SUBMISSION TO SCOTTISH GOVERNMENT ON THE CODE OF PRACTICE AND INFORMATION SHARING UNDER PARTS 4 AND 5 OF THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

From North Ayrshire Health and Social Care Partnership

The first aspect of consideration is that this illustrative draft should it be approved, is likely to be out of date very shortly as the UK Government will shortly present a new Data Protection Bill to Parliament for approval.

Following review of this document we feel that practitioners may struggle with its content particularly the language as it is not written in plain English unlike the Information Commissioners Office (ICO) Data Sharing Code of Practice.

This Bill will seek to align to the European General Data Protection Legislation (GDPR) and ensure that when UK leaves Europe the domestic legislation will align. This will strengthen individual's rights (including children) and where consent is used as a basis for processing (including sharing information with others) this means that consent must be:

- Freely given, specific, informed and unambiguous.
- Page 2, paragraph 6 (i): Is suggesting that if it would take too long or costs are prohibitive, then sharing can happen. There needs to be definition around "circumstances"; what do they mean child wellbeing or welfare? GDPR states there must be a positive opt-in and consent cannot be inferred from silence, pre-ticked boxes or inactivity. Paragraph 6 (d); who decides best interests? This is not a condition of processing currently under current Data Protection Act. Paragraph (iii) refers to "compelling reason" I would suggest that there needs to be a clear definition of what this means as subjective.
- Section 7 (a): This should read legal obligations as defined within the Data Protection Act (DPA) (1998) and may need to reference GDPR and the expected changes in the new UK DPA.
- Section 8: This is misleading. What do Scottish Government mean by "consent is being unreasonably withheld? We would prefer this section is strengthened and reflects GDPR and the draft guidance issued by the ICO on consent.
- Section 11: The language is particularly unhelpful and is confusing, as legal jargon is not practical for practitioners to understand or relate to in their practice.
- Section 12: delete "Generally".
- Section 13: This appears to be repetitive. In relation to 13 (1) the example used does not reflect the fact that parents even if not together may have Parental Responsibility and Rights.
Section 14: You will still need to establish a valid condition of processing from Schedule 2 & 3 of the DPA. Paragraph (111) What is a *compelling reason*? Examples of what may constitute a compelling reason would strengthen this document and relate it to practitioner’s experience.

Regarding the Relevant Law Section it does recognise that Data Protection is changing and some reference to these changes and the terminology i.e. special categories of data. It should reflect also that consent can be withdrawn and this must be respected and information sharing ceases.

There are a few other pieces where it refers to "Health & Morals" Section 37 what does the reflection of morals look like to a practitioner as this is varied and subjective, and where does values come in. The DPA will apply in terms of information sharing.

Overall, this document does not appear to be a useful tool for practitioners or for local practice policy developers within organisations.

Information controllers will understand the detail however as this purpose is a Code of Practice it now requires clear translation for everyday use by practitioners and managers to guide practice.