

Getting it right for every child (GIRFEC)

Practice Development Panel Report:

Scottish Government Response

September 2019

Foreword

We want to make Scotland the best place for children to grow up, and it is clear to me that Getting it right for every child (GIRFEC) is key to achieving that. GIRFEC is Scotland's approach to promoting and improving the wellbeing of every child. It sits at the heart of all our policies to support children and families, establishing a shared approach across all children's services.

A central tenet of GIRFEC is ensuring that children, young people and families get the right help at the right time. But services which support families can only provide that help if practitioners are aware that someone is in need of support.



In my role as Deputy First Minister and Cabinet Secretary for Education and Skills, I regularly see the excellent work that practitioners are doing to help support families who may be struggling. The GIRFEC approach is delivering real benefits to children across Scotland, joining up services and helping children to realise their full potential. I also see the, thankfully rare, but heart breaking, consequences when opportunities are missed to help and support children and families. I firmly believe that one of the critical elements that underpin early intervention is good information sharing practice and I remain committed to supporting that in the best way possible.

That is why I set up the GIRFEC Practice Development Panel to look at developing an information sharing Code of Practice that would provide clear direction on how to support and promote best practice. I would like to thank Professor Ian Welsh OBE, and the Panel members, for taking on this difficult task. I know that this a complex and challenging area and I am grateful for their expert consideration and wider engagement.

It can sometimes be difficult to change course when you have set off down a path. However, it is important to recognise that much has changed since we began our journey with the Children and Young People (Scotland) Act in 2014. I consider it right and appropriate that we take stock of where we are now and consider how best to move forward.

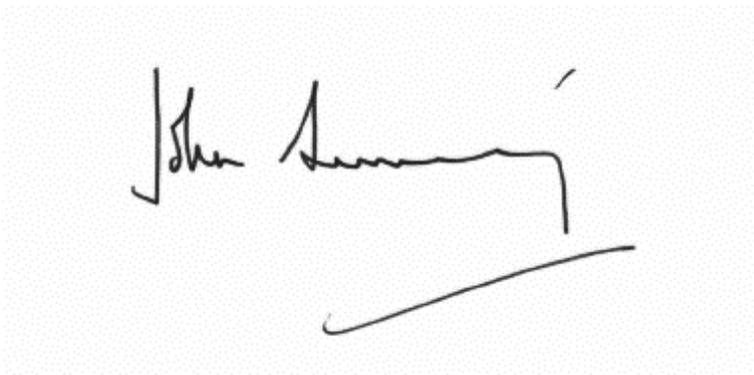
Foremost in my consideration is how to support practitioners so that they can confidently and lawfully handle information in a way that respects the rights of the individual and ensures that children, young people and families get the right support at the right time.

Having reviewed the Panel's report, and in particular the feedback from stakeholders, I understand that what they need is practical guidance that is easy to apply, not a complex statutory Code of Practice or further legislation. To that end, and with that feedback in mind, I have tasked officials to work with stakeholders to

develop a suite of products to support and promote good, proportionate and appropriate, information sharing practice.

This will include further training and guidance for practitioners as well as updated Getting it right for every child policy and practice guidance and a range of other material. Together these measures will give practitioners the confidence they need to share concerns, where appropriate and proportionate, so that children, young people and families can get the necessary support they need, when they need it. It will also bring greater transparency to information sharing practice, giving parents, carers, children and young people assurance that their rights are respected.

I am confident that these measures, together with the refresh of the Getting it right for every child policy and practice guidance, will go further to help Scotland's children grow up safe, healthy, respected and loved.

A handwritten signature in black ink on a light grey background. The signature is written in a cursive style and appears to read 'John Swinney'. There is a long horizontal line underneath the signature.

JOHN SWINNEY
Deputy First Minister

Executive Summary

Scottish Ministers have considered the Getting it right for every child (GIRFEC) Practice Development Panel's report, and agreed with its recommendation that a binding statutory Code of Practice for Information Sharing should not be pursued at this time.

The Panel report also included some suggestions on how Scottish Government could best support good information sharing practice. We welcome these helpful suggestions and will work with stakeholders to take these forward over the coming months. To that end the GIRFEC team will shortly be holding a series of engagement events where we will be inviting our partners to participate in developing and refining a suite of products to support and promote delivering the Getting it right for every child approach in practice and good information sharing practice within the approach.

We have also considered the wider implications of the Panel's recommendations and how best to support front line practice. Having reflected on the feedback from stakeholders and recent changes in the legal landscape, we have concluded that GIRFEC and information sharing practice should be supported through policy and practice guidance rather than further legislation. Consequently we will take steps to withdraw the Children and Young People Information Sharing (Scotland) Bill and repeal Parts 4 and 5 of the Children and Young People (Scotland) Act 2014.

Further detail regarding our considerations and the implications of these conclusions are set out below. However, the overarching priority remains to provide children and families with the right support at the right time through the GIRFEC approach.

