

getting
it right
in the western isles



**MULTI AGENCY PRACTITIONER GUIDE TO
INFORMATION
SHARING, CONFIDENTIALITY AND
CONSENT TO SUPPORT CHILDREN AND
YOUNG PEOPLE'S WELLBEING**

Foreword	Page 3
Practitioners Summary – Key Practice Points	Page 4
Introduction - Information Sharing	Page 5
Children & Young People (Scotland) Act 2014	Page 5
Wellbeing and Early Intervention	Page 5
Caldicott Principles	Page 6
Legislative and Policy Context	Page 6
Information Sharing	Page 7
Information Sharing Summary	Page 9
Confidentiality & Consent	Page 10
Consent Flow Chart	Page 11
Legislative Context - Consent	Page 13
Lawful – Conditions for Processing Data	Page 13
Appendix 1 – Legislation and Policy Context	Page 14
Appendix 2 – Information Sharing Advice – ICO	Page 15
Appendix 3 – Caldicott Principles	Page 16

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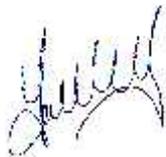
Foreword

Appropriate sharing of relevant information is a critical component of promoting the wellbeing of children, from early intervention through to child protection. Sharing the right information at the right time improves outcomes for children, young people and their families and can help prevent concerns developing further.

Current data protection principles and privacy laws already permit information sharing when it is necessary to prevent or address a risk to wellbeing. These laws apply to all existing information management and data processing by public bodies and those who provide services on their behalf.

The following guidance has been produced to assist practitioners across all Children's and Adult Services in the Outer Hebrides in their endeavours to promote the wellbeing of children. A partnership approach has been taken in developing and consulting on this document and I would like to thank all those involved in their helpful suggestions and amendments.

By working collaboratively and sharing relevant information that is appropriate and proportionate we collectively will make a real difference in the lives of children and their families.



Jack Libby
Chair – GIRFEC Group

Practitioners Summary – Key Practice Points

Information Sharing

- The *wellbeing* of children and young people is *everyone's job and everyone's responsibility*;
- Doing nothing is not an option; do not delay unnecessarily – act quickly;
- Ask yourself the five key GIRFEC Questions – if the answer is no or you do not know gather information to find out;
 - What is getting in the way of this child or young person's well-being?
 - Do I have all the information I need to help child or young person?
 - What can I do now to help this child or young person?
 - What can my agency do to help this child or young person? And
 - What additional help, if any, may be needed from others?
- Adopt a common sense approach;
- Good practice is to discuss your concern with the parents/carers and child and tell them why information is being shared unless it is detrimental to the child's wellbeing or interferes with a criminal investigation or other judicial process
- Use your professional judgment, knowledge and skills – gut feelings;
- Seek help and support in doing so – Line Manager/Supervisor or if your concern is one of safety follow the [Outer Hebrides Inter-agency Child Protection Procedures](#);
- Share what you consider to be necessary, appropriate and proportionate – on a need-to-know basis only;
- Always share your concern with the child or young person's Named Person;
- Consider the alternatives and/or implications of not sharing information;
- Always record your decision and the reasons for it;
- Follow your Departmental policies and procedures and your professional guidelines.

Confidentiality

- Confidentiality is not an absolute right – never promise that;
- Confidentiality does not prevent you from sharing a concern about a child or young person's wellbeing – it actually empowers you to do so;
- Be aware of the constraints and limitations of confidentiality;
- For more information see appendix 2 & 3

Legislation

- Legislation does not prevent you from sharing information – it empowers you (See Appendices 1 to 3).

Introduction

Information Sharing, Confidentiality and Consent to Support Children and Young People's Wellbeing

For children and young people to do well now and in the future they have to be safe, healthy, active, nurtured, achieving, responsible, respected and included. These wellbeing indicators are central to the Getting It Right for Every Child (GIRFEC) methodology that is threaded through all existing legislation, policy, practice and systems for children and young people in Scotland. GIRFEC is the overarching approach of transformational change to improve outcomes for children and young people.

