

Lanarkshire Data

Sharing Partnership

# Lanarkshire Information Sharing Partners

Information Sharing For Adults, Children and  
Young People - A Good Practice Guide

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# LANARKSHIRE INFORMATION SHARING - A GOOD PRACTICE GUIDE

## Introduction to the Good Practice Guide

The Lanarkshire Partners have prepared this guidance for all practitioners and managers working with children, young people, their families, adults and older people within Lanarkshire's partner agencies. The information sharing partners are

- North Lanarkshire Council
- South Lanarkshire Council
- NHS Lanarkshire
- The Scottish Fire and Rescue Service
- North Lanarkshire Health and Social Care Partnership
- South Lanarkshire Health and Social Care Partnership
- Voluntary Action North Lanarkshire
- Voluntary Action South Lanarkshire

All of the Lanarkshire Partners have different functions and responsibilities but we need to share information between and among ourselves at different times and for different purposes. We can do this electronically, in writing, verbally, at meetings and by phone.

The information that is shared and the staff that can access the shared information will vary according to the purpose or reason for sharing information and the roles of different staff, in order that only information which needs to be shared is shared.

This **Information Sharing Good Practice Guide** should be read in conjunction with the appropriate information sharing agreement. The guide has been designed to be of use for all who work within the Lanarkshire Partnership, however parts 2 – 4 are specifically designed for practitioners. It deals with the detail of the Data Protection Act 2018 and the Human Right Act 1998

This guidance has four parts:

1. Overview of Information Sharing Legislation and Principles
2. General Information Sharing
3. Information Sharing integrated Health and Social Care
4. Information Sharing – Children and Young People

## **Background**

### **General Data Protection Regulation**

General Data Protection Regulation (GDPR) is European Union (EU) legislation that addresses the handling of personal data. It is a regulation by which the European Commission intends to strengthen and unify data protection for all individuals within the EU. GDPR also addresses the export of personal data outside the EU.

The GDPR primarily aims to give control of personal data back to citizens and to simplify the regulatory environment for international business by unifying the regulation within the EU. The GDPR took effect on 25 May 2018 and replaced previous EU data protection directives.

### **Data Protection Act 2018**

The Data Protection Act 2018 (DPA) is the UK legislation necessary to build GDPR into UK law. Regardless of Brexit, it will reiterate the UK's commitment to the privacy principles enshrined in the EU Regulation. The DPA 2018 replace the Data Protection Act 1998 and adds clarity on how the UK will apply statutory controls to areas of the GDPR where Member States have been given some flexibility i.e. the derogations. This means that in some areas the DPA 2018 will enhance or alter aspects of GDPR.

## Part 1

# INFORMATION SHARING LEGISLATION

### A GOOD PRACTICE GUIDE

#### 11. Information Sharing

Information sharing takes place as part of day-to-day practice to assist service users to achieve desired outcomes, for example, where there are concerns about substance misuse, difficulties with learning, a family's homelessness or support services are needed to enable an older person to live independently in their own home. In these circumstances referrals, requests for assistance, chronologies, integrated or shared assessments, and plans may be shared. All of these circumstances routinely require us to share some information among some or all of us in the partner agencies.

This Good Practice Guidance reinforces the responsibility to share information lawfully and effectively within agencies and supports practitioners to understand their duties and responsibilities in sharing information outside their own agency.

#### 1.2 Risk of Harm

The protection of children, young people and adults at risk, is **“everyone’s responsibility and everyone’s job”** This cuts across all aspects of private life and professional business. We all have a duty, individually and collectively, to protect vulnerable people in our communities.

On many occasions, this will require staff to seek and exchange personal information about individuals. Questions of privacy and confidentiality can and sometimes do get in the way of ensuring the safety of children, young people and adults at risk. This guidance reinforces the importance of sharing and exchanging information where the protection of children, young people and adults at risk is concerned.

Where you have a concern about a child, young person or adult at risk of harm or you are made aware of such a concern you have a responsibility to share and exchange relevant

information with other professionals. You should do so without delay and with confidence, following your own agency/service procedures.

Harm is defined for adults (anyone of 16 years of age or more) through the Adult Support and Protection Act 2007 and for Children through the Scottish Government National Child Protection Guidance. These definitions are reproduced in Appendix 4 of this guidance.

When faced with a decision about sharing information to do nothing is not an option. Use your professional judgement, adopt a common sense approach, refer to line management, or seek advice from individuals within your agency who have a role to advise on information sharing such as your organisation's Data Protection Officer. Share what you consider to be necessary, legitimate, appropriate and proportionate. Where there is a concern about a service user's wellbeing, a decision not to share information, or failure to share information, would need to be justified by any individual. The decision making process should be recorded accurately in case notes and electronic files, including the chronology of significant events.

We must share information in compliance with the requirements of the Data Protection Act 2018, the Human Rights Act 1998, and the common law duty of confidentiality.

**Legislation does not prevent you from sharing information it empowers you to share information.**

### **1.3 The Data Protection Act 2018**

The General Data Protection Regulations (GDPR) took effect on 25<sup>th</sup> May, 2018. GDPR is embedded in United Kingdom law through the Data Protection Act 2018. GDPR updates and enhances Data Protection legislation which was devised and enacted prior to the digital revolution. There are however implications for information sharing by public bodies and their partners providing care and protection.

