, efficiently and effectively. You may decide to make more enquiries first. If you do, do so quickly and ensure your focus remains on the safety of the child or young person.
- 3.4 At each stage of an intervention, practitioners should consider the [5 key GIRFEC questions](#)

#### **FIVE key GIRFEC questions:**

- 1. What is getting in the way of this child or young person's well-being?
- 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? And
- 5. What additional help, if any, may be needed from others?

- 3.5 To answer all these questions comprehensively, there will be a need for you to share information with other practitioners, working between and/or across a wide range of other services and/or agencies. This is particularly important where the answer to any of these questions is no; or you do not know; or you are unsure of the answer to any one of the above questions.
- 3.6 **If you are worried or concerned about a child or young person's wellbeing or welfare, you should immediately alert your Line Manager/ Supervisor and discuss your worry or concern with him/ her. At each stage in the process, consideration must be given to whether Child Protection measures should be implemented.**

- 3.7 A worry or concern can relate to a child or young person's **WELLBEING**, defined by the 8 Wellbeing (SHANARRI) Indicators: safe; healthy; achieving; nurtured; active; respected; responsible; and included.
- 3.8 Professional judgement based on an understanding of wellbeing, experience, training and information about the child and their circumstances will be key to identifying wellbeing needs, and weighing up whether the sharing of relevant information is likely to affect wellbeing. In some cases, a single observation or incident may result in a wellbeing need being identified and prompt consideration of sharing information. In other situations, a range of factors may either heighten or reduce a perceived wellbeing need and any related consideration about sharing information. A wellbeing need for one child may not be considered to be a need for another child – it will depend on the individual child and circumstances.

i. **Who should I share information with?**

- 3.9 In the first instance, you should immediately alert your Line Manager/ Supervisor. You should fully discuss your worry or concern; agree a course of action and/or intervention; and record what has been agreed or disagreed.
- 3.10 Where you have agreed to share information you should do so with the child or young person's Named Person (and if already appointed and/or known the Lead Professional).
- 3.11 You may also wish to consider the need to share information with other practitioners, services and/ or agencies who are involved with the child, young person and/ or their family. If so, you should do so on a need-to-know basis only.
- 3.12 The GIRFEC approach includes the need for a Named Person for every child, from pre-birth until they reach 18 years of age.

The Children and Young People (Scotland) Act 2014 states that service providers, relevant authorities and those providing services on their behalf must share information with the Named Person's organisation if these three tests are met:

1. The information **is likely to be relevant** to the exercise of the functions of the Named Person in relation to a child or young person (i.e. it is considered that the information is likely to help the Named Person promote, support or safeguard the wellbeing of a child or young person);
2. The information **ought to be provided** for the purpose of the exercise of Named Person functions (i.e. taking into account the views of the child or young person and the likely benefit to the wellbeing of the child or young person weighed against any likely adverse effect that could result from sharing the information);
3. That sharing this information with the Named Person service provider would **not prejudice the conduct of a criminal investigation or the prosecution of any offence**. (Such circumstances will be rare and will involve close partnership working with Police Scotland and the Crown Office Procurator Fiscal Service.) If information is not shared, the information holder will need to consider the likely impact on the child's wellbeing.

If these three tests are met, and there are no other legal restrictions, then the Named Person service provider must be given relevant and proportionate information to help an identified Named Person to carry out their functions.

- 3.13 Where there is a Named Person in place, then all **wellbeing** concerns that you have about a child or young person should be shared with them, after discussion with your Line Manager/ Supervisor.
- 3.14 At each stage in the process, consideration must be given to whether **Child Protection** measures should be implemented.
- 3.15 On some occasions, it may also be appropriate to share information with other organisations which may hold additional information and/or provide you with further help, advice, support and/ or assistance.
- 3.16 Whilst there is a duty on you to share information with certain other practitioners, services and/or agencies, equally there is a duty on them to share information with you.
- 3.17 Information must be shared with SCRA if it is considered that it might be necessary for a compulsory supervision order to be made in relation a child.

## ii. **What** information should I share?

- 3.18 Only share information that you consider **relevant, necessary, legitimate, appropriate and proportionate** to your worry or concern.

You should share information which:

- Helps you answer the *five* key GIRFEC questions;
- Clearly identifies the child or young person you are worried or concerned about;
- Relates directly to your current worry or concern;
- Describes the child's current living and family circumstances; and
- You consider to be relevant.

- 3.19 You need to exercise **professional judgement**; adopt a **common sense approach**; and only share information on a **need-to-know basis**.
- 3.20 In addition the decision to share information will be informed by historical and current information contained in case files and/or electronic record systems. This information will be used to ensure you have all the necessary and relevant information.

