



getting
it right
for every child
in North Lanarkshire

Information Sharing
Interim Guidance

Education and Families
December 2019



Interim Information Sharing Guidance for practitioners working with children, young people and families in North Lanarkshire [not for NHS staff]

Staff using this guidance should note that it is interim guidance until the Scottish Government have completed national information sharing practice guidance for all practitioners as part of their current GIRFEC policy refresh.

1. Who is this guidance for?

This advice is for all frontline practitioners and managers, except NHS staff, working with children and young people who have to make decisions about sharing personal information on an individual basis. This may also include sharing parent and carer's information.

2. Why is this guidance needed?

The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 were introduced in May 2018. They introduce some new elements and considerations in relation to information sharing. The GDPR Principles we need to consider are:

Lawfulness

- We have identified an appropriate lawful basis (or bases) for our processing.
- If we are processing special category data or criminal offence data, we have identified a condition for processing this type of data.
- We don't do anything generally unlawful with personal data.

Fairness

- We have considered how the processing may affect the individuals concerned and can justify any adverse impact.
- We only handle people's data in ways they would reasonably expect, or we can explain why any unexpected processing is justified.
- We do not deceive or mislead people when we collect their personal data.

Transparency

- We are open and honest, and comply with the transparency obligations of the right to be informed.

It is important that you are aware of when and under what circumstances you can share relevant information about children and young people or others who may have an impact on the child or young person's safety and wellbeing. It is also important that you are aware of how the European Convention on Human Rights (ECHR) and the Common Law Duty of Confidentiality may impact on information sharing. Further detail on ECHR and the Common Law Duty of Confidentiality can be found in Appendix C of this guidance. Health professionals should also consider Caldicott principles.

3. Sharing Information

Sharing information is an essential part of your job when working with children and young people. How much information you share, with whom and when, can have a significant impact on individuals' lives. Information sharing aims to ensure that children and young people receive the right services at the right time to prevent a need from becoming more acute and difficult to meet.

Uncertainty about sharing information cannot be allowed to stand in the way of the need to keep children safe and to promote, support and safeguard their wellbeing. You must take responsibility for deciding what information should be shared, you cannot assume that someone else will pass it on. This is particularly important when there are concerns that a child or young person is, or is likely to be, at risk of harm. On many occasions, this will require you to seek and exchange personal information about children, young people and others.

Where you have a concern that a child or young person is, or is likely to be, at risk of harm or you are made aware of such a concern, you have a responsibility to share and exchange relevant information with other professionals. You should do so without delay and with confidence, following your own agency/service Child Protection/Adult Protection Procedures.

4. Key principles

The principles set out below are intended to help you to make the right decisions when sharing information about children, young people or their families with others. You should always use your professional judgement when making decisions about when and what information you share and record your justification for that decision. You should follow your organisational procedures or consult with your manager if in doubt.

Necessary

When taking decisions about what information to share, you should consider who you might need to share it with and how much information you need to release to ensure it is adequate to allow the 3rd party to do what is needed.

Relevant and proportionate

Only share information that is relevant to the specific circumstances that you are dealing with to improve the desired outcomes for the child or young person. Ensure you can justify why you consider it relevant and proportionate. If the information is not required by the other person to allow them you do their job then you do not have a legal reason to share it.

Accurate

Information should be accurate and up to date. It should clearly distinguish between fact and opinion. If historical information is included you should be able to explain why you have included it.

Timely

Information should be shared in a timely fashion to reduce the risk of missed opportunities to offer support or protection to a child.

Secure

Wherever possible, the information you share must be shared in an appropriate, secure way. You must always follow your Service's and Council Policy on security for handling personal information.

Recording

Information sharing decisions should be recorded. If the decision is to share, reasons should be recorded including why and what information has been shared and with whom, in line with your organisational procedures. (In line with the Council's own retention policy, the information should not be kept any longer than is necessary.)

If the decision is not to share, you must record the reasons for this decision and discuss them with the person who has requested the information.

Transparent

Where possible be transparent with the child, young person or family member informing them what information has been shared, who with and for what purpose as long as doing so would not put the child or young person or anyone else at increased risk.

When discussing the sharing of information with a child, young person or their family member you should provide them with a copy of Appendix D (Privacy Notice - Sharing your information, for children, young people and families) and refer to it during your discussion.

You should apply these principles every time you share information.

5. Sharing Information about others in a child or young person's life

You may hold information about other family members of the child or young person you are working with. You may wish to share some of this information to support the wellbeing of the child or young person or to improve their outcomes. Should you wish to share information about family members it must be necessary, relevant and proportionate to the needs of the child or young person. You must identify a suitable condition which will allow you to share the information. In most cases the 'Public Task' condition will apply. (See Section 6 for further information on lawful bases for processing of personal information).