The majority of parents want to get it right for their child but at times may need additional support. Best practice is to work in partnership with the family, discussing the wellbeing of the child and sharing appropriate information with them (unless this puts the child at immediate risk).

To provide children and young people with the help they need, when they need it, for as long as they need it means moving away from crisis intervention towards early identification, intervention and support.

Effective early intervention necessitates appropriate and proportionate information sharing, as well as consideration of confidentiality and consent.

This document lays out guidance around sharing information for the benefit of the child or young person as well as the principles around confidentiality and consent to achieve best practice.

All practitioners working with children and young people must play their part in supporting the wellbeing of children and young people to ensure they are safe, healthy, achieving, nurtured, active, respected, responsible and included.

Across Scotland supporting the wellbeing of children and young people is everyone's job and everyone's responsibility. This is a shared responsibility for all practitioners and managers working across the public, private and third/voluntary sectors.

Children & Young People (Scotland) Act 2014

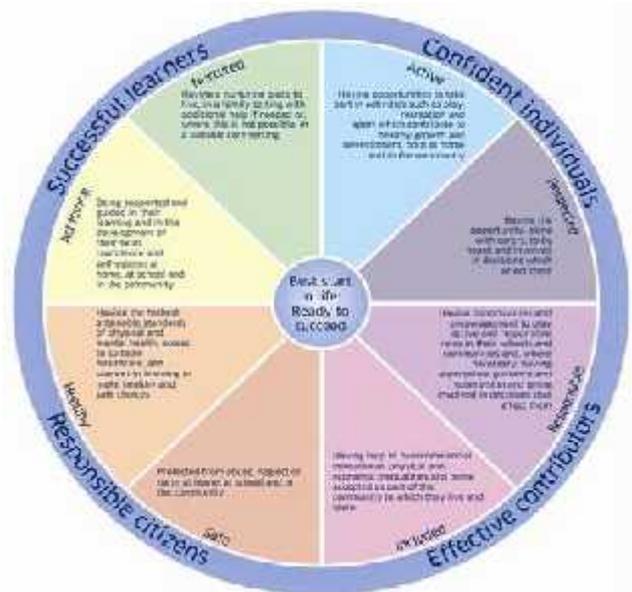
In March 2014, the Children and Young People (Scotland) Act 2014 gained Royal Assent. Parts 4 and 5 of the Act include provisions specifically designed to ensure that aspects of the GIRFEC policy are covered by legislation.

Wellbeing and Early Intervention

The wellbeing of children and young people is at the heart of Getting it Right for Every Child (GIRFEC).

This approach uses the eight Wellbeing Indicators in which all children and young people need to progress, in order to do well now and in the future. These eight interconnected Wellbeing Indicators are defined as: *safe; healthy; achieving; nurtured; active; respected; responsible; and included;* providing a common language for all practitioners. A focus on wellbeing will support all practitioners to take a holistic view of the child or young person and ensures that all aspects of their wellbeing are supported. The Wellbeing Indicators are interconnected. For example, it is difficult to talk about a child or young person achieving without relating this to nurture, health and/or how active they are.

GIRFEC encourages all practitioners to be more aware of the impact situations can have on other aspects of a child or young person’s wellbeing, as they may lead to long lasting and/or permanent harm. This is achieved through the use of the National Practice Model.



If we are to get it right for every child and young person’s wellbeing and intervene early enough (which will involve the appropriate and proportionate sharing of personal information and in some cases sensitive personal information) evidence suggests that early and effective intervention will reduce the need for crisis intervention.

It is important that we do not separate child protection, or any other intervention, from the Getting It Right For Every Child (GIRFEC) policy and practice approach. Child Protection is a GIRFEC intervention where the emphasis on keeping Safe is the main Wellbeing Indicator.