### iii. **How should I share information?**

- 3.21 You must comply with your agency's Data Sharing Code and protocols. You can contact your agency's Information Security Officer if you need further advice on the secure transfer of information.
- 3.22 In practice you may be sharing information verbally face-to-face with other practitioners; over the telephone; in reports/ assessments; and/ or at meetings. If you are doing so via fax and/or by e-mail, you should ensure these networks are secure.
- 3.23 Sensitive and/ or confidential information should only be transferred securely. Where practitioners require to send confidential, sensitive or personal information via email, advice should be sought from your agency's ICT services. You should follow your own organisation's guidance on secure transfer of information.
- 3.24 NHS Greater Glasgow and Clyde (GG&C) protocol for information sharing with Councils (2013) and NHS GG&C Email Usage Policy (2015) provides guidance for health staff.
- 3.25 When sharing information, you should tell the recipient exactly what information you are providing; why you are providing this information; what you would be proposing to do with this information; who else it may be shared with. You should only share information on a need-to-know basis. You may be asked to support this in writing.

### iv. **What should I be recording when I share information?**

- 3.26 When you are actively sharing information you should record this in the child or young person's case file notes and/ or any electronic system. You should follow your service/ agency policies on recording information.
- 3.27 You should also be recording any circumstances where information is **not being** shared and the reason for that. You should also record any circumstances where there is a refusal to share information and the reason for that too.
- 3.28 You should ensure that you record this clearly, accurately and concisely. You should ensure that all this information is kept safe, secure and that there is no unauthorised access to this information.



**v. What if I decide **not to share** information?**

- 3.29 If you are worried or concerned about a child or young person's wellbeing, you should have alerted your Line Manager/ Supervisor.
- 3.30 You should also be actively sharing information with the child or young person's Named Person (and if already appointed and/or known the Lead Professional). You may also be sharing information with certain other practitioners, services and/or agencies involved with the child, or young person and their family. However, in some circumstances, you may decide not to share information, albeit this would be the exception, as opposed to the rule.

If you decide **not to** share information, then you must ask yourself the following three questions:

- What are my reasons for deciding not to share information?
- What harm could result if I do not share information? And
- What are the implications for the child or young person, for me and/or my service, if I decide not to share information?

- 3.31 The decision **not to** share information should be properly recorded following your agency/ service guidance on recording.

- 3.32 It is a common misconception that data protection legislation prevents you from sharing personal information and in some cases sensitive personal information where you are worried or concerned about a child or young person's wellbeing. It does not. It actually empowers you. In these circumstances, you should share information.**

**If any concerns arise that the child may be at risk of significant harm, it is essential that child protection procedures are followed immediately and Police and/ or Social Work contacted without delay.**

**3.33 RCPC Guidance: Effective Communication between Agencies and Professionals**

Must be followed in situations where a member of staff from one agency has asked a member of staff from another agency to carry out a specific task.

Information is **likely to be relevant** to the exercise of the functions of the Named Person where an information holder considers that the information is likely to help the Named Person promote, support or safeguard the wellbeing of a child or young person by:

- (a) Advising, informing or supporting the child or young person, or a parent of the child or young person;
- (b) Helping the child or young person, or a parent of the child or young person, to access a service or support;
- (c) Discussing, or raising, a matter about the child or young person with a service provider or relevant authority; or
- (d) Other functions that a Named Person carries out in relation to a child or Young Person.

The test to determine whether information **ought to be provided** is in 2 main parts:

- (a) **Views of the child or young person** – the information holder must, where reasonably practicable, seek and take into account the views of the child or young person.

Examples of where it might not be reasonably practicable to obtain the views of the child or young person may be because the child cannot be found; the child is unable to express their view; or because obtaining the views would not be possible without compromising the child's wellbeing. The information holder will need to clearly record and explain why they did not seek and consider the child's views.

This does not mean, however, having to comply with the child's wishes. Where the information holder makes a decision to share specific information against the wishes of the child they should record what that information is, what the child's views are, and why they decided to share the information.

- (b) **Likely benefit** – the information holder must consider whether the likely benefit to the wellbeing of the child or young person outweighs any likely adverse effect that could result from sharing the information.

In weighing this up and reaching a decision, the information holder should use their judgement, experience and professional guidance.

## 4. Consent

**‘any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed’**

- 4.1 If you are working with a child, young person and/or their family and you do not have any concerns about a child or young person’s **wellbeing**, you may feel it appropriate to rely on consent, as a condition to allow you to share information.
- 4.2 Consent is most likely required where:
- Confidential information is to be shared, without a clear legal basis; and/ or
  - Individuals may be expected to object.

### 4.3

**Consent should only be sought when the individual has a real choice over the matter.**

**If you have a genuine, professional concern in relation to a child or young person’s wellbeing that you believe must be shared with another service, agency and/or practitioner with or without consent, there is no requirement to seek consent and you should rely on one of the other conditions for processing (please see above).**

**If, in your professional judgement, there is a need to share information – consent is not necessary.**

- 4.4 Good practice indicates that **where possible** consent will be sought for the sharing of information. However, there will be circumstances where information will be shared without consent. As such, you should be careful about offering individuals a ‘choice’ if the information sharing is going to take place regardless of their wishes, for example where it is required by statute or is necessary because of wellbeing concerns.
- 4.5 Parents, carers and young people should be given an explanation about the concerns the practitioner has and information about the duties and responsibilities of agencies towards children in need, and **where appropriate**, an explanation that information might sometimes have to be shared without consent.
- 4.6 Steps taken to seek consent and the outcome of this must be recorded in the child’s file. Where consent has not been sought or granted, the reasons for this must be recorded in the child’s file.