However, Article 8 of the European Convention on Human Rights provides individuals with the right to have their privacy protected. This right, is not absolute and can be overridden in the interest of:

- the protection of other people's rights
- national security
- public safety
- the prevention of crime
- the protection of health.

This allows you to share information which is necessary to:

- protect a child or young person from a risk of harm
or
- meet the health or social care needs of a child or young person

and are in pursuit of legitimate aims.

Only share what is necessary, relevant and proportionate as outlined in Key principles, see section 4.

6. Sharing information using Public Task as a condition

Public Task is a condition of GDPR which allows you to share information without consent where it is necessary to share information to enable you to perform any of your organisations public tasks (public functions). Your organisation has clear privacy or data protection notices which

make people aware of how they use people's information. (Privacy Notice – Sharing your information for children, young people and families Appendix D.

The only exception is 'Special Category' information, see section 7 for guidance.

An example of the use of the public task condition would be a teacher sharing information about alleged bullying of a pupil with another teacher, as this falls within the duty of care a school would be expected to exercise towards all pupils. However, if the pupil disclosed that the bullying may be due to their sexual orientation, this additional information cannot be shared solely under the public task condition as it falls within the definition of 'Special Category' information. In such cases additional or alternative conditions for sharing would need to be used. Such as: it is necessary to protect the child's vital interests, for the purpose of the provision of health, social care or medical treatment or explicit consent. (These are explained further in the 'Special Category' information section that follows.)

7. Sharing Special Category information

Special Category information is information which includes aspects of a person's race; ethnic origin; political beliefs; religion; health; sex life; or sexual orientation.

Special Category information can only be shared under specific circumstances. The conditions you are most likely to rely on are:

- (a) the information sharing is necessary to protect the vital interests of the child, young person or another person. (Where an individual is at risk of significant harm, clear justification exists under GDPR legislation to support the sharing of special category information where this is necessary to prevent such harm.) **You would follow your organisations Child/Adult Protection Procedures if you were concerned that a child or young person was or was likely to be at risk of harm.**
- (b) The information sharing is necessary for reasons of substantial public interest. **You would use this condition if you were obliged to share information to comply with the law i.e. required by legislation or an order of the court.**
- (c) The information sharing is necessary for the provision of health, social care or medical treatment. **You would use this condition if it was necessary to share information in the treatment of a child or young person's health or where it was necessary to provide social care.**

- (d) The person has given explicit consent to their information being shared. **Consent should only be used as a condition of sharing when no other condition is available. For more information about using consent as a condition see Appendix B of this this guidance.**

Current Data Protection legislation is clear that, in Scotland children 12 years of age or over are presumed to be of sufficient age and maturity to make their own decisions for data protection purposes unless the contrary is shown. For children under this age decisions should to be made by whoever holds parental responsibility for the child.

8. When and how to share information

When deciding to or having been asked to share information, you should consider the following questions to help you decide how best to effectively share the information.

When

Is there a clear and legitimate purpose for you sharing information?



Yes – see next question



No – do not share

Does the information you share enable an individual to be identified?



Yes – see next question



No – you can share but should consider how you will share it

Does the information you share involve disclosing information about a child, young person or other person's race; ethnic origin; political beliefs; religion; health; sex life; or sexual orientation?



Yes – This is called 'Special Category' information and requires additional consideration as outlined in the 'Special Category' information section 7.



No – information will usually be shared under your organisations 'Public task' see the Public Task section 6.

Please see the flow chart in Appendix A of this guidance.