Should there be any concern that the child or young person may be at risk of significant harm, it is essential that the [Outer Hebrides Inter-agency Child Protection Procedures](#) are followed immediately.

Caldicott Principles

The original Caldicott Report, published in 1997, established six principles for NHS bodies (and parties contracting with such bodies) to adhere to in order to protect patient information and confidentiality. A seventh Caldicott Principle was added in the March 2013 Information Governance Review conducted by Dame Fiona Caldicott. This guidance reflects those principles (Appendix 4).

Legislative and Policy Context

It is important that you:

- understand the legislative, policy and practice context parameters when sharing personal and/or sensitive personal information;
- understand the limitations and constraints of confidentiality and consent; and
- 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 nothing prevents you from doing so.

This guidance has been informed by and is underpinned by a legislative and policy framework, further described at Appendix 1.

Information Sharing

What should I consider first?

“While it is acknowledged that practitioners need to be sure that their actions comply with all legal and professional obligations, fear that sharing genuine concerns about a child or young person’s wellbeing will breach the Act (Data Protection Act 1998) is misplaced. Rather, the Act promotes lawful and proportionate information sharing, whilst also protecting the right of the individual to have their personal information fairly processed.” Information Commissioners Office

First and foremost, you should ask yourself the following five key GIRFEC questions:

- What is getting in the way of this child or young person’s well-being?
- Do I have all the information I need to help child or young person?
- What can I do now to help this child or young person?
- What can my agency do to help this child or young person? And
- What additional help, if any, may be needed from others?

To answer all of these questions comprehensively, there may be a need to collate information and/or share information with the other appropriate practitioners. 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.

What should I do know? **Doing nothing is not an option! Do not delay unnecessarily**

If you are concerned about a child or young person’s wellbeing then you should start by asking yourself the above *five* key GIRFEC questions. You may find it helpful to share and discuss your concern with a colleague and if appropriate alert your line manager, as these can be difficult issues to deal with alone.

Should there be any concern that the child or young person may be at risk of significant harm, it is essential that the [Outer Hebrides Inter-agency Child Protection Procedures](#) are followed immediately.

You should tell your Line Manager/Supervisor why you are concerned, even if this is just a gut feeling, what you have done about it and what you plan to do about it. You must always ensure that the child or young person is safe, and record your concerns and actions.

A concern relates to a child or young person’s wellbeing as defined by the eight Wellbeing Indicators. This might relate to a single event or series of events. It makes no difference. The principles are the same.

Use your professional judgement in deciding what to do and when to do it. In doing so, you should always adopt a common sense approach and on a need-to-know basis.

This approach has been further explained, supported and endorsed by Appendices 2 & 3:

- (UK) Information Commissioner’s Office (ICO) Letter of Advice 2013 – Information Sharing;
- Scottish Government GIRFEC Programme Board Letter of Advice 2013 – Information Sharing;
- Scottish Government GIRFEC Bulletin Issue 1 2013 – Information Sharing.

How should I share information?

However you share information you must ensure it is done safely and securely in line with your existing information security procedures and follow safe haven principles.

If you are sharing information, you should only share information on a need-to-know basis. You should record your decisions in writing.

What should I be recording when I share information?

When you are actively sharing information it is important you record this in the child or young person's case file notes on CareFirst or SEEMiS. The following should be recorded:

- What information are you sharing?
- Why are you sharing it?
- Who are you sharing it with?

Where you are requesting information, you should record:

- What information you need?
- Why you need this information?
- What else would you be proposing to do with this information?
- Who else may it be shared with?

No matter how you are sharing information, you should ensure you are recording it accurately for future reference. This could be in a hard copy case file and/or in an electronic file. You should be recording your request and all responses received.

What if I decide not to share information?

You should also be recording any circumstances where information is **not being** shared and the reason for that. If you have requested and then been refused information you need to discuss this with your Line Manager/Supervisor. You should also record any circumstances where there is a refusal to share information and the reason for that too. You should ensure that you record this clearly, accurately and concisely to prevent any misunderstanding and/or confusion on your part; on the other practitioner's part; and for future reference. You should ensure that all this information is kept safe, secure and that there is no unauthorised access to this information.