The key principles of GDPR and the Data Protection Act 2018 are:

- a) information will be shared lawfully, fairly and in a transparent manner in relation to individuals;
- b) collected for specified, explicit and legitimate purposes and not further shared in a manner that is incompatible with those purposes;
- c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are shared;
- d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal information that is inaccurate, having regard to the purposes for which they are shared, is erased or rectified without delay;
- e) kept in a form which permits identification of information subjects for no longer than is necessary for the purposes for which the personal information is shared

f) shared in a manner that ensures appropriate security of the personal information, including protection against unauthorised or unlawful sharing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.”

In particular GDPR requires that:

“the controller (organisation holding the information) shall be responsible for, and be able to demonstrate, compliance with these principles.”

The conditions which allow information to be shared in line with the principles above are:

- (a) **Consent:** the individual has given clear consent for you to share their personal information for a specific purpose.
- (b) **Contract:** *the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.*
- (c) **Legal obligation:** sharing information is necessary for you to comply with the law (not including contractual obligations).
- (d) **Vital interests:** sharing information is necessary to protect someone’s life.
- (e) **Public task:** sharing information necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.
- (f) **Legitimate interests:** *sharing information is necessary for your legitimate interests or the legitimate interests of a third party unless there is a good reason to protect the individual’s personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)*

(The conditions in italics are not relevant to the partners in the context of this guidance.)

Public bodies such as Local Authorities and Health Boards will primarily use the public task condition, however depending on the circumstances Legal Obligation, Vital Interests and Consent may apply. Many of the lawful bases for processing depend on the processing being “necessary”. This does not mean that processing always has to be essential. However, it must be a targeted and proportionate way of achieving the purpose. The lawful basis will not apply if you can reasonably achieve the purpose by some other less intrusive means.

### Public Task

- This condition can be used when carrying out a specific task in the public interest which is laid down by law; or
- exercising official authority (for example, a public body’s tasks, functions, duties or powers) which is laid down by law.

The Data Protection Act 2018 includes a clause clarifying that the public task basis will cover processing necessary for:

- the administration of justice;
- parliamentary functions;
- statutory functions; or
- governmental functions.

However, this is not intended as an exhaustive list. This condition should be relied upon whenever we are sharing information which is necessary as part of a Public Task. Some examples of this are:

***A Health Visitor shares a child's new address details with others involved in providing medical care***

***A Council Housing Officer shares information about a tenants accessibility requirements with the council's facilities team so that suitable amendments can be made to the tenant's property as it is necessary to provide suitable housing.***

When this condition is used, you should be able to specify the relevant task, function or power, and identify its basis in common law or statute. You should also ensure that you can demonstrate there is no other reasonable and less intrusive means to achieve your purpose.

### **Legal obligation**

You can rely on this condition if you need to share information to comply with a common law or statutory obligation. Sharing information must be necessary. If you can reasonably comply without sharing the personal data, this basis does not apply. An example of a legal obligation to share information is:

***A Health practitioner is of the opinion that a person is an adult at risk. The Adult Support and Protection Act 2007 states that they must report the facts and circumstances to the council. The Health practitioner as an employee of the Health Board has a legal obligation to share the necessary information.***

### **Vital Interests**

This condition should be used when it is considered necessary to share information to protect the life of the adult, child or young person. You are likely to be able to rely on vital interests as your lawful basis if you need to process the personal data to protect someone's life. The processing must be necessary. If you can reasonably protect the person's vital interests in another less intrusive way, this basis will not apply.

### **Consent**

**Consent should only be used as a condition of sharing when no other condition is available.**

In general Public Bodies are unlikely to rely on consent as a condition, however if it is the only condition available to you, it can be used. When relying on consent great care needs to be taken to ensure it is given freely and that:

- the person fully understands they can refuse without any detriment
- it is not requested or given as a pre-condition to a service
- the right to withdraw consent is adhered to
- the right of the person to specify who the information can or cannot be shared with is respected
- a record of the consent being granted is kept.

New Data Protection law is clearer that an indication of consent must be unambiguous and involve a clear affirmative action (an opt-in). It specifically bans pre-ticked opt-in boxes. It also requires distinct consent options for distinct processing operations. This means a person may consent to information being shared with a specific person or service but exclude other persons or services. Consent should be separate from other terms and conditions and should not generally be a precondition of signing up to a service.

You must keep clear records to demonstrate consent. This can be by using a signed consent form, however it is permitted to obtain consent through a telephone conversation, provided that the information about the choice is fair, intelligible and clear, and you ask the person to indicate their consent in a clear manner. In such cases you must keep a record detailing how consent was given. There is no specified period of time for consent to be reviewed, however should any change in circumstances occur or if you need to share additional information or share with anyone not agreed to you should review the consent and seek it again.

A person now has a specific right to withdraw consent. You need to tell people about their right to withdraw, and offer them easy ways to withdraw consent at any time. You must also consider any request a person makes to have their information erased.

Consent is only appropriate if you can offer people real choice and control over how you use their information. If you cannot offer a genuine choice, consent is not appropriate. If you intend to share information regardless of whether consent is given or not, asking for consent is misleading and inherently unfair.

If you do use consent, tell individuals that they can withdraw their consent at any time and explain how they can do so.

Ensure that the person knows that they can refuse to consent without any detriment.

Act on any request to withdraw consent as quickly as possible and no later than 30 days from receipt of the request.

### **Special Category Information**

Article 9 of GDPR specifies that 'Special Category Information' is information in relation to

- race;
- ethnic origin;
- politics;
- religion;
- trade union membership;
- genetics;
- biometrics (where used for ID purposes);
- health;
- sex life; or
- sexual orientation.