#### 4.7 What types of consent should be considered?

There are two key principles involved in consent, as it applies to information sharing between practitioners, services and/ or agencies.

- **Informed Consent** – the individual (child or young person and if appropriate their parent/ carer) must understand what is being asked of them and must give their permission freely. Information should be provided of the possible consequences of withholding information; and
- **Explicit Consent** – the individual (child or young person and if appropriate their parent/ carer) positively gives their consent for their information to be shared.

- 4.8 You must record the granting of consent, when and why it was supplied for future reference. Details of refused or withdrawn consent should also be recorded; together with any subsequent reviews of consent.
- 4.9 **Implied consent** is not sufficient for this type of information sharing. Implied consent simply means that the individual (child or young person and if appropriate their parent/carer) has not explicitly said they do not agree to their information being shared; so it is inferred that they do agree to their information being shared.
- 4.10 Consent (explicit consent for sensitive personal data) is one of the conditions the DPA provides to legitimise processing.
- 4.11 There must therefore be some form of active communication where the individual knowingly indicates consent. Whilst consent will provide a basis on which organisations can share personal information, the Information Commissioner recognises that it is not always achievable or even desirable.
- 4.12 If you are going to rely on consent as your condition you must be sure that individuals know precisely what information sharing they are consenting to and understand its implications for them. They must also have genuine control over whether or not the information sharing takes place.

#### 4.13 Who can give consent?

- **Children under the age of 12** – Where the child or young person is under the age of 12, consent for information sharing should be sought from a parent/ carer. However, the child or young person has a right to be kept informed and to participate in the process if possible. In circumstances where you consider a child or young person under 12 to have the capacity to understand *informed consent* and where there is difficulty in relationships with their parents/ carers, then a request by the child or young person that consent should not be sought from their parents/ carers should be respected, wherever possible.

- **Children from age 12 – 15** – Children and young people from the age of 12 are presumed to have the full mental capacity to give *informed consent* and to take decisions in their own right. Children and young people age 12 – 15 are presumed to have a sufficient level of understanding of the nature of consent and its consequences and you should seek their consent. However, if this is not the case or you are in any doubt, you should seek consent from their parent/ carer or other person with legal authority to act on behalf of the child or young person.
- **Children from 16 – 18** – Parental rights and responsibilities largely cease when a child is aged 16. The exception to this is a parent/ carer's responsibility to continue to provide guidance to their child from age 16 – 18. In these circumstances, you should seek to keep their parent/ carer or guardian involved in issues affecting their child or young person, but only to the extent that this is compatible with the rights and autonomous choices of the child or young person.

### How should I ask for, obtain and record consent?

- 4.14 Where you decide it is appropriate to seek consent to information sharing, you should make sure that consent is given on an **informed basis** by explaining:
- The purpose for which the information is to be shared
  - What information is to be shared
  - With whom it is to be shared
- 4.15 You should obtain the consent of the child or young person (and if appropriate their parent/ carer) to share their information when seeing them for the first time, or when you decide that another practitioner, service and/or agency input is required.

### What should I do if consent to information sharing is refused?

- 4.16 If you have decided that there is a need to seek consent and/or that the situation is not one where information can be shared under any of the other criteria stipulated in Schedule 2 or Schedule 3 of the DPA, you should not share that information without consent.
- 4.17 You may in the future re-visit this decision if there are changes to the child or young person's **wellbeing** situation or if risk is present. Consent is most likely required where:
- Confidential information is to be shared, without a clear legal basis; and/or
  - Individuals may be expected to object.
- 4.18 In some cases, the child or young person (and if appropriate their parent/ carer) may refuse to give consent. If consent is refused then, unless there are other factors about the child or young person's ability to understand the implications of refusal, or risk exists, then in the first instance, the child or young person's right to refuse must be accepted and recorded.

- 4.19 Where there is doubt about the child or young person's capacity and understanding, or risk exists, you should **weigh up the balance between the child or young person's right to privacy and their wellbeing**. In these circumstances, you should consider whether there remains a need and/or justification to share information without consent, despite permission to share being withheld.

**The following indicators may help you decide not to seek consent:**

- Where there is a perceived risk to a child or young person's **wellbeing**, which may, if not addressed, lead to harm
- When a child or young person is believed to have been abused or at risk of harm
- Where there is evidence of serious public harm or risk of harm to others
- Where there is evidence of a serious health risk to the child or young person
- For the prevention, detection or prosecution of crime
- When instructed to do so by the court; and
- Where there is a statutory requirement, e.g. when making a referral to SCRA when it might be necessary for a compulsory supervision order to be made or where information is required by a Children's Reporter as part of their investigation of a child or young person referred to them.

