

Date: 25 August 2017

Your Ref:  
Our Ref: ACCSP/040-2017



Nelson Telfer  
Assistant Chief Constable

Service and Protection

Dear Sir/Madam,

### **Children and Young People (Information Sharing) (Scotland) Bill**

I refer to the call for evidence from The Scottish Parliament's Education and Skills Committee on the Children and Young People (Information Sharing) (Scotland) Bill. Consideration has been given to both the Children and Young People (Information Sharing) (Scotland) Bill and the illustrative draft Code of Practice on information sharing under Parts 4 and 5.

Firstly, I can confirm that the provisions contained within Section 26 (2) of the Bill in respect of Information Sharing are entirely consistent with our current practice. Nevertheless, there are a number of key points for consideration in respect of the statutory Code of Practice. In this regard, it is essential that Police Scotland continue to be consulted in further shaping the content, as we will continue to identify and record the highest volume of child wellbeing concerns for consideration of sharing with the Named Person Service. In effect, the journey of a high volume of wellbeing concerns and the interaction with children and young people and their families starts with Police Scotland.

In addition, there is insufficient emphasis within the Code of Practice on the alternative legal gateways that Police Scotland already rely upon to share information without the need for consent. This is briefly referenced at Section 26 of the Code of Practice, however I believe there needs to be a much greater emphasis on this within the document.

#### **Consent**

On occasion, Police Scotland can utilise alternative legal gateways to justify the sharing of child wellbeing concerns, which is consistent with the Bill however potentially inconsistent with the overemphasis on consent within the Code of Practice.

Within Section 5 there is a presumption that agencies should seek consent from a child, twelve years or over. This section needs to be clear that there will be a number of circumstances where consent is not required for us to share information. Should this not be detailed explicitly with the Code of Practice, it could give rise to unrealistic expectations from partners in respect of consent, who might not subsequently act on information we hold which has been provided.

While Police Scotland recognise the need to inform a child or young person that their information is likely to be shared, and accept there may be circumstances where seeking consent will be appropriate, it is difficult for officers to seek explicit consent as standard, when they do not have sufficient awareness of the decisions likely to be taken at assessment stage within the Police Concern Hub, where all available information will be considered. Likewise there would be a significant impact on Police Scotland, for officers to return to obtain consent following Concern Hub assessment and this would, without doubt, lead to delays in wellbeing information being shared.

Police Scotland will create Privacy Notices to be published which will cover the general circumstances around why Police Scotland might process information relating to children. These will include what will be processed and how, what information will be shared and the organisations we will share with, and how individuals can access information we hold about them.

### General Data Protection Regulation (GDPR)

The Code of Practice should reflect potential changes which may occur as a result of GDPR – in particular which aspects of GDPR Article 6 and GDPR Article 9 – “Processing of special categories of personal data” will be engaged. For example, could Police Scotland use Article 9(h) ..... “the provision of health or social care or treatment”..... as the justification for sharing a child wellbeing concern without consent.

Likewise, in circumstances where consent is being sought, the Code of Practice should reflect the additional requirements that the GDPR brings around consent, e.g. advice on how the organisations involved should record consent, how granularity of consent is ensured and mechanisms for consent withdrawal. The ICO consent guidance also mentions circumstances of an imbalance in the relationship between the individual and the data controller, which, in turn may make it difficult for public authorities to use as their lawful basis.

It is widely acknowledged that continual consultation is required to further shape the Bill taking into account the anticipated wide ranging impacts of the General Data Protection Directive (GDPR) due to come into effect in mid-2018, prior to the implementation of this Bill. As detailed in our response to the Financial Memorandum, there will be a significant impact in developing and delivering a detailed training programme to staff.

### Statutory Functions of Information Holders

Within Sections 7 and 8, specifically the statements contained within 7(c) and 8 (b) regarding the guidance in seeking consent, highlights that information may be processed when necessary for the functions conferred on the person to whom the disclosure is made by legislation. However, the sharing must also be necessary for the functions of the relevant authority and in addition, there is no narrative within the Code of Practice which takes account of the statutory functions of the agency, which intends making the disclosure.

### 16 and 17 Year olds

In respect of 16 and 17 year olds, details should be clearly highlighted within the Code of Practice, in order to avoid any confusion with conflicting legislation in respect of adults and children.

For example, Police Scotland practitioners would seek a condition for processing, rather than consent to share information about a child under the age of 16. When a child reaches the age of 16, the Adult Support and Protection (Scotland) Act 2007 will be considered as part of our assessment in deciding if the sharing is fair and lawful. Despite this, 16 and 17 year olds who

meet the 3-point test are still managed as part of a child's plan and clarity around the conditions for processing in these circumstances and how the information sharing decision-making should subsequently be recorded, ought to be included in the Code of Practice.

I trust you will find this information of benefit.

Yours sincerely,

Nelson Telfer  
Assistant Chief Constable  
Service and Protection