When 'Special Category' information is to be shared, there are specific conditions that must be met. The most relevant are listed below:

- the data subject has given explicit consent to the processing of their personal data for one or more specified purposes.
- processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
- processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional.

The latter two conditions support information sharing in a Health and Social Care context and where the sharing is deemed necessary in the provision of medical treatment.

The Data Protection Act 2018 has introduced a further condition in respect of Special Category information specific to the protection of wellbeing. The condition states:

- Processing is necessary for the purposes of—

- (i) protecting an individual from neglect or physical, mental or emotional harm, or
- (ii) protecting the physical, mental or emotional well-being of an individual.

It applies equally to adults and children and only allows information sharing without consent when:

- the processing is necessary for reasons of substantial public interest.

or

- in the circumstances, consent cannot be given by the subject;
- in the circumstances, the sharer cannot reasonably be expected to obtain the consent of the subject;
- it must be carried out without the consent of the subject because obtaining consent would prejudice the provision of the protection.

This condition should not be confused with Child or Adult Protection as when there is a risk of harm information can be shared without consent. In Scotland the condition will support sharing information about a child or young person's wellbeing when there is no likely risk of harm.

## 1.4 The European Convention on Human Rights (ECHR)

The ECHR has been in existence since the 1950s, but was given legal force in Scotland through the Human Rights Act 1998 and the Scotland Act 1998.

Article 8 of the Convention provides that:

- Everyone has the right to respect for his/her private and family life, his/her home and his/her correspondence.
- It is not an absolute right. It is a qualified right that allows a public authority to interfere where that interference is:
  - in accordance with law;
  - in the pursuit of a legitimate aim; and
  - necessary in a democratic society.

Further information on ECHR can be found at:

[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

It is a key aspect of Article 8 that a public authority cannot interfere in the rights it afforded by the ECHR except in accordance with the law and is **necessary** in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others unless the subject consents.

In an information sharing context this means that Public Bodies can only share information when it is necessary to protect an individual's health, to prevent risk of harm or in the interests of national security. Neither GDPR nor the Data Protection Act 2018 fundamentally alter this fact. Particular sections within both pieces of regulation/legislation assist in specifying specific conditions to support the sharing of information.

## 1.5 Duty of Confidentiality

Information that is given in confidence or considered confidential is usually of some

sensitivity; is neither lawfully in the public domain nor readily available from another public source; and is shared in a relationship, where the person giving the information understood that it would not be shared with others. The duty of confidentiality requires that, unless there is a statutory requirement to use information that has been provided in confidence or, a court orders the information to be disclosed, it should only be used for the purposes that the subject (child or adult) has been informed about and has consented to.

This duty of confidentiality is not absolute but can be overridden if you, as the holder of the information, can justify the information being shared as being in the public interest (e.g. to protect a **child or adult from harm**).

The circumstances making the sharing of confidential information lawful are:

- where the individual, to whom the information relates, has consented;
- where disclosure is in the public interest/function; and
- where there is a legal duty to do so.

***Where there is a risk to a child/young persons or adult which may lead to harm, then it is acceptable to share confidential information in the best interest of the child/young person or adult and/or in the public interest.***

## 1.6 Conclusion

The introduction of GDPR and the Data Protection Act 2018 has enhanced the privacy rights of the individual. Unfortunately there is a risk that its complexity may prove confusing and difficult for practitioners to navigate. In essence the information sharing pathway requires consideration of how to meet the conditions of the Data Protection Act 2018 as it interprets and legislates GDPR, then to consider ECHR Article 8 and the rights it protects and finally if the information to be shared falls under the duty of confidentiality. The sections of this guide which follow present a simplified guide to practice when sharing information about adult outwith integrated Health and Social Care, between Health and Social Care when the information is aligned to a function in the relevant integration scheme and sharing information about children and young people.

## Part 2

# General Information Sharing Guidance

### 2.1 Risk of Harm

The protection of children, young people and adults at risk, is “**everyone’s responsibility and everyone’s job**” This cuts across all aspects of private life and professional business. We all have a duty, individually and collectively, to protect vulnerable people in our communities.

**Where you have a concern about a child, young person or adult at risk of harm or you are made aware of such a concern you have a responsibility to share and exchange relevant information with other professionals. You should do so without delay and with confidence, following your own agency/service procedures.**

Harm is defined through legislation for adults (anyone of 16 years of age or more) through the Adult Support and Protection Act 2007 and for Children through the Scottish Government national Child Protection Guidance. These definitions are reproduced in Appendix 1 of this guidance.

### 2.2. Information Sharing Principles

It is important that you understand when it is permitted to share information about the people you work with/provide services for. Current legislation permits you to share information when it is in accordance with set conditions. Regardless of the circumstances when information is shared the principles of the Data Protection Act 2018 and the Human Rights Act 1998 must be strictly adhered to. In all cases you must ensure information is:

- collected for specified, explicit and legitimate purposes and not further shared in a manner that is incompatible with those purposes
- adequate, relevant and limited to what is necessary in relation to the purposes for which it is shared
- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal information is accurate if not it should be erased or the inaccuracy rectified without delay;

- kept for no longer than is necessary.
- kept and shared in a manner that ensures appropriate security.
- that you record your reason for sharing or not sharing information.