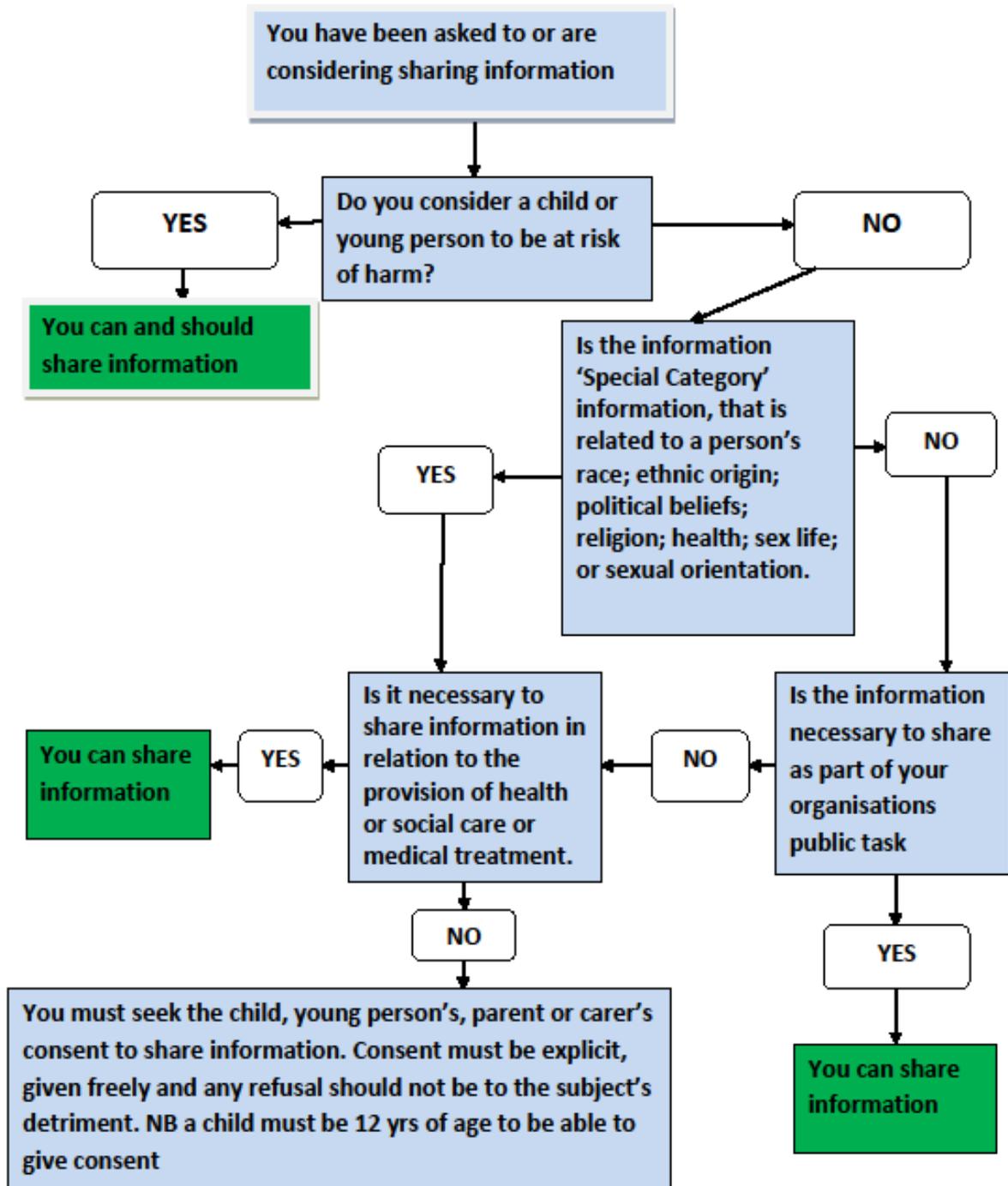
How

- Identify what specific information you need to share
- Distinguish fact from opinion
- Ensure that you are giving the right information to the right individual
- Ensure where possible that you are sharing the information securely
- Where possible, be transparent with the child, young person or family member, informing them what information has been shared, who with and for what purpose as long as doing so would not put the child or young person or anyone else at increased risk.

All information sharing decisions and reasons must be recorded in line with your organisational or local procedures.

If at any stage you are unsure about how or when to share information, you should seek advice on this from your line manager or subject expert. You should always ensure that the outcome of the discussion is recorded.

Appendix A INFORMATION SHARING CHILDREN AND YOUNG PEOPLE



Appendix B - Sharing information using consent as a condition

Consent should only be used as a condition of sharing when no other condition is available.

In general Public Bodies are unlikely to rely on consent as a condition, however if it is the only condition available to you, it can be used. When relying on consent, great care needs to be taken to ensure consent is given freely and that:

- the person fully understands they can refuse without any detriment
- it is not requested or given as a pre-condition to a service
- the right to withdraw consent is adhered to
- the right of the person to specify who the information can or cannot be shared with is respected
- a record of the consent being granted is kept.

New Data Protection law is clearer that an indication of consent must be unambiguous and involve a clear affirmative action (an opt-in). A person may consent to information being shared with a specific person or service but exclude other persons or services.

You must keep clear records to demonstrate consent. This can be by using a signed consent form, however it is permitted to obtain consent through a telephone conversation, provided that the information about the choice is fair, intelligible and clear, and you ask the person to indicate their consent in a clear manner. In such cases you must keep a record detailing how consent was given. There is no specified period of time for consent to be reviewed, however should any change in circumstances occur or if you need to share additional information or share with anyone not agreed to you should review the consent and seek it again.