- 4.20 It is important that the basis for sharing information *or not* sharing information is recorded and noted in the child or young person's case file notes and/or electronic file and that the child or young person (and if appropriate their parent/ carer/ guardian) is informed of the decision.
- 4.21 **Consent should only be sought when the individual has a real choice over the matter. If you have a genuine, professional concern in relation to a child or young person's wellbeing that you believe must be shared with another service, agency and/or practitioner with or without consent, there is no requirement to seek consent and you should rely on one of the other conditions for processing as outlined above.**

## What if consent is withdrawn?

4.22 Children and young people (and if appropriate their parent/ carer) have the right to withdraw consent for information sharing. If they withdraw their consent to sharing their information, the considerations about sharing without consent will still apply.

4.23 In these circumstances, you should:

- Fully explain the consequences to the child or young person (and if appropriate their parent/ carer)
- Advise your Line Manager/ Supervisor
- Record the decision in the child or young person's case file notes and/or electronic file; and
- Advise any other practitioner, service and/or agency receiving information that consent has been withdrawn and that they should cease processing the information from that point onwards.

4.24 A child or young person (and if appropriate their parent/ carer) cannot withdraw consent retrospectively. If wrong information has been shared, the child or young person has the right to ask for that wrong information to be corrected. The receiving practitioner, service and/or agency should be notified accordingly and the information should be corrected.

## What if someone is unable to provide informed consent?

4.25 If a child or young person (and if appropriate their parent/ carer) cannot give consent to share information you should ask yourself the following four basic questions:

- a) Does the child or young person (and if appropriate their parent/ carer) understand the nature of consent and its consequences?
- b) Is there a legitimate need to share information?
- c) Will failure to share mean that assistance and support will not be provided? And
- d) Will the child or young person be at risk?

4.26 Where the child or young person (and if appropriate their parent/ carer) is deemed not to have capacity, you should also record the following in the child or young person's case file notes and/or electronic file:

- Why the decision was made
- Who was involved
- The purpose of sharing the information; and
- What information was shared, with whom and the date

4.27 You should inform the recipient of the information on what basis the decision to share the information was made. You should always endeavour to ensure that anyone lacking capacity to consent to share their information understands the implications of their information being shared.



- 4.28 The parent/ carer should also be informed, unless this might place the child or young person at greater risk of harm and/or abuse, e.g. the parent/ carer is a factor in such concerns.

### What about sharing information pre-birth?

- 4.29 You may also be worried or concerned about the **wellbeing** of an unborn child. In these circumstances, you should try to involve the expectant parents in decisions about sharing information, unless this would increase the risks to the unborn child.
- 4.30 Where you have a worry or concern about foetal development, or the mother's health, or the future wellbeing of the child when born, you should share information. This includes sharing information prior to the birth of a child to ensure planning during the pregnancy, which will inform protective planning from the moment of birth.
- 4.31 Practitioners caring for a pregnant woman should always consider if the unborn child may be endangered, or its future wellbeing harmed by the adult's condition, behaviour or lifestyle. In these circumstances, child protection procedures must be followed.
- 4.32 If a decision is taken to share information about an unborn child, the pregnant woman should be informed and this decision should always be recorded. The recipient of the information should also be informed of why it was decided to share the information.

### Do I always need to seek consent? – No, not always.

- 4.33 The Information Commissioner has said that:

**“Where a practitioner believes, in their professional opinion, that there is a 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. 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 DPA should not be viewed as a barrier to proportionate sharing.”**

- 4.34 In such cases, where information will be shared, consent should not be sought, as to do so would give the subject (child or young person and/ or their parents/ carers) a false belief that they can control the decision, which they cannot.
- 4.35 In such circumstances, the child, young person and/or their parents/ carers should be informed of the intention to share information and the reasons why, unless by doing so would further expose the child or young person to risk or hamper a police investigation.

- 4.36 This must be recorded in the child or young person's case file notes and/ or in an electronic file.

**Key points on Consent:**

- Do not seek consent in situations where you are likely to share information in any case (i.e. where you are concerned about the *wellbeing* of a child or young person).
- Consent can be difficult and it 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; and
- Consent must always be recorded.

## 5. Confidentiality

Section 26(11) of the Children and Young People (Scotland) Act 2014 permits information sharing in breach of a duty of confidentiality in relation to the information sharing duties in the legislation – however there are a number of considerations before doing so (see below). This section of the legislation permits professionals under a duty of confidentiality to legally disclose relevant information without the information provider's consent, where disclosure of that information has been considered and meets the tests set out in the relevant section of the legislation. Such information can be shared where it is necessary to promote, support or safeguard the child's wellbeing. This would include taking into account the child's views and understanding the likely effect of sharing on the child's wellbeing.

### Practitioners must work within the limitations and constraints of Confidentiality.

5.1 The child's right to confidentiality and privacy is defined as a *qualified right* which needs to be balanced with the rights and freedoms of others. **If a child is considered to be at risk of harm, relevant information must always be shared for the child's protection.**

5.2 The circumstances making the sharing of confidential information lawful are:

- Where the individual to whom the information relates has consented;
- Where disclosure is in the public interest/ function; and
- Where there is a legal duty to do so.