It is also important that:

- we always let people know that we are sharing their information and the reasons why (unless than by doing so you may be placing someone at risk, interfering with a Police investigation or it is not reasonably practical to do so i.e. in situations where there is a need for urgency)

**In all circumstances, if you are in doubt, seek advice from your line manager and/or subject experts within your organisation.**

## **2.3 Sharing Information about Adults outwith a Health and Social Care Partnership**

You can share information without consent if you have a concern about a child, young person or adult at risk of harm or you are made aware of such a concern.

(If you suspect an adult is at risk of harm and you work for the Council, Health Board or Police you have a statutory obligation to report your concern to the council within whose area that adult resides.)

You can share information without consent when the information is not 'Special Category' Information. If it is necessary to share the information to perform any of your organisations public tasks (public functions). Your organisation has clear privacy or data protection notices which make people aware of how they use people's information.

Special Category Information is information in relation to:

- race;
- ethnic origin;
- politics;
- religion;
- trade union membership;
- genetics;
- biometrics (where used for ID purposes);
- health;
- sex life; or
- sexual orientation.

You can share 'Special Category' information without consent when it is necessary in relation to the provision of health or social care or medical treatment.

In all other cases you require to seek consent to lawfully share information.

## 2.4 Consent

**Consent should only be used as a condition of sharing when no other condition is available.**

In general Public Bodies are unlikely to rely on consent as a condition, however, if it is the only condition available, you can use it but great care needs to be taken to ensure it is given freely and that:

- the person **fully** understands they can refuse **without any detriment** if they refuse
- it is not requested or given as a **pre-condition** to a service
- the right to **withdraw** consent is explained and adhered to
- the right of the person to specify **who the information can or cannot be shared with** is respected
- a **record** of the consent being granted is kept.

There is a standard consent form available for use, however, current legislation is clear that a signed form is not a necessity. Consent can be obtained through talking to someone either in person or on the telephone, however, you must be careful to record the details of how the consent was given following the requirements detailed above.

A flowchart which illustrates when information can be shared is contained within Appendix 1 on page 26 of this guidance.

## 2.5 Points to Remember

- **If you suspect a person is or is likely to be at risk of harm you can and should share information, consent is not required.**
- **Remember that the Data Protection Act 2018 is not a barrier to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately.**
- **Be open and honest with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, unless it is unsafe or inappropriate to do so.**

- **Seek advice if you are in any doubt, without disclosing the identity of the person where possible.**
- **You can share information that is not Special Category Information if it is necessary in relation to the functions of your organisation (Public Task).**
- **You can only share Special Category information without consent if it is in necessary in relation to the provision of health or social care or medical treatment.**
- **Share with consent but only where there is no other condition that allows you to share information. Never ask for consent if the circumstances are such that you are likely to share in any case or are required by a legal duty to share information.**
- **If you are relying on consent it must be freely given; without detriment if consent is refused: always explain that consent can be withdrawn; respect the wishes of the person as to whom information can and cannot be shared with.**
- **Information shared should be necessary, proportionate, relevant, accurate, timely and secure.**
- **Keep a record of what your decision and the reasons for it - whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.**

## Part 3

# Information Sharing Integrated Health and Social Care

### 3.1 Risk of Harm

The protection of children, young people and adults at risk, is **“everyone’s responsibility and everyone’s job”** This cuts across all aspects of private life and professional business. We all have a duty, individually and collectively, to protect vulnerable people in our communities.

On many occasions, this will require staff to seek and exchange personal information about individuals. Questions of privacy and confidentiality can and sometimes do get in the way of ensuring the safety of children, young people and adults at risk. This guidance reinforces the importance of sharing and exchanging information when protecting people.

**Where you have a concern about a child, young person or adult at risk of harm or you are made aware of such a concern you have a responsibility to share and exchange relevant information with other professionals. You should do so without delay and with confidence, following your own agency/service procedures.**

Harm is defined for adults (anyone of 16 years of age or more) through the Adult Support and Protection Act 2007 and for Children through the Scottish Government National Child Protection Guidance. These definitions are reproduced in Appendix 4 of this guidance.

### 3.2 Context

This guidance is for all staff working with people and their families within the North and South Lanarkshire Integrated Health and Social Care Partnership. It supports both North and South Lanarkshire Health and Social Care integration scheme and the Public Bodies (Joint Working) (S) Act 2014 aims:

The information sharing partners are:

[North Lanarkshire Integrated Health and Social Care Partnership](#)

- North Lanarkshire Council Adult, Children's and Criminal Justice Social Work, and
- NHS Lanarkshire

For the purposes of delivering any of the functions as stipulated in the partnership integration scheme.

### South Lanarkshire Integrated Health and Social Care Partnership

- South Lanarkshire Council Adult, Children's and Criminal Justice Social Work, and
- NHS Lanarkshire

For the purposes of delivering any of the functions as stipulated in the partnership integration scheme<sup>1</sup>.

In North Lanarkshire the integration of Health and Social Care has been extended to include Social Work Services for Children and Young People and Social Work Criminal Justice Services.

In South Lanarkshire the integration of Health and Social Care does not currently include Social Work Services for Children and Young People and Social Work Criminal Justice Services.

All of the partners covered by this guidance have different functions and responsibilities but we need to share information between and among ourselves at different times and for different purposes. We can do this electronically, in writing, verbally, at meetings and by telephone.

