

To: Education and Children's Services Policy Board

On: 24 August 2017

Report by: Director of Children's Services

Heading: Children and Young People (Information Sharing) (Scotland) Bill

1. Summary

- 1.1 The Children and Young People (Scotland) Act 2014 ('the Act') received Royal Assent on 27th March 2014. Parts 4 and 5 of the Act (concerning provision of the Named Person and the Child's Plan respectively) were scheduled to be implemented in August 2016. However, they were halted following legal challenges about the safeguards for the sharing of personal information.
- 1.2 In July 2016, the Supreme Court ruled that the Named Person proposals for sharing information were in breach of human rights laws. The Scottish Government responded by delaying implementation while it developed legislative amendments to ensure lawful information sharing processes.
- 1.3 Renfrewshire Council and its planning partners had made extensive preparations for the implementation of the Named Person Service (of which provision for the Child's Plan is a part) prior to the Supreme Court ruling. These plans were suspended in July 2016 while we awaited further advice from the Government.
- 1.4 The Children and Young People (Information Sharing) (Scotland) Bill was published on Tuesday 20 June. It will introduce a duty on public and other services to consider if the sharing of information will promote, support or safeguard the wellbeing of a child or young person. It will also ensure that the sharing is compatible with current law. The earliest the Bill can be enacted is August 2018.
- 1.5 The Government will produce Statutory Guidance for Information Sharing, however, no indication of timescales has yet been provided.

- 1.6 The GIRFEC Project Board is currently revising its implementation plans for Parts 4 and 5 of the Act in response to the new Bill. As yet there is no firm date for the commencement of the Bill, however, partners are working towards readiness for implementation of our Named Person Service in August 2018.
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2. **Recommendations**

The Education and Children's Services Policy Board is asked to note:

- 2.1 The implications of the new Information Sharing Bill for Renfrewshire's Children's Services.
- 2.2 That there is a multi-agency action plan in place to ensure preparation for compliance with the Bill and delivery of the Named Person Service.
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3. **Background**

- 3.1 The Children and Young People (Information Sharing) (Scotland) Bill is the Scottish Government's response to the Supreme Court judgement in 2016 regarding the provisions in Part 4 and 5 of the Children and Young People (Scotland) Act 2014. The Supreme Court ruled that the information sharing provisions within the Act were incompatible with human rights legislation. Specifically, the Court found that there were insufficient safeguards for the protection of personal and sensitive information.
- 3.2 The Supreme Court judgement emphasised the need for clarity about the rules for information sharing and guidance about how to assess proportionality in relation to the disclosure of personal information.
- 3.3 The Court also ruled that care should be taken to emphasise the voluntary nature of the Named Person Service to avoid the impression that failure to co-operate might be taken as evidence of a risk of harm.
- 3.4 The new Bill will introduce a duty on public and other services to consider if the sharing of information will promote, support or safeguard the wellbeing of a child or young person. It will also require that any sharing of information is compatible with current laws re data protection, human rights and the law of confidentiality.
- 3.5 Section 26B of the Bill provides for a 'Code of Practice' in relation to the sharing of information between service users and professionals. The Code sets out the steps practitioners must undertake when they share (or consider sharing) information in terms of their functions under Parts 4 and 5 of the Children and Young People (Scotland) Act 2014. In particular the Code specifies safeguards applicable for the sharing of information.

- 3.6 The Code requires that those sharing (or considering sharing) information must act in accordance with the law and in a manner which is proportionate to the aim being pursued. The Code includes a strong presumption that service users will be informed before information is shared (or in some circumstances as soon as possible thereafter) and that explicit consent will be obtained *unless there is a legal basis for not doing so*.
- 3.7 The Code describes the steps practitioners must take to inform service users that their personal or sensitive personal information *may* be shared; inform service users *before* their information is shared and to obtain consent; and if sharing has occurred without prior knowledge or consent, to inform service users as soon as practicable after the fact. Practitioners must record their actions and reasoning (including relevant legal basis) for all actions relating to the sharing of personal or sensitive personal information.
- 3.8 The Code of Practice does not introduce new rules for information sharing. Rather, it describes the relevant law (data protection, principally the Data Protection Act 1998, the law of confidentiality and human rights law) to which practitioners must comply when sharing personal information either with or without consent.
- 3.9 The Government have undertaken to issue statutory guidance to provide additional clarity about the legal basis for sharing information, however, there is no indication as yet about when this will be forthcoming.
- 3.10 Renfrewshire Children's Services had made comprehensive plans for the implementation of the Name Person Services prior to the Supreme Court decision. We are currently reviewing and updating the existing GIRFEC implementation plan to take account of the new Bill and ensure compliance with the new requirements.
- 3.11 While we await the Statutory Guidance, we will provide refresher training to all staff on information sharing laws to ensure clarity about the basis on which social work, health, education and other professionals supporting families share and receive information in their named person role.
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Implications of the Report

1. **Financial** - None.
2. **HR & Organisational Development** - None.

3. **Community Planning –**
Community Care, Health & Well-being - The appropriate sharing of sensitive personal information is necessary to promote, support and safeguard the wellbeing of some children and young people safe and this increases the likelihood of them becoming effective citizens who contribute productively to the communities in which they live.
Safer and Stronger - Sharing sensitive personal information between agencies and professionals is essential to keeping our most vulnerable children and young people safe from harm.
4. **Legal** - The Council's processes for sharing sensitive personal information must continue to be compliant with all relevant law. Compliance with the new Bill will require careful planning, implementation and oversight to avoid legal challenge.
5. **Property/Assets** - None.
6. **Information Technology** - None.
7. **Equality Opportunity and Human Rights Implications** – As the Bill was introduced to address human rights concerns, complying with its provisions will ensure human rights compliance.
8. **Health & Safety** - None.
9. **Procurement** – None.
10. **Risk** - It is essential that all potentially staff involved in the sharing of sensitive personal information are sufficiently trained to ensure they comply with relevant laws and follow local procedures.
11. **Privacy Impact** - None.
12. **CoSLA Policy Position** – None.

List of Background Papers

- (a) Children and Young People (Information Sharing) (Scotland) Bill and associated documents can be found here:
<http://www.gov.scot/Topics/People/Young-People/gettingitright/information-sharing>.

DH
4 August 2017

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