Background

Getting it right for every child is already well established as Scotland's approach to promoting and improving the wellbeing of every child. GIRFEC helps Scotland's children and young people to grow up feeling loved, safe and respected so that they can realise their full potential.

Most children and young people get all the help and support they need from their parent(s) or carer(s), wider family and community but sometimes, perhaps unexpectedly, they may need a bit of extra help.

GIRFEC puts the child's wellbeing at the heart of all services that support families whether that be everyday health and education services, more specialist services or when multi-agency planning is required. Appropriate and proportionate information sharing practice is an important factor in forming a holistic picture of a child's wellbeing and understanding how best to support families to ensure that children are able to realise their full potential.

Following the enactment of the Children and Young People (Scotland) Act 2014, (the "2014 Act") we introduced the Children and Young People Information Sharing (Scotland) Bill (the "Bill") in 2017. The Bill proposed changes to the information sharing provisions in Parts 4 and 5 of the 2014 Act in order to address the Supreme Court's judgment and to ensure that the information sharing provisions align across the Parts. In addition, the Bill requires that a Code of Practice be produced to provide appropriate safeguards in relation to these information sharing provisions, as well as clarification of the interaction between the 2014 Act and other relevant areas of law.

In February 2018 the Deputy First Minister, John Swinney, established the GIRFEC Practice Development Panel and appointed Professor Ian Welsh OBE, Chief Executive of the Health and Social Care Alliance Scotland, as its independent Chair. The Panel's membership includes experts from education, health, the third sector and the legal profession.

The Panel was tasked with developing an authoritative draft Code of Practice for information sharing to assist in the consideration of the Bill. It was also invited to provide recommendations on Statutory Guidance and other materials required to support commencement of Part 4 and Part 5 of the 2014 Act.

Since the Panel was established the legal landscape in relation to data protection law has changed. The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA 2018) came into force in May 2018 and have provided helpful clarification on safeguards around when and how data can be shared.

The Panel has given detailed consideration to the challenges of good information sharing practice such as:

- The role of consent
- The interaction between different areas of law, including human rights law
- The challenges facing front line staff

The Panel were supported by a Legal Focus group, who used their expertise to inform the Panel's considerations. The Panel also engaged extensively with practitioners from across children's services to fully understand how best to support good practice.

The Panel's report contains more detail about their considerations and conclusions and can be found here <http://www.gov.scot/ISBN/9781839601699>.

Panel's Principal Recommendation

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

We agree with the Panel's conclusions that;

- *It would be challenging to produce an authoritative draft Code of Practice for Information Sharing that properly reflects the relevant legal requirements, is workable, comprehensive and user-friendly for children and young people, parents and practitioners.*
- *Professional codes, policies, procedures and guidance on GDPR and the DPA 2018 can, in the Panel's view, provide the legal framework and safeguards that are needed to support proportionate and necessary information sharing within a GIRFEC approach;*

We recognise that a complex, legalistic Code of Practice would not be beneficial to children, young people, parents or practitioners. This was also reflected in feedback from practitioners and stakeholders during the Panel's engagement process, who advised that practical, accessible guidance was needed.

The genesis of the request for a Code of Practice lies in the need to provide adequate safeguards to ensure that the sharing of wellbeing information does not unduly interfere with an individual's right to privacy. Scottish Government remains committed to respecting and protecting the Rights of all its citizens. We were reassured by the Panel's conclusions that GDPR and DPA 2018 provide a legal framework and safeguards which, combined with practice guidance, could support good information sharing practice within the Getting it right for every child approach.

We also note some of the challenges of producing an authoritative Code of Practice at this time. Our understanding of the implications of GDPR and DPA 2018 are still evolving and will be informed by:

- Case Law
- The UK Government's position (as Data Protection legislation is reserved)
- The Information Commissioner's Office's Data Sharing code

We therefore agree that a binding Code of Practice should not be pursued at this time.

Other Recommendations

In addition to their principal recommendation, the Panel made recommendations to improve knowledge, understanding and practice in relation to sharing information to promote, support and safeguard the wellbeing of children and young people and delivery of the Getting it right for every child approach.

The Panel have also recommended:

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

Good information sharing practice is key to improving outcomes for Scotland's children. It is important that we bring clarity to this complex area and support all those working in Scotland's children's services to deliver Getting it right for every child. We welcome the recommendations from the Panel which are helpful in informing next steps to support good information sharing practice.

Work in many of these areas has already begun:

- We are currently undertaking a refresh of the GIRFEC policy and practice guidance. This will be updated to reflect the Panel's conclusions and we will be consulting with stakeholders on a revised draft later this year with a view to publishing by early 2020.
- A suite of guidance and training materials will be developed to support practitioners, including interactive case studies based on real life scenarios.
- We are also exploring ways to better support Data Controllers to bring greater consistency, pool knowledge and disseminate best practice.
- Work is already underway to refresh the Child Protection Guidance which will also reflect information sharing best practice.

We will take these actions forward in partnership with stakeholders with an aim to co-produce products which draw on the knowledge and expertise of those working across children's services. These key actions will support good practice in information sharing in order to promote and support the wellbeing of Scotland's children.