### 3.3 Information Sharing Principles

It is important that you understand when it is permitted to share information about the people we work with/provide services for. Current legislation permits you to share information when it is in accordance with set conditions. Regardless of the circumstances when information is shared the principles of the Data Protection Act 2018 and the Human Rights Act 1998 must be strictly adhered to. In all cases you must ensure information is:

- collected for specified, explicit and legitimate purposes and not further shared in a manner that is incompatible with those purposes

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<sup>1</sup> [The North Lanarkshire Health and Social Care Partnership integration scheme can be accessed by clicking on this link.](#)

[The South Lanarkshire Health and Social Care Partnership integration scheme can be accessed by clicking on this link](#)

- adequate, relevant and limited to what is necessary in relation to the purposes for which it is shared
- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal information is accurate if not it should be erased or the inaccuracy rectified without delay.
- kept for no longer than is necessary.
- kept and shared in a manner that ensures appropriate security.
- that we you record your reasons for sharing or not sharing information.

It is also important that:

- we always let people know that we are sharing their information and the reasons why (unless than by doing so you may be placing someone at risk, interfering with a Police investigation or it is not reasonably practical to do so i.e. in situations where there is a need for urgency).

**In all circumstances, if you are in doubt, seek advice from your line manager and/or subject experts within your organisation.**

### **3.4 Sharing Information about Adults within a Health and Social Care Partnership**

Consent will not be used a condition to share information between Health and Social Care when the information sharing is necessary in respect of any of the integrated functions covered by the Health and Social Care Partnership.

You can share information if you have a concern about a child, young person or adult at risk of harm or you are made aware of such a concern.

(If you suspect an adult is at risk of harm and you work for the Council, Health Board or Police you have a statutory obligation to report your concern to the Council within whose area that adult resides.)

You can share information when the information is not 'Special Category' Information. If it is necessary to share the information to perform any of your organisations public tasks (public functions). Your organisation has clear privacy or data protection notices which make people aware of how they use people's information.

Special Category Information is information in relation to:

- race;
- ethnic origin;

- politics;
- religion;
- trade union membership;
- genetics;
- biometrics (where used for ID purposes);
- health;
- sex life; or
- sexual orientation.

You can share 'Special Category' information without consent when it is necessary in relation to the provision of health or social care or medical treatment.

A flowchart which illustrates when information can be shared is contained within Appendix 2 on page 27 of this guidance.

### **3.5 Points to remember**

- **Consent will not be used a condition to share information between health and social care when the information sharing is necessary in respect of any of the integrated functions covered by the Health and Social Care Partnership.**
- **If you suspect a person is or is likely to be at risk of harm you can and should share information.**
- **You can share information with others in the Health and Social care Partnership if it is necessary to support any of the integrated functions.**
- **Remember that the Data Protection Act 2018 is not a barrier to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately.**
- **Be open and honest with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, unless it is unsafe or inappropriate to do so.**
- **Seek advice if you are in any doubt, without disclosing the identity of the person where possible.**
- **Information shared should be necessary, proportionate, relevant, accurate, timely and secure.**
- **Keep a record of your decision and the reasons for it - whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.**

## Part 4

# INFORMATION SHARING – Children and Young People.

### 4.1 Risk of Harm

The protection of children, young people and adults at risk, is **“everyone’s responsibility and everyone’s job”** This cuts across all aspects of private life and professional business. We all have a duty, individually and collectively, to protect vulnerable people in our communities.

On many occasions, this will require staff to seek and exchange personal information about individuals. Questions of privacy and confidentiality can and sometimes do get in the way of ensuring the safety of children, young people and adults at risk. This guidance reinforces the importance of sharing and exchanging information where the protection of children, young people and young adults is concerned.

**Where you have a concern about a child, young person or adult at risk of harm or you are made aware of such a concern you have a responsibility to share and exchange relevant information with other professionals. You should do so without delay and with confidence, following your own agency/service procedures.**

Harm is defined for adults (anyone of 16 years of age or more) through the Adult Support and Protection Act 2007 and for Children through the Scottish Government National Child Protection Guidance. These definitions are reproduced in Appendix 4 of this guidance.

### .2 Information Sharing Principles

It is important that you understand when it is permitted to share information about the people we work with/provide services for. Current legislation permits you to share information when it is in accordance with set conditions. Regardless of the circumstances when information is shared the principles of the Data Protection Act 2018 and the Human Rights Act 1998 must be strictly adhered to. In all cases you must ensure information is:

- collected for specified, explicit and legitimate purposes and not further shared in a manner that is incompatible with those purposes
- adequate, relevant and limited to what is necessary in relation to the purposes for which it is shared

- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal information is accurate if not it should be erased or the inaccuracy rectified without delay;
- kept for no longer than is necessary.
- kept and shared in a manner that ensures appropriate security.
- that you record your reasons for sharing or not sharing information.

It is also important that:

- we always let people know that we are sharing their information and the reasons why (unless than by doing so you may be placing someone at risk, interfering with a Police investigation or it is not reasonably practical to do so i.e. in situations where there is a need for urgency)

**In all circumstances, if you are in doubt, seek advice from your line manager and/or subject experts within your organisation.**

## 4.2 Sharing Information about Children and Young People

You can share information without consent if you have a concern about a child, young person or a young adult or you are made aware of such a concern.

(If you suspect an adult (16yrs or over) is at risk of harm and you work for the Council, Health Board or Police you have a statutory obligation to report your concern to the Council within whose area that adult resides.)

