

**Children in Need of Protection:
A Code of Practice on the Sharing of Information**

Introduction

Barnardo's Scotland welcomes the opportunity to comment on the Code of Practice. We manage over 60 services across Scotland and have a wide range of experience of sharing information in the context of child protection.

Overall Comment

This is a difficult document to produce because judgement decisions are dependent on the situation, the participants and the relationships involved. It may be worth considering what do professionals really need with respect to guidance on information sharing. It is not possible to cover all angles and situations through this document and it therefore cannot be overly prescriptive. The nature of the subject will require it to rely on individual assessments made within a broad framework – and this limitation on the Code of Practice should be recognised from the outset.

Barnardo's Scotland suggests it is worth giving consideration to producing a Code of Practice that is a short document concentrating on the basic principles with examples of existing protocols that capture these principles in action. It would result in a smaller document of two parts: the first laying out the reason and scope of the document including basic principles and the reason for these; and a second illustrating how these principles have been applied in existing practice.

General Comments

1. The document is focussed on sharing information on the basis of a high threshold of concerns for a child. This approach will not capture lower threshold behaviours where it is the pattern of behaviour that gives cause for concern that may merit sharing of information. It is arguable that the high threshold concerns are actually easier to deal with and it is the lower threshold concerns that require the finer judgements on whether or not to share information. One Barnardo's Scotland's practitioner describes it as 'piecing together bits of the jigsaw where the pattern may not be evident until each small piece is linked'. 'Significant harm' is used throughout the document and this sets the context for the high threshold for the sharing of information. The General Medical Council guidance quoted (p27) uses the threshold of 'risk of death or serious harm'.

Barnardo's Scotland suggests that the document, through general principles should consider all levels of information sharing as will be required from our understanding of the Getting it Right proposals.

2. The document makes no reference to existing developments on sharing information. Data Sharing Partnerships exist in all local authority areas and many of these have focussed on child protection. These could provide a useful framework for the development of the Code of Practice and the document should at least make reference to the Data Sharing Partnerships. Barnardo's Scotland is also aware of local information sharing protocols although there is no national framework for these. There should be reference to these in the code and in a re-worked document, examples given (or referenced) for adoption elsewhere.
3. Throughout the document the terms 'welfare' and 'well-being' are linked. The term 'welfare' has a legal definition under the Children (Scotland) Act, but the term 'well-being' has, as yet, no legal status. If it is the intention to use these terms simultaneously it raises the possibility where there may be a legal challenge on the grounds of satisfying one rather than the other.
4. Barnardo's Scotland notes the comments in the recently circulated Scottish Executive feedback from Letters of Assurance 2: Children affected by drug-misusing parents and drug misuse (p4)

"Professionals continue to lack confidence about when and with whom to share sensitive information about a child indirectly affected by illegal drug misuse. Some report feeling constrained by data protection legislation. The independence of GPs is also seen as a barrier. Overall, the LoA responses suggest that relevant information originating from health settings is less accessible than information coming from other sources".

Barnardo's Scotland suggests that this issue needs to be addressed, that there is an urgent need for joint training and the Code of Practice could provide a useful conduit for this process of cultural change in practice in health, local authority and voluntary sectors workers.

5. It is important to have the legal framework. However, generally this section was not easy to read and could benefit from précis of the relevant main points. It may also benefit from a link to a more detailed children rights section.

Specific Comments

Given the general comments regarding a smaller document, we have limited specific comments to those that are most significant.

p6 Definition of a Child

The definition of a child is given as 'any person under the age of 18'. Barnardo's Scotland understands the intention of this is to capture the most vulnerable young people, although this seems a wide catch-all. It may be more useful to adopt the definition of a child as any child under the age of 16 years, except for

16/17 year olds who are either looked after or where there is an identified risk of significant harm. The reason for this is to more clearly specify the circumstances where the code applies to 16 and 17 year olds.

The issue of legal capacity is important and appears at different points in the document. In terms of consent it is more normally accepted as 12 years when a child can give consent and this is noted later in the document (p14). It may be helpful to have a separate section on capacity.

It is important that consideration is given to pregnant women and early concerns regarding the birth of a child. It would be helpful if this was more specific regarding timing during pregnancy as the use of the term 'foetal development' could be interpreted as 'from conception' and it is presumed this is not the intention.

p6 Who is the Code for?

The code notes that it is relevant for those working with adults where there may be children involved. Despite 'Getting Our Priorities Right', Barnardo's Scotland experience is that there is still a need to heighten awareness in adult services of the needs of children and this is particularly relevant for information sharing. The reference to 'can be shared' (p18, last sentence) should be 'should be shared'

It is appropriate that the code identifies the relevant sectors as public, independent and voluntary. It may be helpful to emphasis that it is expected that independent and voluntary agencies would already have working arrangements for the sharing of information with the public sector where there are child protection concerns. It may also be helpful to make specific mention of voluntary sector agencies because of the range and diversity working with children and young people.

p7 Children's Rights

This section is weak and it would benefit from specific considerations of relevant articles under UNCRC and illustrating the dilemmas that it poses where consent is not sought or given. For instance, the right to privacy, the right to be heard, and the right to be protected are all relevant.

p8 The protocol suggests workers should discuss with 'a manager or trusted colleague' Barnardo's Scotland suggests that this should be set within the context of local protocol agreements and this illustrates the general point relating to the difficulty of covering all eventualities through the code of practice and limitations on its applicability when important decisions will inevitably be left to judgement.

The issue of respecting the right of the child not to inform the parent appears strong. However, the assumption that information should be shared between parents may be potentially harmful in situations of domestic abuse and could exacerbate already difficult situations. The decision not to share (noted on p10)

may usefully mention domestic abuse situations and the additional considerations in these situations.

- p9 Once a decision has been made that information should be shared, consideration should be given to the timescale and what else needs to be done to keep the child on side – particularly where they are aged 12-16 years. This means that the section on ongoing discussions is useful, although greater clarity is required as to what is meant by ‘to review consent on a regular basis’.

It would also be helpful to know what information can be shared when it has come from other agencies e.g. health information passed to a voluntary agency.

- p12 ‘Not all information is confidential’. It may be useful to rephrase this to read – ‘No information is confidential, but most of it can be’. The reason for this is that when information is given it may not be clear whether it is information that needs to be passed on or not. There may be extreme circumstances where it is obvious that certain information requires to be shared. However, in most instances it is not immediately clear that information should be shared and this is particularly so for low threshold information. For this reason, the sentence ‘Workers should make it clear to children and their parents that confidentiality is never absolute’ should be in bold and the section built around this.

- p13 Consent

Barnardo’s Scotland acknowledges that the issue of seeking consent is difficult. Consent should be sought when you are willing and able to go with the decision of the young person. If you decide to seek consent, you are bound by the decision of the young person, and there is no point in seeking consent, if you will ignore it if it is not given. If however, you have already decided to share information and inform the young person that you need to share it, it is good practice to inform the young person and get their agreement to share, but it is different from consent.

- p16 It would appear that the flow chart could be combined without making it too complicated. It would also allow for an acknowledgement of the importance of the decision regarding whether or not to share information.

- p19 Information to be kept ‘no longer than necessary’ is unclear and there are statutory requirements for the retention of information on children in any case.