The code of practice requires to be a succinct, useable document written in plain English so that it is accessible and useful to all for whom it is intended.

The legislation risks adding complexity to the system. What is needed is for families and professionals to have a set of rules that can be easily understood. As it stands, guidance is complex and contains legal jargon that requires to be simplified to be shared with practitioners. In addition, it would benefit from practical examples to aid quality professional dialogue. The guidance should be clear and accessible so that it can be readily applied on a daily basis by professionals and understood by children and young people (and their families).

The Supreme Court Judgement and subsequent production of the Bill and Illustrative Code could lead to less information being shared between agencies, for fear of the professional’s judgement being questioned, all to the detriment of children. Highlighting information sharing legalities will prevent informal sharing of information between services which then informs the course of action for professionals to follow when initial, seemingly low level concerns are raised. This could lead to early indicators of a wellbeing concern not being acted upon – again to the future detriment of the child. Implications for current practice on sharing wellbeing information with class teachers will lead to less understanding of issues the child is facing – again to the detriment of the child. It is important to reflect that CP concerns are often only substantiated when information is shared and it is often only with initial sharing of information that a more holistic picture emerges about a child/family’s circumstances. It is disappointing that the previously proposed lower thresholds for sharing information have been removed. Due to the high level of public interest and potential confusion caused by changes there is a risk that professionals become overly cautious about sharing information about children and young people, which is the opposite to what the original legislation/policy intended.

Further clarification on how consent should be sought and recorded would be helpful. A template for this may be useful as would some guidance on how best to record the justification for sharing/not sharing information. When consent is withheld, there should be consideration given to the level of concerns and there may need to be further protocol about how these situations or information would be managed. Who determines when “consent is being unreasonably withheld” and how is it determined?

It is crucial that further training and support is provided to Named Persons, but that there is also some quality assurance and/or shared responsibility with a senior manager in relation to a decision to share information without a child/family’s consent. Support is also required as to how this information should be recorded and to support practitioners should their decisions be challenged – it would be of benefit to expand further within Section 10 to help clarify this. Clarification is also required as to the course of action to be taken by professionals if the parent and child disagree about giving consent to share information.

The key core messages of GIRFEC are being lost within the information sharing debate. It is important to reinforce with staff the core principles of GIRFEC including working in partnership with children, young people, their families and carers.

Named Persons cannot be expected to interpret legal principles so very clear parameters are required as the draft Code of Practice does not do this as it stands. Individual interpretation of terms will lead to variation in practice across professionals, schools and local authorities. Practitioners in front line delivery of services need more clarity about terms and phrases used in the Code of Practice as they form the basis of the legislation. For example:

- “wellbeing test”
- “best interests of the child”
- “interference with the person’s right to respect for privacy”
There is a need for a comprehensive and robust programme of professional learning opportunities for lead officers to promote a shared understanding of the legislation and consistent practice across local authorities.

Workload implications will not become clear until full implementation but documenting information sharing actions and reasoning behind these decisions are likely to be perceived as a workload issue for Named Persons and other relevant professionals.

Consistency of language used in Section 7b “the person the information relates to” and Section 8a “the data subject” would aid understanding for all professionals. Are these two statements interchangeable and if so could one be consistently used?

Section 9 is couched in very different language from the previous sections. Less technical and yet what this section states is the crux of the matter – the private and the public family life”. Clarity to the final statement within Section 9 would be required as it is unclear and could be misleading.

9. In considering whether or not sharing personal information or sensitive personal information is necessary for one of the specified purposes, you should take into account the sensitivity of the information in question, the purpose to be achieved in sharing it, and whether there is another way in which that purpose could reasonably be achieved. The question of whether it is ‘necessary’ to share information for a particular purpose will also depend on how much of an interference with the person’s right to respect for their private and family life is involved – the greater the interference, the stronger the necessity should be.

The guidance would need to simplify and cut-through bureaucracy to ensure professionals are able to get it right for every child and young person without unnecessary expectations being placed upon them. We support the principles of GIRFEC, including the need to share information lawfully at an early stage to prevent bigger problems developing.