Response to Call for Evidence on the Children and Young People (Information Sharing) (Scotland) Bill: illustrative draft Code of Practice.


The Bill reflects the changes which were expected and for which we are beginning to prepare. However, how will the EU Data Protection Regulations 2018 impact on the Bill, will a major rewrite be required next year?

The Code of Practice (CoP) while it reflects the legal framework which is implicit in Information Sharing, the language used at times is too technical and is not always in clear English. In it’s present form it is not accessible or useful for those for whom the document is intended. Practitioners, children and families would find it difficult to understand and navigate and may not be reassured by it.

Some examples of the language used may include new terms with very specific meanings within the context of the Act and CoP

- “personal information”
- “sensitive personal information”
- “data subject”
- “the person to whom the information relates”
- “personal data”
- “sensitive personal data”
- “breach of confidence”
- “obligation of confidentiality”
- “quality of confidence”
- “right to privacy”
- “fair”
- “fairly”
- “lawfully”

or some terms may be interchangeable. (If they are then a single term would be more helpful in terms of clarity.)

- “the data subject” and “the person to whom information relates” – are these the same or is there a subtle difference?
- “must do” and “could do” – what is the difference legislatively?

Practitioners would benefit from illustrative examples, question and answer examples (e.g. what do I do if consent is denied by the parent or child?), flowcharts providing clarity of the processes, highlighted information relating to other documents embedded in text rather than links or references.

Clearer guidance on how consent should be sought, what is meant by reasonably practicable, what would be “some other compelling reason not to inform the person”. Explanation with examples of what is meant by “vital interests” would all support practitioners. In Section 7a, which “legal obligations” are being referred to?
Practitioner judgement and decision-making.
There is much anxiety amongst practitioners in relation to their professional judgement and decision making processes, whilst balancing the wellbeing of the child and keeping within the law. Without consistent, robust training agreed and used across Scotland we may end up with different thresholds, different interpretation and different practice across Scotland as well as perhaps within LA, and Health Boards, as each interprets and implements the CoP in their own way. Will the Scottish Government be providing a training module to support consistent practice?

Decision making processes and all record keeping by practitioners requires a simple framework with agreed practice – how do practitioners record the decisions and actions they take, how should information be stored, transferred and shared? Some systems are already in place but others will have to be developed to support this. What are the time/workload implications associated with these processes?

Sections 26 and 27 should be expanded to include Data Protection principles and conditions in Schedule 2 and 3 as appropriate.

Confidentiality – is confidentiality only waived in the absence of consent by “prevention or detection of crime”? Further explanation is required of what is meant by “over-riding interest”.

Human Rights (sections 32-40)
This area is complex, practitioners now have to explicitly consider Article 8 on an individual basis and any guidance requires to be written in plain English. How do staff professionalise “the right to a family life” which is value based, there may be risks associated around personal values of professionals. Good case studies may be helpful. Section 34 examples are required of the tests that apply to Article 8.

Relevant Law: DPA, Confidentiality and Human Rights
More clarity is required than is in the current draft CoP. Is this a three stage process, if consent fails at DPA, can we move forward, are there competing priorities, does one over-ride the other, do we require compliance in all three or are there situations where one over-rides the other? (We fully acknowledge that Child Protection processes do not change).
Practitioners, children and families require a simplified ‘visual’/ ‘step by step’ framework of how practitioners will comply with the law and how practitioners will be supported to make clear decisions.

There are significant implications for staff development to support practitioners as they navigate a complex system for which they have had little or no specific training relating to law.

DP regulation 2018 is mentioned but not explicit in how this will impact on the Bill and CoP.

It is with sadness that we recognise that the principles behind Getting it Right for Every Child, providing the right help at the right time, proportionate and timely early
intervention, could be compromised at those early stages as practitioners may find the Information Sharing processes too complex to navigate. (There is also a fear amongst some professionals of their professional judgement being scrutinised and a fear of litigation if they breach the law associated with information sharing.)