You can share information without consent when the information is not 'Special Category' Information. If it is necessary to share the information to perform any of your organisations public tasks (public functions). Your organisation has clear privacy or data protection notices which make people aware of how they use people's information.

Special Category Information is information in relation to:

- race;
- ethnic origin;
- politics;
- religion;
- trade union membership;
- genetics;
- biometrics (where used for ID purposes);
- health;
- sex life; or
- sexual orientation.

## You can share 'Special Category' information without consent:

- When it is necessary in relation to the provision of health or social care or medical treatment.

## You can share 'Special Category' information without consent

- When it is necessary for protecting the physical, mental or emotional wellbeing of a child, young person or young adult.

### But only when

- the processing is necessary for reasons of substantial public interest.

or

- in the circumstances, consent cannot be given by the subject;
- in the circumstances, the sharer cannot reasonably be expected to obtain the consent of the subject;
- it must be carried out without the consent of the subject because obtaining consent would prejudice the provision of the protection.

This condition should not be confused with Child or Adult Protection as when there is a risk of harm information can always be shared without consent.

In all other cases you require to seek consent to lawfully share information.

## 4.3 Consent

**Consent should only be used as a condition of sharing when no other condition is available.**

Current Data Protection legislation is clear that a child can competently give consent when they have reached 13 years of age. For children under this age you need to get consent from whoever holds parental responsibility for the child.

In general Public Bodies are unlikely to rely on consent as a condition, however it is the only condition available you can use it. When relying on consent great care needs to be taken to ensure it is given freely and the child/parent **fully** understands they can refuse **without any detriment** if refused

- it is not requested or given as a **pre-condition** to a service
- the right to **withdraw** consent is explained and adhered to

- the right of the child/parent to specify **who the information can or cannot be shared with** is respected
- a **record** of the consent being granted is kept.

There is a standard consent form available for use, however, current legislation is clear that a signed form is not a necessity. Consent can be obtained through a talking to the child/parent either in person or on the telephone however you must be careful to record the details of how the consent was given following the requirements in the bullets above.

A flowchart which illustrates when information can be shared is contained within Appendix 3 on page 28 of this guidance.

#### **4.4 Points to Remember**

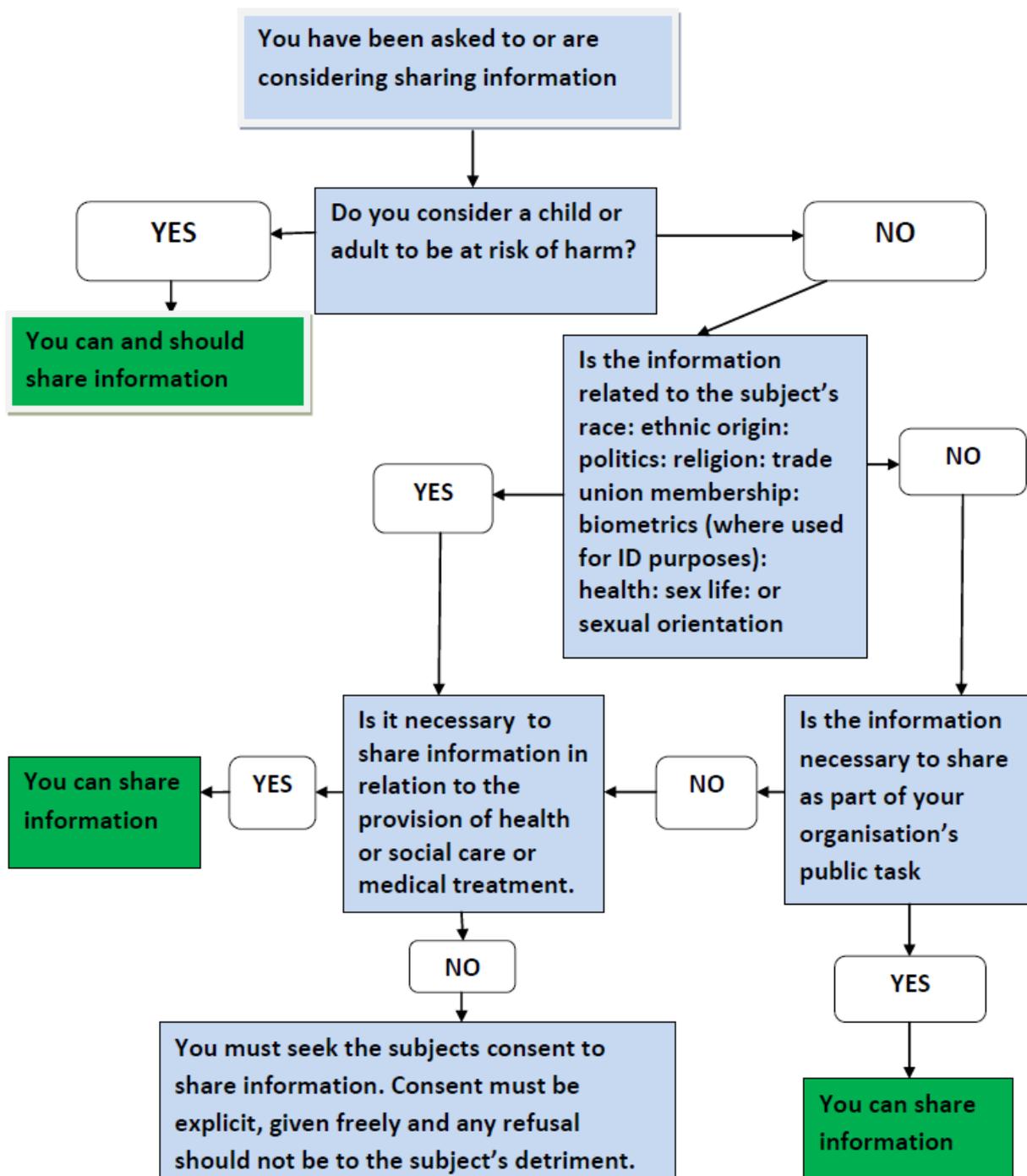
- **If you suspect a child or young person or young adult is or is likely to be at risk of harm you can and should share information, consent is not required.**
- **Remember that the Data Protection Act 2018 is not a barrier to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately.**
- **Be open and honest with the child/parent(s) (where appropriate) from the outset about why, what, how and with whom information will, or could be shared, unless it is unsafe or inappropriate to do so.**
- **Seek advice if you are in any doubt, without disclosing the identity of the person where possible.**
- **You can share information that is not Special Category Information if it is necessary in relation to the functions of your organisation (Public Task).**
- **You can share Special Category information without consent if it is necessary in relation to the provision of health or social care or medical treatment.**
- **You can share Special Category information without consent if it is necessary for protecting the physical, mental or emotional wellbeing of a child (up to 18yrs of age). But only in specific circumstances as described in Para 4.2 above.**
- **You can share with consent but only where there is no other condition that allows you to share information. Never ask for consent if the circumstances are such that you are likely to share in any case or are required by a legal duty to share information.**
- **If you are relying on consent it must be freely given, without detriment if consent is refused. Always explain that consent can be withdrawn and**