If you decide **not to** share information, then you must ask yourself the following three key 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, agency and/or organisation if I decide not to share information?

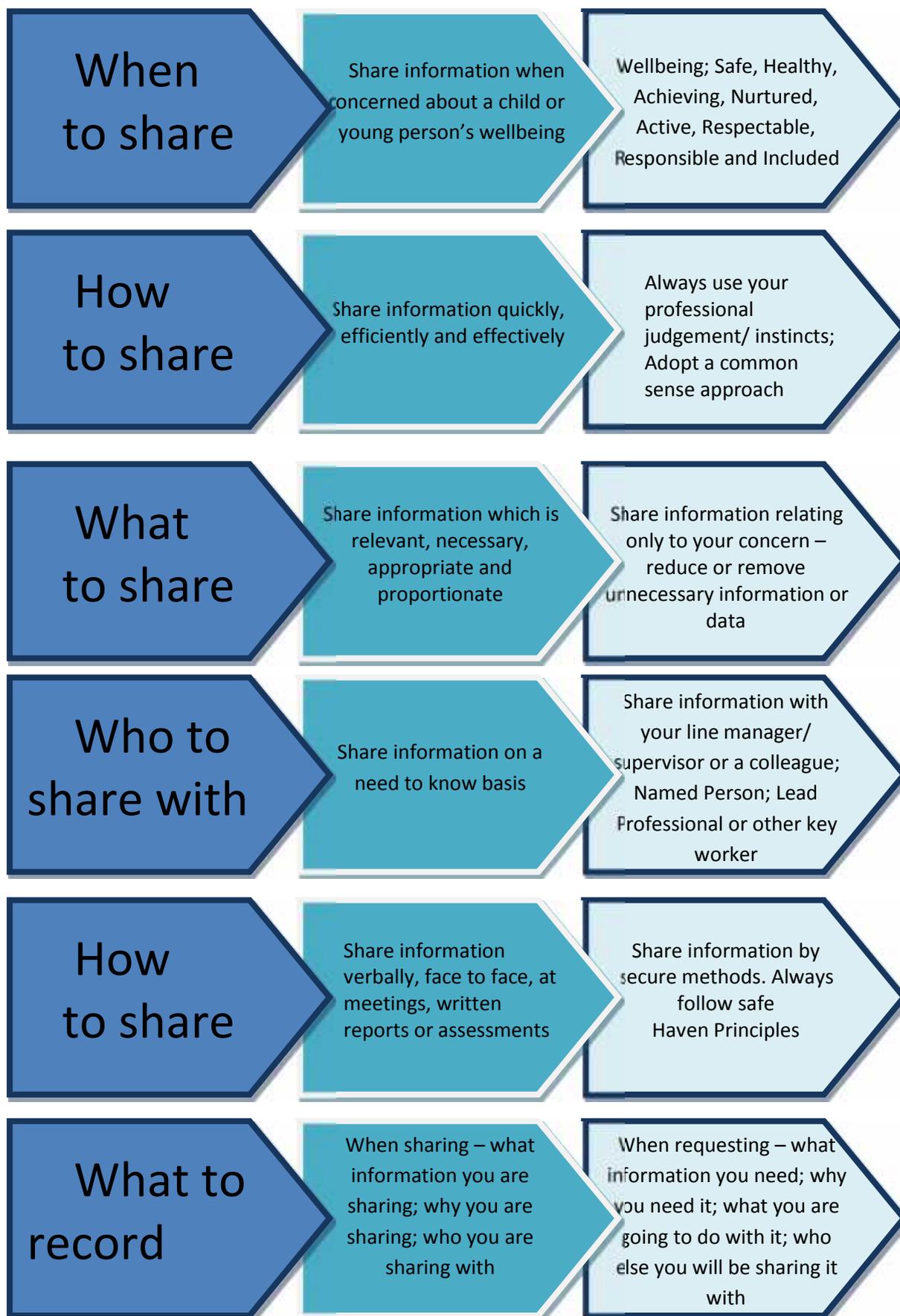
This decision **not to** share information should be properly recorded.