A person now has a specific right to withdraw consent. You need to tell people about their right to withdraw, and offer them easy ways to withdraw consent at any time. You must also consider any request a person makes to have their information erased.

Consent is only appropriate if you can offer people real choice and control over how you use their information. If you cannot offer a genuine choice, consent is not appropriate. If you intend to share information regardless of whether consent is given or not, asking for consent is misleading and inherently unfair.

Appendix C

The European Convention on Human Rights (ECHR)

The ECHR has been in existence since the 1950s, but was given legal force in Scotland through the Human Rights Act 1998 and the Scotland Act 1998.

Article 8 of the Convention provides that:

- Everyone has the right to respect for their private and family life, their home and their correspondence.
- It is not an absolute right. It is a qualified right that allows a public authority to interfere where that interference is:
 - in accordance with law;
 - in the pursuit of a legitimate aim including the protection of Health and Morals; and
 - necessary in a democratic society

Sharing information which:

- is necessary to protect a child or young person from a risk or likely risk of harm
or
- is necessary to meet child or young person's Health and Social Care needs and are in the pursuit of legitimate aims.

The Common Law Duty of Confidentiality

All data given to health care professionals is given in confidence. For other professionals there may be circumstances where private and sensitive information is provided to you on a confidential basis. A person may have expressly stated that they were providing information confidentially, or confidentiality may have been implied because of the type of information being provided, or the circumstances in which it was given or received.

Therefore, you must only share confidential information where it is necessary and proportionate for you to share it.

A number of professional regulatory bodies have codes of practice in place which explain the duty of confidentiality as applicable to their members. Most common within a health and social care partnership would be the NHS Code of Practice.

Sharing information which is necessary for Health and Social Care is permitted where the general benefits to an individual, or to society, of the disclosure of confidential information, must outweigh the interests of both the public and the person who is the subject of the information.

You must make a professional judgement when sharing confidential information to consider if the benefits to the individual outweigh the interests of the public and that person. Where the information sharing is necessary for the provision of health and social care then in most cases you may share confidential information without consent, however this is a case by case decision that you must be able to justify. It is important that you record the reason for any decision you make.

Appendix D

Privacy Notice - Sharing your information, for children, young people and families.



Introduction

From time to time some children, young people or families may need help from other Council services or organisations to help them improve their wellbeing. To ensure that you or your child gets the right help, at the right time, we may need to share some of your information.

Partners work together to ensure that the services you receive are of good quality, effective and are delivered to meet your individual needs.

We will always tell you what information is to be shared, why it needs to be shared and who it is going to be shared with.

If anything changes with your circumstances or if we need to share additional information we will discuss this with you before we share it.

Using your personal information

In line with the General Data Protection Regulation (GDPR) we have produced this privacy notice to inform you how we deal with personal information as part of our statutory function as Education and Families.

The Council has a legal obligation to deliver effective education services to children, young people and adult learners in North Lanarkshire. In order to do this we need to collect personal information about children, young people and their families so that we can help them to learn and keep them safe.

The Council is a “controller” of the personal information you provide when enrolling for a nursery or school, applying for an education service or participating in groups or activities provided by Education and Families.

How do we share information?

We may share your information either through face to face discussions, over the telephone, by text, letter or email.

Information we collect from you about you and your child

We may ask for the following information:

- yours and your child’s name, address, date of birth, gender and your family contact details
- information about medical conditions, additional support needs, religion, ethnicity and other any information you may wish to provide about your family circumstances.

We require this information to ensure that children and young people are educated appropriately, supported, and that we take account of their health and wellbeing. We will also ask you to update this information when there are changes to your circumstances.

Why do we need this information?

- to keep children and young people safe and to provide appropriate pastoral care to support health and wellbeing of children and young people
- to support pupil learning, improve outcomes and identify where additional support is needed to help children and young people
- to support children and young people during transitions when moving on each year from nursery to primary, primary to secondary and when they move or leave school
- to allow us to process Education Maintenance Allowance (EMA) applications
- to make appropriate transport arrangements for children and young people
- to process placing requests
- to improve the wellbeing of children, young people or families by requesting help from other Council services or organisations
- to help us develop and improve education services provided for children and young people
- In accordance with our legitimate interests as an education authority we will also use your information to create statistical reports.

Your rights

You have the right to access your personal information as well as the rights of rectification, erasure, restriction and the right to object.

For information on these rights and how to exercise them or for information about how we manage your personal information, you can get a copy of our full privacy notice from your school.

Our full privacy notice will also provide information on how to make a complaint or to request a paper copy of the privacy notice from the Data Protection Officer.

Data Protection Officer

Civic Centre,

Windmillhill Street,

Motherwell ML1 1AB

or by email to

AITeam@northlan.gov.uk





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