**respect the wishes of the person as to whom information can and cannot be shared with.**

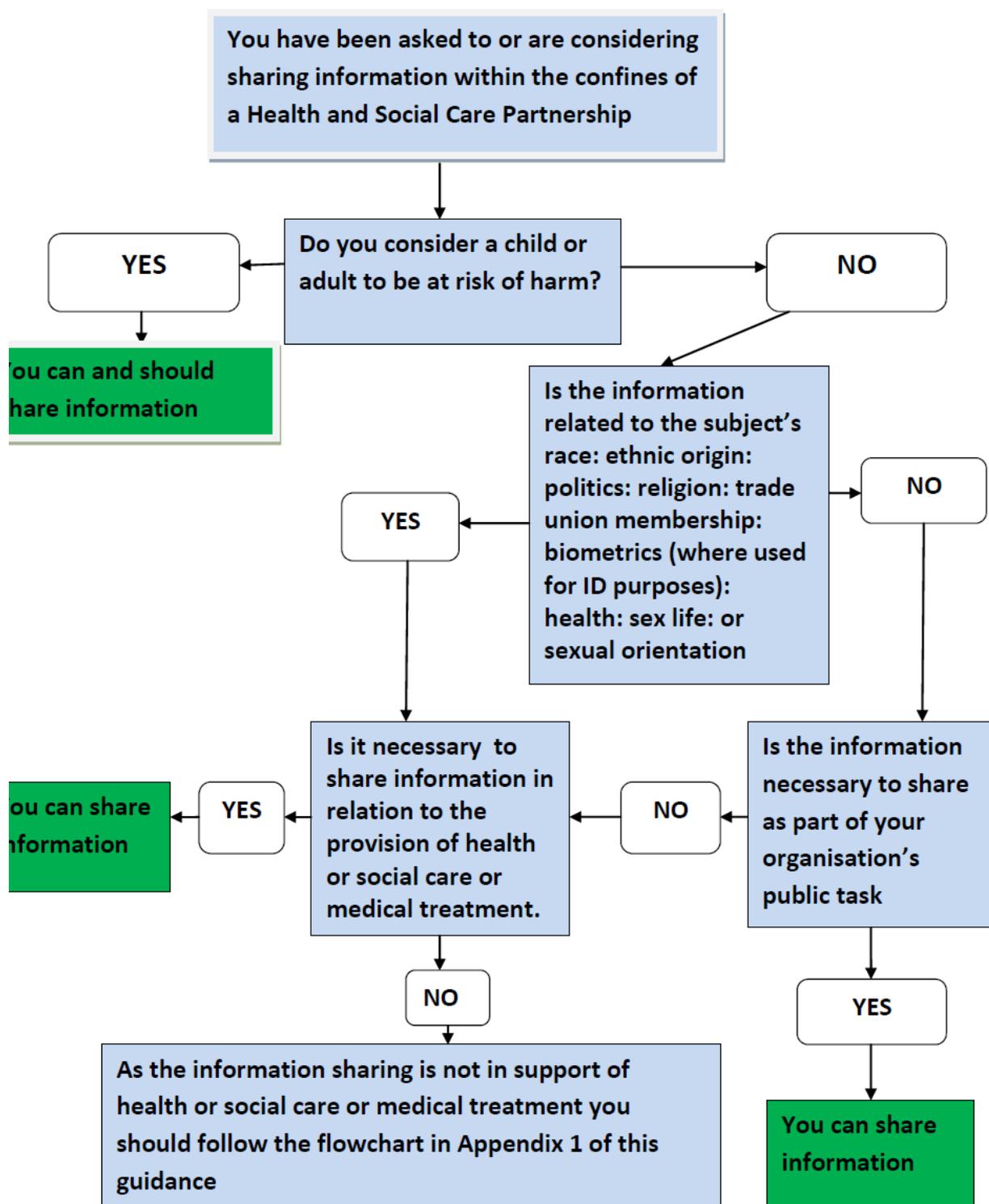
- **Information shared should be necessary, proportionate, relevant, accurate, timely and secure.**
- **Keep a record of your decision and the reasons for it - whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.**