5.3 **It is accepted that where there is a risk to a child or young person's wellbeing which may lead to harm, then it is acceptable to share confidential information in the best interest of the child or young person and/ or in the public interest.**

**Does all information have to be kept confidential? – No. Not all information is confidential. Confidentiality is not an absolute right.**

5.4 Information that is considered confidential is usually of some sensitivity; is neither lawfully in the public domain nor readily available from another public source; and is shared in a relationship, where the person giving the information understood that it would not be shared with others.

5.5 The duty of confidentiality requires that, unless there is a statutory requirement to use information that has been provided in confidence or, a court orders the information to be disclosed, it should only be used for the purposes that the subject (child or young person) has been informed about and has consented to.

5.6 This duty of confidentiality is not absolute but should only be overridden if you, as the holder of the information, **can justify the information being shared as being in the public interest (e.g. to protect wellbeing and/or others from harm).**

## What should I consider when deciding to share information given to me in confidence?

- 5.7 In deciding whether it is justified, or not, to share information given in confidence, you should first **consider the harm that might result from failing to disclose the information against the harm that could result from a breach of confidence.**
- 5.8 Any sharing of information should be relevant, necessary, legitimate, appropriate and proportionate and go no further than the minimum necessary to achieve the public interest objective of protecting a child or young person's wellbeing.
- 5.9 Acting in the child or young person's best interest and/or in the public interest is a defence to a concern of breach of confidentiality, provided it can be demonstrated that the information shared was **necessary** and **proportionate**.

### Key points on Confidentiality:

- Practitioners must work within the limitations and constraints of Confidentiality
- Confidentiality does not prevent you from sharing a worry or concern about a child or young person's *wellbeing*
- Confidentiality is not an absolute right (it is a qualified right) - never promise that information will be kept confidential
- Acting in the public interest can be a defence to an accusation of breach of confidence – but this must be justified

## **6. Information Security**

- 6.1 The DPA obliges agencies to have appropriate technical and organisation measures in place to protect the security of information which is being shared.
- 6.2 Consideration should always be given to any risk to security in relation to information sharing and the impact that this could have on both the individual and the agency.
- 6.3 Personal information should only ever be accessed or shared on a 'need to know' basis. Information must be afforded a suitably high level of security when it is being shared, particularly if this is sensitive.
- 6.4 Sensitive and/ or confidential information should only be transferred securely (for example, always identify the person you are communicating with; do not give verbal information where you can be overheard; do not leave information on answering machines or voicemail, do not use fax if at all possible etc.) Where practitioners require to send confidential, sensitive or personal information via email, advice on encryption methods and software should be sought from your agency's ICT Service.
- 6.5 NHS Greater Glasgow and Clyde (GG&C) protocol for information sharing with Councils (2009) and NHS GG&C Email: acceptable use policy (2010) provides guidance for health staff.

## 7. Appendices

- a) Quick Practice Guide
- b) Conditions for Lawful Processing
- c) Information Sharing Summary
- d) Information Sharing Checklist
- e) ICO Letter
- f) Extract from “National Guidance for Child Protection in Scotland 2014”
- g) Extract from “Protecting Children and Young People: Framework for Standards”
- h) Flowchart – Renfrewshire Children’s Services Partnership (RCSP) Consent Process
- i) Flowchart – General Consent Process
- j) Extract: Children and Young People (Scotland) Act 2014

## Appendix (a) - Quick Practice Guide

### GIRFEC – Information Sharing

#### Why do we need to share information?

Relevant information must always be shared if a child is considered to be at risk of harm. Sharing information that is *relevant* and *proportionate* about children who are at risk of harm is fundamental to keeping children safe.

Any sharing of information should be **relevant, necessary, legitimate, appropriate** and **proportionate** and go no further than the minimum necessary to achieve the public interest objective of protecting a child or young person's wellbeing.

As GIRFEC is about early intervention and prevention it is very likely that information may need to be shared before a situation reaches crisis.

The circumstances making the sharing of information lawful are:

- where the individual to whom the information relates has **consented**;
- where disclosure is in the **public interest**; or
- where there is a **legal duty** to do so (e.g. if it is considered that it might be necessary for a compulsory supervision order to be made in relation a child).

#### What should I consider before sharing information?

- Remember that the DPA is not a barrier to sharing information. It provides a framework to ensure that personal information about living persons is shared appropriately.
- Be open and honest with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so.
- Please ask for advice from your Line Manager if you are in any doubt.
- Share with consent where appropriate and, where possible, respect the wishes of those who do not consent to share confidential information. You may still share information without consent if, in your judgement, that lack of consent can be overridden in the public interest. You will need to base your judgement on the facts of the case.
- Consider safety and well-being: Base your information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.
- **Relevant, necessary, legitimate, appropriate and proportionate**: Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.
- Keep a record of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose. If you decide not to share, then record why.

