

# Non-disclosure of Information in the Children's Hearing System, a good practice guide

## ***Principles***

1. The provisions in the Children's Hearings (Scotland) Act 2011, and related Rules, about non-disclosure of information are for the purpose of enabling information which would otherwise have to be provided to an individual to be withheld from that individual.
2. They operate in the broader context that no agency should be providing personal information about one individual to any other individual without good cause. Every agency must always consider whether it is lawful and appropriate to provide such information, or to include such information in reports, even if no non-disclosure provision applies.
3. Reports provided by any agency to the reporter or a children's hearing should contain only information relevant to child's circumstances and life.

## ***When to Consider Non-disclosure within the Act***

4. The test to any non-disclosure provision is that disclosure of the information to the individual(s) would be likely to cause **significant harm** to the child (or to a relevant person re disclosure of the relevant person's whereabouts). There is no established definition of what that term means. It covers physical and emotional harm, most obviously where there is an assessed risk to the health or well being of a child or other person and/or a threat of the child being abducted. It should never be a reluctance by a carer to share their address.
5. If a non-disclosure provision is applied, the process must be transparent. The reporter has a duty to tell everyone entitled to receive the hearing documentation and papers what information has been withheld and from whom; this includes giving a broad outline to the person from whom the information has been withheld.

## ***The Non-disclosure Provisions***

6. There are three primary provisions enabling information to be withheld:
  - *A non-disclosure request.* A non-disclosure request may be made by any person. The request must specify what information within the hearing (or pre-hearing panel) papers is to be withheld from whom, and why. The reporter must withhold the specified information from the specified individual(s) and refer the request to the children's hearing (or pre-hearing panel). The hearing (or pre-hearing panel) will decide whether to agree to the request.
  - *Rule 16.* Rule 16 enables the reporter to withhold the whereabouts of the child or a relevant person when sending notifications or papers or other communications relating to a children's hearing or pre-hearing panel.
  - *A non-disclosure measure.* Where an order by a children's hearing or sheriff requires the child to reside at a particular place, including a place of safety,

the hearing or sheriff may include a measure in the order prohibiting disclosure of that place. The measure prohibits disclosure of the address, and also other information if necessary to prevent indirect disclosure of the place.

7. More than one type of non-disclosure provision may apply to a child's case.

### ***Responsibilities of Report Writer***

8. Report writers are responsible for making it clear within their report that there is a non-disclosure request. If no non-disclosure request is made, the reporter will assume that it is appropriate to provide the report in full to all those entitled to receive the report.

9. A report writer should provide information which is, or may be, subject to a non-disclosure provision in a format which supports withholding or redaction of the information (e.g. in a separate document, an appendix or a single paragraph/section within the report). A report must not contain multiple references to the same 'non-disclosure' information. There should be minimum inclusion of addresses, only where legally required and/or of particular relevance

### ***Responsibilities of Reporter***

10. If the reporter withholds information under any non-disclosure provision, the reporter will provide the local authority with full details of the information which has been withheld and from whom.

### ***Agency Responsibilities***

11. Where a non-disclosure provision has been applied, all agencies involved with the child must have an appropriate system in place to ensure this is highlighted on the child's and/or carer's records. As a non-disclosure measure is a statutory instrument, it is legally binding on all agencies.

12. Where a non-disclosure measure is included in an order, the local authority must keep this measure under review. If the measure becomes unnecessary, the local authority must request a review of the order and remove from their review system.

13. All agencies connected with the children's hearing system should ensure that the relevant members of their organisation have adequate knowledge and understanding of their roles in relation to the non-disclosure provisions.

### ***Breach and Learning***

14. A breach is where there is a legal order in force made by a court or children's hearing which includes a measure that sets out conditions of non disclosure of information that apply to a specified individual or individuals and that information is disclosed to that individual or individuals by any person or agency

### ***Partnership and Action in Managing Non-disclosure***

15. Where any practitioner identifies a breach of a non-disclosure provision they should immediately inform their line manager, the lead professional and SCRA. The lead professional should undertake a risk assessment and take any appropriate steps to safeguard the child.

16. A full review of how the breach occurred will be co-ordinated by SCRA. Any lessons to be learned from a breach will be shared with relevant agencies by SCRA.

17. All agencies should have a multi-agency non-disclosure protocol. Chief Social Work Officers will take the lead in ensuring that the Chief Officers Group in each local authority regularly reviews the number of children with a non-disclosure measure in an order, the number of breaches, and provides analysis of the cause of breaches and lessons learned.

18. Chief Social Work Officers on an annual basis will provide areas of learning/improvement to Children's Hearing Improvement Partnership and this information will be collated and reported upon nationally.