What about sharing information pre-birth?

You may be concerned about the wellbeing of an unborn child. Sharing information about an unborn child presents additional challenges. Where you have concerns about the unborn child you should share information. Practitioners should always consider the adults around a child and how their condition, behaviour or lifestyle impacts on the wellbeing of the unborn child. Best practice is to involve the parents-to-be in decisions about sharing information, unless this would increase the risks to the unborn child.

Information Sharing Summary

A useful summary of the key considerations for all practitioners when considering when to share information:



Confidentiality & Consent

Not all information is confidential. Confidentiality is not an absolute right.

It is accepted that where there is a risk to a child or young person's wellbeing, which may lead to harm, that all confidential information in the best interests of the child or young person and/or in the public interest will be shared.

Any sharing of information should be **relevant, necessary, 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.

Do I always need to seek consent?

Recent advice from the (United Kingdom) Information Commissioner's Office has clarified what has been a misconception held by many in relation to the Data Protection Act 1998 and lawful processing.

Extract:

"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.

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".

(UK) Information Commissioner's Office (ICO) Letter of Advice 2013 – Information Sharing (Appendix 3)

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.

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.

You may be asked to justify that decision later; so best practice would be to record this in the child or young person's case file notes and/or in an electronic file.

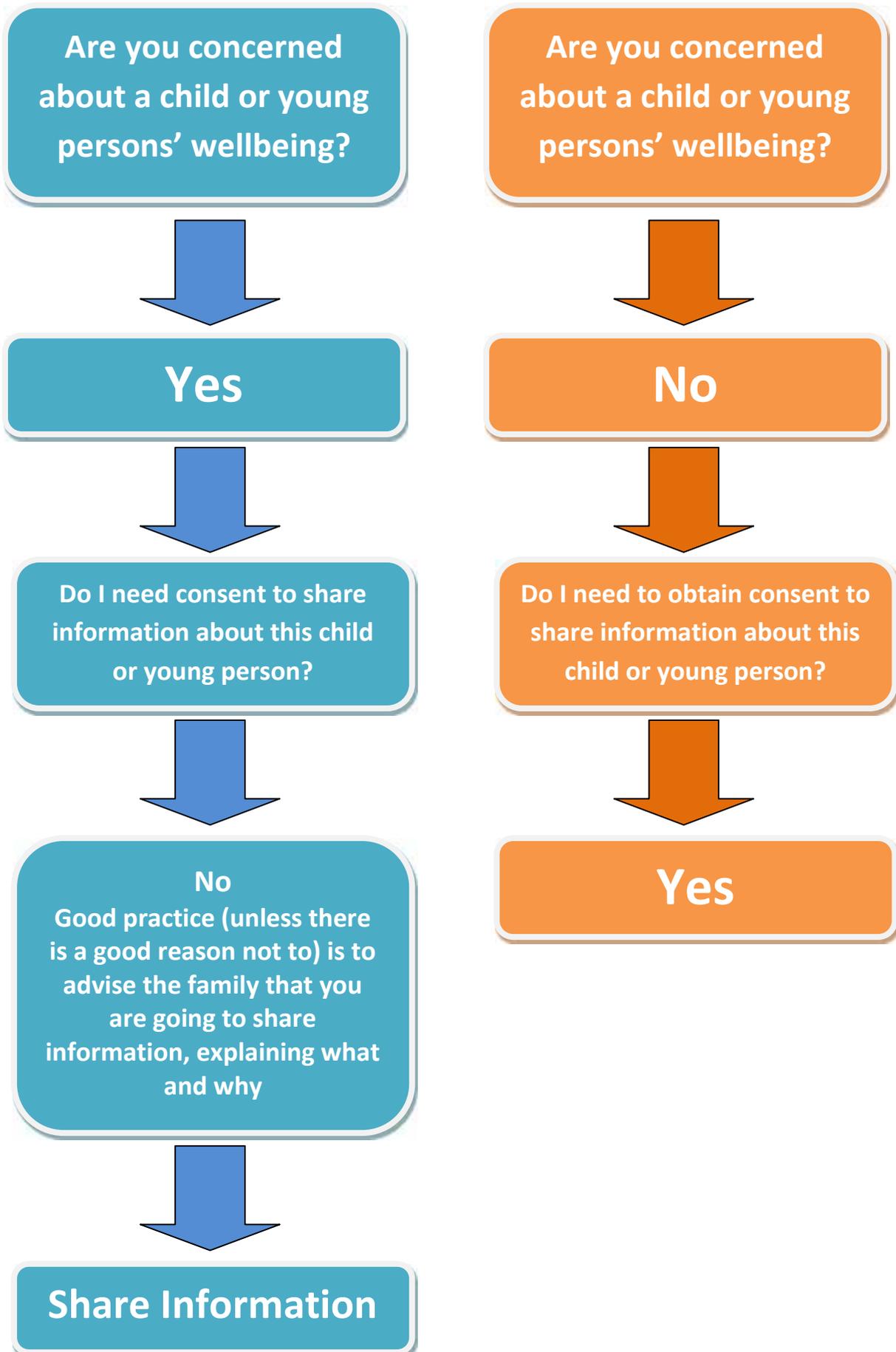
Acting in the child or young person's best interest and/or in the public interest is a defence to an accusation of breach of confidentiality, provided it can be demonstrated that the information shared was necessary and proportionate.

