Summary of previous meeting

The GIRFEC team shared the output from the previous meeting and it was agreed by the group as a true reflection of the discussion and consensus conclusion.

Update

The GIRFEC Team provided an update on progress of the Named Person engagement work and corporate processes.

- The engagement has seen a wide variety of views offered on how the information sharing provisions in Parts 4 and 5 of the Act should be amended; these have ranged from repealing all information sharing provisions to making the minimum changes possible. However the vast majority of stakeholders have so far expressed views somewhere in the middle.

- So far, an absolute requirement to share information is not an approach desired by the majority of stakeholders. Part of the difficulty seen by stakeholders is that it has been perceived that the Supreme Court is suggesting that a new clearly defined threshold (below Child Protection and at risk of significant harm) would be required as to when it was ‘necessary’ to share information in relation to wellbeing needs and risks and that this would be challenging to apply in practice.

- Most are saying that it would be helpful to have something in Part 4 and 5 of the Act to encourage information sharing when it can be shared under existing data sharing law to address wellbeing needs and risks while also providing a framework to support consistency in approach to information sharing.

- While most stakeholders were supportive of a clearer framework being put in place to support information sharing they also wished this to provide for professional judgement and discretion and did not want this framework to be complex or too prescriptive unless it related to law.

- There were wide views on introducing provisions in relation to seeking consent on the face of the Act, some thought that this would be helpful while others thought that this could be very complex to define this clearly in supporting guidance to ensure that practitioners complied with the law.

- Most stakeholders said once we were clear on the way forward there would need to be engagement on developing the revised guidance, any new code of
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practice, new practice development materials and training materials. They also indicated that time would need to be available to establish practitioner confidence and competence in delivering the new provisions.

Discussion

- Strong views expressed that no matter what way forward is taken we must take the opportunity to help clarify when, how and from whom consent should be sought and this should be explained through case studies/ scenarios. Equally we should clarify when consent should not be sought or is not required to be sought, advise on handling when consent is withheld or withdrawn and when should consent be revisited.

- There were different views on providing a legal requirement to seek consent if specific criteria or threshold is met. A duty to seek consent when 'a specific threshold is met' may be difficult to operate as often it may be realised that this has been met on reflection after the interaction, after the natural opportunity to ask for consent has passed or when it would be disruptive to ask for consent at that moment e.g. after a call has been considered by NHS 24, after an ambulance service attendance, during a prison visit, etc.

- The view was that information should be shared with the Named Person when they had a distinct role to play. However, the Named Person is not a crisis service and information sharing provisions should reflect the response that the Named Person can provide.

- The voice of the child and children’s rights must be promoted throughout.

- Practitioners confidence and competence must be in place before commencement of revised provisions. They should have clear accessible guidance.

- There was discussion about the difference between seeking and obtaining support/ agreement/ consent to share information and asking for consent. i.e. even when consent is not required before information can be shared it is usually helpful to have the support/ agreement/ consent to share as this can often support on-going engagement. Agreement is needed on how this should be expressed in terms of guidance.

- Some of the group suggested that some sort of central support should be available for a short period to support consistency in addressing challenging queries in relation to information sharing. This may also support the development of more targeted guidance on specific issues.

- There is much guidance already out there on confidentiality, consent and information sharing and information management. We should be mindful of
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this existing guidance and on the impact on current well established practice that is expected and accepted by the public and practitioners alike.

- The group wanted to understand better the process for agreeing new guidance and possibly a code of practice.

- It will be helpful to clarify rules/ law, general principles and guidance.

- The group struggled to articulate common reasons for sharing with the Named Person rather than Social Work where concerns/ needs were at a level of significant risk to health or safety and were not in favour of separating out Health and Safety indicators from the other wellbeing indicators.

- The view was that to introduce a requirement to share information with the Named Person at a level where it was not necessary to obtain consent would be around the same level where practitioners would share information with Social Work services. Hence introducing this may be of no real benefit and may introduce complexity to decisions around who to share information with.

- The general view was that children, young people or parents rarely refused to give consent to share information, where a practitioner explained why they thought it would be helpful to share specific information to engage the right help for a child or young person.

Conclusions

The group confirmed that their view continued to reflect the conclusions of the last meeting:

- Legislation would be helpful in encouraging (rather than requiring) sharing of relevant and proportionate information in relation to children and young people’s wellbeing to support early intervention and prevention.

Additional conclusions

- Legislation should not be complex and detailed – any complexity of delivering on the legislation should be addressed through guidance or a code of practice.

- The legislation must focus on the policy objective of increasing information that can and should be shared to support families, address children and young people’s holistic wellbeing needs and risks – significant risks to health and safety are already well addressed through child protection guidance, processes and practice.

- There must be significant scope for professional judgement and discretion in line with the GIRFEC ethos of a person centred approach of engaging and working alongside families to build sustainable resilience and capacity to address their challenges.
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- How, when, from whom consent is sought or not sought should be explained in any guidance/ code of practice, the DPA and existing professional guidance provide the basis for this.
- It could be highly complex to introduce and manage a new requirement to seek consent when a specific threshold is met in relation to wellbeing needs or risks.