## **What about consent?**

You don't always have to rely on consent to share information. There are other 'conditions' which allow information to be shared even where there is no consent, such as

- Where it is in the public interest, or
- Where it is for legitimate purposes of the agency / Council or the party with whom you are sharing the information (and it is not prejudicial to the Child),

Sharing confidential information without consent will normally be justified in the public interest:

- When there is evidence or reasonable cause to believe that a child is suffering, or is at risk of suffering, significant harm;
- To prevent significant harm to a child, including through the prevention, detection and prosecution of serious crime.

Practitioners must decide whether sharing information is a necessary and proportionate response to the need to protect the child in question. The decision making process must weigh up what might happen if the information is shared against what might happen if it is not shared.

## **What about confidentiality?**

Information which is not confidential may generally be shared where necessary for legitimate purposes. There will not be a breach of confidence where there is explicit consent to the sharing.

Confidential information can be lawfully shared, even if this has not been authorised, if this can be justified in the public interest (as above).

## **Remember:**

Nothing in Scottish, UK and/or European Law and/ or in the Scottish child protection legislative, policy and/or practice environments prevents you from sharing personal information and in some cases sensitive personal information where you are worried or concerned about a child or young person's wellbeing.

If a practitioner is worried or concerned about a child or young person's wellbeing, concerns should be shared quickly, efficiently and effectively.

It is vital that decisions to share information are formally recorded - including the rationale behind making the decision to share the information. This will also 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.



## Appendix (b) – Conditions for Lawful Processing

### **Schedule 2**

Personal information can only be lawfully processed if ONE of the following conditions is met:

- The data subject has **consented** to the processing
- The processing is necessary for compliance with a **legal obligation**
- The processing is necessary to **protect the vital interests** of the data subject
- The processing is necessary for the performance of a **contract** to which the data subject is a party
- The processing is necessary for the **administration of justice**
- The processing is necessary to pursue a **legitimate interest** but this must not prejudice the rights and freedoms or legitimate interests of the data subject.

### **Schedule 3**

Sensitive personal information be only be processed when at least one condition from Schedule 2 is met and one of the following is **also** met:

- The data subject has given **explicit consent** to the processing
- The processing is necessary in terms of **employment law**
- The processing is necessary to protect the **vital interests** of the data subject or any other person when consent cannot be obtained
- The information has already been made **public** as a result of steps deliberately taken by the data subject
- The processing is necessary for **legal proceedings**
- The processing is necessary for the **administration of justice** or for the exercise of any functions conferred by enactment

## **Appendix (c) – Information Sharing Summary**

### **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
  - Proportionate
- Share Information relating only to your worry or concern – reduce or remove unnecessary information.
- 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; Named Person; Lead Professional or other Key Workers or SCRA

### **How to Share**

- Share Information verbally, face-to-face, at meetings, written reports or assessments
- Share information by secure methods
- Ensure you record information sharing accurately

## Appendix (d) - Information Sharing checklist

### **Is the sharing justified?**

- Do you think you should share the information?
- Have you assessed the potential benefits and risks to individuals and/or society of sharing or not sharing?
- Do you have concerns that an individual is at risk of serious harm? Do you think that it might be necessary for a compulsory supervision order to be made in relation a child?
- Do you need to consider an exemption in the DPA to share?

### **Do you have the power to share?**

- The type of organisation you work for.
- Any relevant functions or powers of your organisation.
- The nature of the information you have been asked to share (for example was it given in confidence?).
- Any legal obligation to share information (for example a statutory requirement or a court order).

### **If you decide to share**

- What information do you need to share?
  - Only share what is necessary.
  - Distinguish fact from opinion.
- How should the information be shared?
  - Information must be shared securely.
  - Ensure you are giving information to the right person.
- Consider whether it is appropriate / safe to inform the individual that you have shared their information.

## **Record your decision**

Record your information sharing decision and your reasoning – whether or not you shared the information.

If you share information you should record:

- What information was shared and for what purpose.
- Who it was shared with.
- When it was shared.
- Your justification for sharing.
- Whether the information was shared with or without consent.

## **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. 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 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**

**Information-sharing for child protection: general principles**

- 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.
- 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.

## Appendix (g) – Extract from “Protecting Children and Young People: Framework for Standards”

Published in 2004, the Framework for Standards translates key messages from the CHILDREN’S CHARTER into child protection practice for all practitioners, services and/or agencies, by providing *eight* high level generic practice statements, all supported by additional narrative/ text. Standard 4 relates directly to Information Sharing, Confidentiality and Consent.