When should consent be asked for?

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

There may be times when you are working with a child, young person and/or their family and you feel it necessary to share information. If this information does not relate to a concern about a child or young person's wellbeing it may be appropriate to obtain consent to share.

Consent Flow Chart



Consent should be:

- **Informed** – *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.*
- **Explicit** – *the individual (child or young person and if appropriate their parent/carer) positively gives their consent for their information to be shared.*

Who can give consent?

Children under the Age of Twelve

In most circumstances where the child or young person is under the age of twelve, 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 twelve to have the capacity to understand *informed consent* 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 the age of Twelve to Fifteen

Children and young people from the age of twelve are presumed to have the full mental capacity to give *informed consent* and to take decisions in their own right.

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 unless to do so would place the child at further risk.

Children from Sixteen to Eighteen

Parental rights and responsibilities largely cease when a child is aged sixteen. Parent/carers still have a responsibility to provide guidance to their child from age sixteen to eighteen.

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

Do not share and record the reason why.

What if consent is withdrawn?

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

If consent was used as the sole legal basis for sharing data the data subject can withdraw their consent at any time. Consent has no time limit and applies until either the parent/carer or child withdraws it. Children may withdraw consent at the age of 12 under Scottish Law and this should be on all privacy wording aimed at children. Re-consent not required when children reach the age of consent.

Legislative Context - Consent

The Data Protection Act 2018 provides specific conditions for processing personal information and sensitive personal information respectively.

At least one criterion from the left hand column below **must be met** before processing personal information and at least one from each column for sensitive personal information. No single basis is 'better' or more important than the others – which basis is most appropriate to use will depend on your purpose and relationship with the individual.

LAWFUL – CONDITIONS FOR PROCESSING DATA (Data Protection Act 2018)	
Personal Data:	Special category data:
<ul style="list-style-type: none"> • Consent • Contract • Legal Obligation • Vital Interests • Administration of Justice • Public function in the public interest • Legitimate interests of the data controller and third part but not prejudicial to individual 	<ul style="list-style-type: none"> • Explicit consent • Employment, social security and social protection law • Vital interests where subject is incapable of giving consent • Not-for-profit TU/religious/political/philosophical groups • Already in public domain • Legal proceedings/advice • Substantial public interest • Public Health • Archiving scientific or historical research • Preventative/occupational medicine diagnosis, provision of health or social care.