Implications

The decision not to pursue a binding Code of Practice has implications for legislation that is already before the Scottish Parliament. Legislation is one of many tools that can be used to support improvement. In light of the Panel's recommendations, we have considered whether this continues to be the most effective vehicle to embed the Getting it right for every child approach nationally. Having carefully reviewed the position, we have concluded that other measures would be more effective in achieving our strategic aims of supporting children, young people and their families.

Children and Young People Information Sharing (Scotland) Bill

Since this Bill was introduced in 2017 there have been significant changes to the legal landscape, such as the introduction of GDPR and DPA 2018. If we were to pursue a Bill of this nature it would need to be revised to reflect the current position. This process is likely to take some time and before undertaking that process Scottish Government has reflected on the necessity for this legislation.

Feedback from stakeholders and advice from the Panel suggest that there is little appetite for further complex legislation and that what practitioners really want and need is stability and guidance to consolidate their understanding of good information sharing practice.

Ministers have also reflected on the Panel's conclusion that this new statutory framework along with professional codes, policies and guidance on data protection could provide the necessary legal safeguards to support good information sharing practice within the Getting it right for every child approach.

Having carefully considered the Panel's expert advice and in light of recent legal developments, Ministers have concluded that the best way forward is practical help, guidance and support, not further legislation. Consequently the Children and Young People Information Sharing (Scotland) Bill will be withdrawn.

In place of a complex Code of Practice or further legislation we will work with stakeholders to develop a suite of products to support and promote good, proportionate and appropriate information sharing practice.

As set out above, this will include further training and guidance for practitioners as well as updated Getting it right for every child policy and practice guidance as well as a range of other material. Together, these measures will seek to give practitioners the confidence they need to share concerns, where appropriate and proportionate, with a view to giving people assurance that their rights are being respected.

Parts 4 and 5 of the Children and Young People (Scotland) Act 2014

Part 4 of the 2014 Act refers to the named person service and outlines their role to promote, support or safeguard the wellbeing of a child or young person. Part 5 of the 2014 Act introduced the requirement for a child's plan when a child has a wellbeing need requiring targeted intervention. These elements of the 2014 Act are not yet in force and were awaiting the passage of the Children and Young People (Information

Sharing) (Scotland) Bill through Parliament. Having decided that we will be withdrawing this Bill, we must then consider the next steps for Part 4 and Part 5 of the 2014 Act.

In anticipation of commencement of the 2014 Act in full, many Community Planning Partnerships (CPPs) have already considered how elements of named person and child's plan can be incorporated into existing practice within the current legal framework. These services are provided within their existing statutory functions and have evolved over the last 10 years to provide early help, high quality planning and coordination of services.

Having reflected on current practice we believe that many of the ambitions of the Act are already being fulfilled and these policies are already delivering benefits across Scotland. This current good practice can be further promoted and supported through updated practice and policy guidance.

While our commitment to these policies is unabated, we no longer believe that legislation to underpin the delivery of a named person service and child's plans is necessary and today we are giving notice of our intention to seek to repeal Parts 4 and 5 of the Children and Young People (Scotland) Act 2014, using a suitable legislative vehicle in due course.

Named Person Service

A named person service is currently being delivered in many areas using existing legislative powers. This differs from the statutory named person service as originally envisaged. This current named person practice provides a contact point who has an existing role such as a Health Visitor or promoted teacher, providing advice and support to families. These key points of contact are familiar with children's services and will be well placed to support parents to navigate and join up services when requested. This service is generally based on parents, young people and children actively engaging to seek and accept help and support from the named person.

Families are already benefiting from this service, which provides a key contact to navigate and join up services. The named person service does not require wellbeing information about a child or young person to be routinely shared without their or their families' knowledge or engagement. Anyone operating these services must handle personal information in line with existing laws and guidance such as those applicable in relation to data protection, confidentiality and human rights.

We consider that current named person good practice should be supported and will reflect that in the upcoming refresh of the Getting it right for every child practice and policy guidance. We have no plans to expand the role further at this time.

The Child's Plan

The child's plan is currently being operated across children's services through existing legal powers and has been well received. Children and families are already benefitting from a joined up, multi-agency plan to support children where there is a need for coordinated planning. The child's plan is managed by a 'lead professional':

someone with the right skills and experience to make sure the plan is managed properly.

Children and parents should know what information is being shared, with whom and for what purpose, and their views will be taken into account. It is only in exceptional cases, such as where there is a concern for the safety of a child or someone else that this may not be possible.

Our commitment to the importance of the child's plan is undiminished and we will continue to support and promote its use in policy and practice guidance.

Further Engagement

We would like to thank everyone who participated in the Panel's engagement for your useful feedback.

We will shortly be undertaking a series of engagement events and will be inviting practitioners to help develop products to support and promote implementation of GIRFEC and good information sharing practice.

If you would like to participate please get in touch on:

GIRFEC@gov.scot



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