**DRAFT**

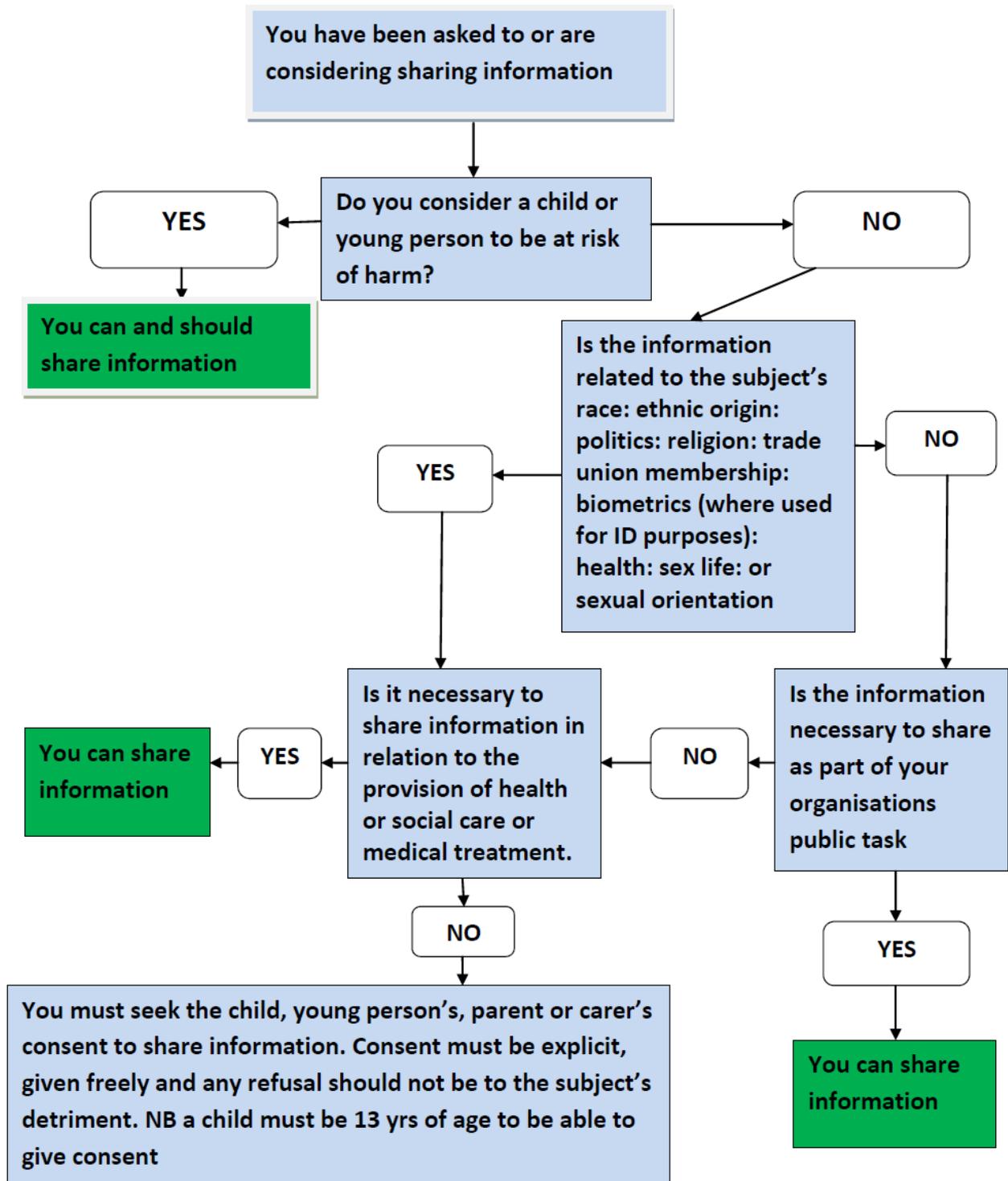
## Appendix 1 GENERAL INFORMATION SHARING



## Appendix 2 INFORMATION SHARING INTEGRATED HEALTH AND SOCIAL CARE



## Appendix 3 INFORMATION SHARING CHILDREN AND YOUNG PEOPLE



## Appendix 4 DEFINITION OF HARM

### Adults

The Adult Support and Protection (Scotland) Act 2007 Section 53 defines harm as follows:

Harm includes all harmful conduct and, in particular, includes:

- conduct which causes physical harm;
- conduct which causes psychological harm (for example by causing fear, alarm or distress);
- unlawful conduct which appropriates or adversely affects property, rights or interests (for example theft, fraud, embezzlement or extortion); or
- conduct which causes self-harm.

**Risk of harm** – Section 3(2) makes clear that an adult is at risk of harm if: another person's conduct is causing (or is likely to cause) the adult harm; or the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.

### Children

The Scottish Government National Guidance for Child Protection 2014 defines harm as follows:

Harm means the ill treatment or the impairment of the health or development of the child, including, for example, impairment suffered as a result of seeing or hearing the ill treatment of another.

In this context, "development" can mean physical, intellectual, emotional, social or behavioural development and "health" can mean physical or mental health."