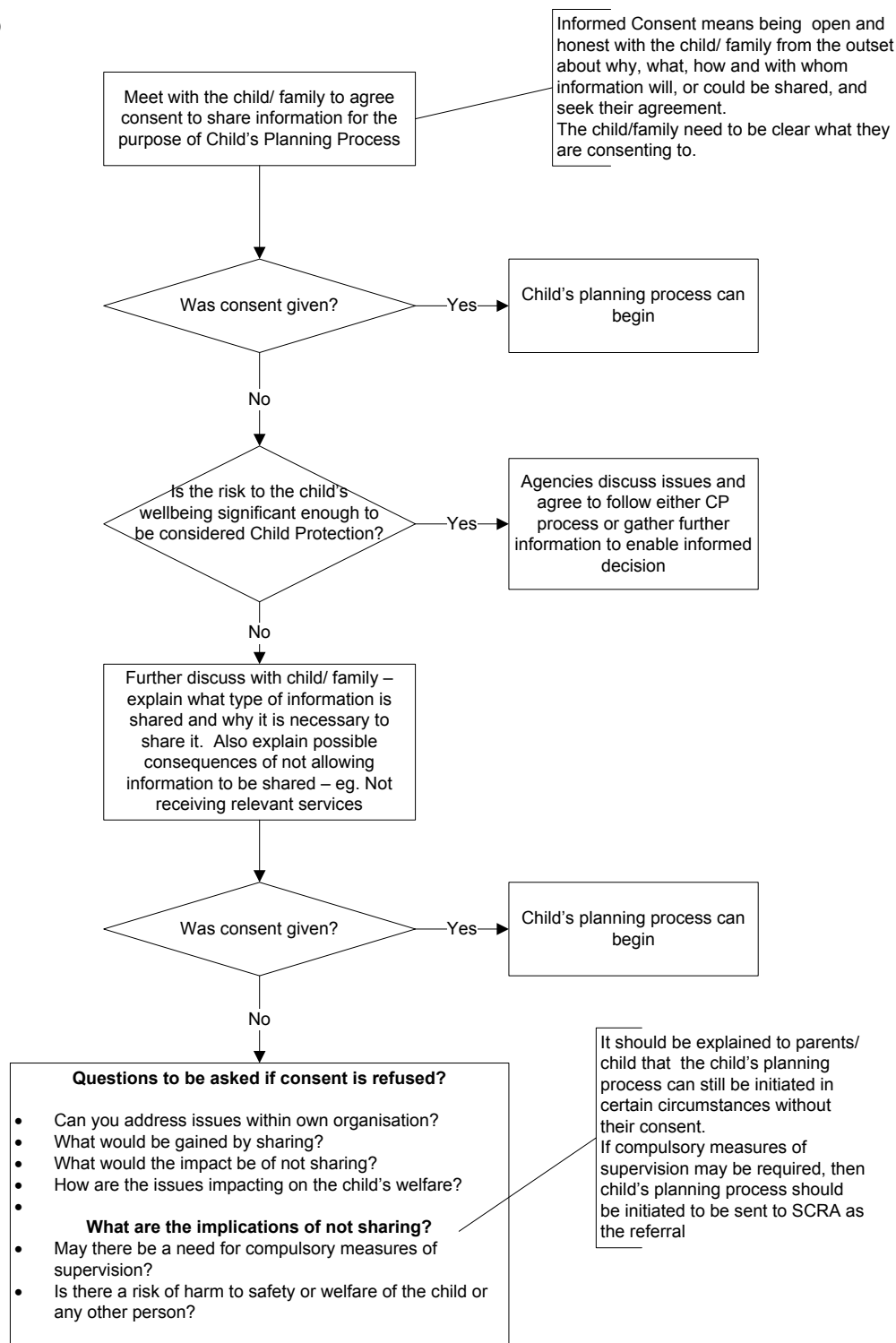
Agencies and professionals share information about children where it is necessary to protect them.

1. Professionals discuss any concerns and relevant information about a child or their circumstances with those other professionals or agencies with statutory responsibilities for the protection of children when it is in the child’s best interests to do so;
2. The needs of each child are the primary consideration when professionals decide how best to share information. All decisions and reasons for them are recorded;
3. Agencies actively manage and support the sharing of information recognising that confidentiality does not prevent sharing information where a child is in need of protection;
4. Professionals ensure that parents and children are made aware of, and check it is understood, what information:
  - Agencies hold
  - How it is stored
  - With whom it may be shared; and
  - Under what circumstances information may be shared with others without their consent;
5. Professionals identify what information each child and their parents are content to share freely
6. Professionals take account of each child and their parent’s views when deciding when to share information without their consent and can provide reasons and explain to them when they have shared information without consent; and
7. Agencies and professionals store information securely.



## Appendix (h): Renfrewshire children's services partnership consent process

### Informed consent to share information



***When considering sharing information without consent, practitioners should balance the service users right to privacy against their protection (or protection of others) from harm.***