Appendix 1 – Legislation and Policy Context

Information Sharing, Confidentiality and Consent are underpinned by a UK Government and/or Scottish Government, Legislative and Policy Framework. Practitioners may find the following key electronic links useful:-

Key Legislative Framework

- Children and Young People (Scotland) Act 2014
- Civil Contingencies Act (Scotland) 2004
- The Social Work (Scotland) Act 1968
- The Age of Legal Capacity (Scotland) Act 1991
- The Children (Scotland) Act 1995
- The Human Rights Act 1998
- The Data Protection Act 2018
- The Freedom of Information (Scotland) Act 2002

Key Policy Framework

- UN Convention on the Rights of the Child (1989)
- Common Law and Statutory Obligations of Confidence (2004)
- Scottish Executive's Audit and Review Report (2002) entitled "It's everyone's job to make sure I'm alright"
- Protecting Children and Young People: Children's Charter (2004)
- Protecting Children and Young People: Framework for Standards (2004)
- HMle Services for Children Unit (2006): Self Evaluation and Quality Indicators Framework: How well are children and young people protected and their needs met?
- HMle Services for Children Unit (2009): How good are we now? How well do we protect children and meet their needs? How good can we be? Self-Evaluation Using Quality Indicators
- Scottish Government (2010) National Guidance: Under-Age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns
- National Guidance for Child Protection in Scotland 2010
- Getting it Right for Every Child
- (UK) Information Commissioner's Office (ICO) Letter of Advice 2013 – Information Sharing
- Scottish Government GIRFEC Programme Board Letter of Advice 2013 – Information Sharing
- Scottish Government GIRFEC Bulletin Issue 1 2013 – Information Sharing
- Pan Lothian and Borders Partnership General Protocol for Information Sharing 2012
- Individual Professional Guidance i.e. GMC, SSSC, RCN, HPC
- Getting it Right for Children and Families affected by parental problem alcohol and drug use: Guidelines for agencies in Edinburgh and the Lothian's (2013)

Dr Ken Macdonald, Assistant Commissioner Scotland & Northern Ireland
Information Commissioner's Office offers this directive in March 2013.

“Whilst 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. 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. Whilst 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.

*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.”***

Appendix 3 – Caldicott Principles

Principle 1 - Justify the purpose(s)

Every proposed use or transfer of patient-identifiable information within or from an organisation should be clearly defined and scrutinised, with continuing uses regularly reviewed by an appropriate guardian.

Principle 2 - Don't use patient-identifiable information unless it is absolutely necessary

Patient-identifiable data items should not be used unless there is no alternative.

Principle 3 - Use the minimum necessary patient-identifiable information

Where use of patient-identifiable information is considered to be essential, each individual item of information should be justified with the aim of reducing identifiability.

Principle 4 - Access to patient-identifiable information should be on a strict need to know basis

Only those individuals who need access to patient-identifiable information should have access to it, and they should only have access to the information items that they need to see.

Principle 5 - Everyone should be aware of their responsibilities

Action should be taken to ensure that those handling patient-identifiable information, (both clinical and non-clinical staff) are made fully aware of their responsibilities and obligations to respect patient confidentiality.

Principle 6 - Understand and comply with the law

Every use of patient-identifiable information must be lawful. Someone in each organisation should be responsible for ensuring that the organisation complies with legal requirements. The Information Governance Review, April 2013 (known as Caldicott 2), added a 7th Principle:

Principle 7 - The duty to share information can be as important as the duty to protect patient confidentiality

Health and social care professionals should have the confidence to share information in the best interests of their patients within the framework set out by these principles. They should be supported by the policies of their employers, regulators and professional bodies.