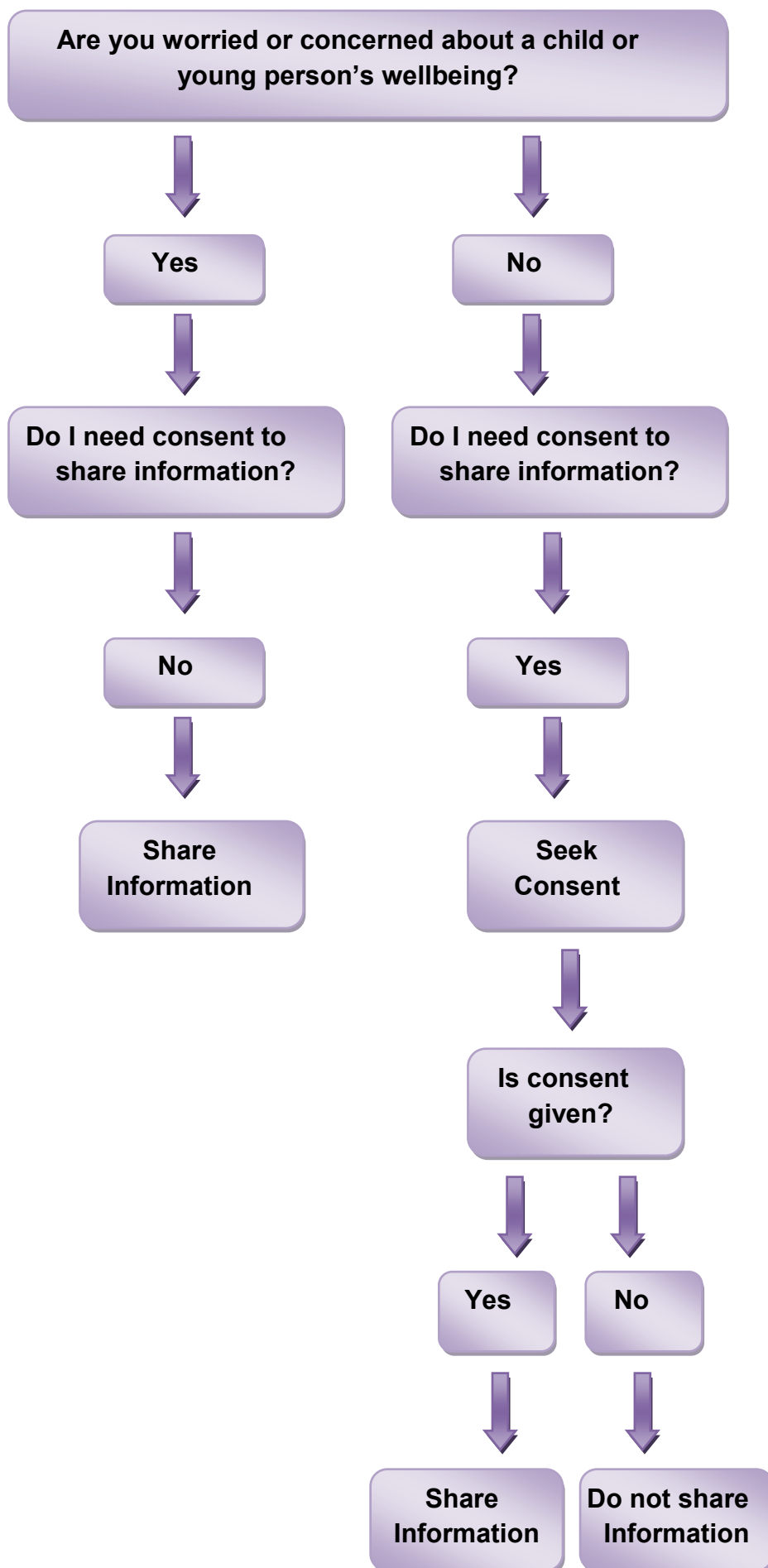
***If there is reasonable professional concern that a child or young person may be at risk of harm this will always override a professional or agency requirement to keep information confidential. All service providers have a responsibility to act to make sure that a child or young person whose safety or welfare may be at risk is protected from harm. Parents, children and young people should always be told this.***

***If there is a risk to any individual and sharing information is the only way of minimising that risk, the information must be shared. Any action taken without consent must be proportionate to the potential risk.***

March 2016

## Appendix (i) – Consent Flowchart

Where there is an immediate concern to safety information **MUST** be shared



## Appendix (j) - Children and Young People (Scotland) Act 2014

### **The duties in the Act will be in force from August 2016**

Section 26 of the Children and Young People (Scotland) Act 2014 deals with Information Sharing.

This legislation sets out that service providers/ relevant authorities must share information in relation to children and young people if it considers that:

- The information is likely to be relevant to the exercise of the Named Person role and functions;
- The information ought to be provided for that purpose; and
- The provision of the information would not prejudice the conduct of any criminal investigation or the prosecution of any offence.

In establishing whether information ought to be shared, the 'information holder' should, so far as is reasonably practicable, ascertain and consider the views of the child or young person (taking into account their age and maturity). The 'information holder' **'can only decide that information ought to be shared if the likely benefit to the Child or Young Person's wellbeing outweighs any likely adverse effect on their wellbeing.'**

The legislation also provides that the Named Person may share information with a service provider/ relevant authority which is necessary or useful to help them carry out their Named Person role.

Information can be shared for the purposes set out in the Act if it breaches a duty of confidentiality, but the legislation does not permit or require information to be shared which would breach any legal prohibition or other restrictions on disclosure.

Section 27 of the 2014 Act sets out that where a person ("the recipient") receives information and that has breached a duty of confidentiality and the recipient knows it has breached a duty of confidentiality, then the recipient must not then share that information with anyone else (a third party), unless they are permitted or required to provide that same information to the third party by virtue of any enactment or any rule of law.