



## SCRA Consultation Response to the August 2019 Consultation on the Information Sharing Agreement between NHS Boards and Police Scotland

**The Scottish Children's Reporter Administration (SCRA) welcomes the opportunity to respond to this consultation.**

**The Children's Hearings System is Scotland's distinct statutory system, in which concerns about a child's circumstances (whether about the care or treatment of the child by adults or the behaviour of the child) are considered by Children's Reporters and then by panel members in a Children's Hearing, who make a decision about whether there needs to be compulsory professional involvement with the child and family.**

### **In the Children's Hearings System:**

- the needs of children or young people are addressed through one holistic and integrated system which considers all the circumstances of the child and the child's welfare
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making
- the rights of children and families are respected

### **The role and purpose of SCRA is to:**

1. Make effective decisions about a need to refer a child/young person to a Children's Hearing
2. Prepare for and participate in court proceedings where statement of grounds or Hearings findings are appealed and ensure the wellbeing of children and young people – particularly vulnerable witnesses – are protected throughout the court process
3. Support Panel Members (though we are not involved in making Hearing decisions) and ensure fair process in Hearings
4. Support children, young people and families to participate in Hearings
5. Disseminate information and data to influence, inform and reassure
6. Provide premises for Hearings to take place
7. Work collaboratively with partners to support and facilitate the Getting it Right For Every Child (GIRFEC) agenda

**SCRA's vision of service is that: We operate within Scotland's Children's Hearings System to protect and support the country's most vulnerable and at risk children and young people identified as requiring the full protection of the law due to difficulties, challenges and risks they face.**

### **1. Do you have any general comments about the Data Protection Impact Assessment and Information Sharing Agreement?**

SCRA welcomes the open and consultative approach being taken by NHS Scotland and Police Scotland. Both the DPIA and ISA are full and comprehensive. The DPIA and ISA do seem to cover more than information sharing between the NHS and Police Scotland though, so may impact on information sharing with other organisations / bodies as well.





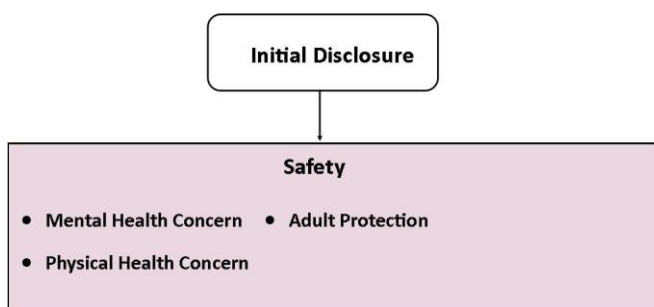
**Data Protection Impact Assessment Questionnaire (DPIA)**

**2. How will the Data Protection Impact Assessment bring clarity and consistency to NHS Boards?**

No answer given.

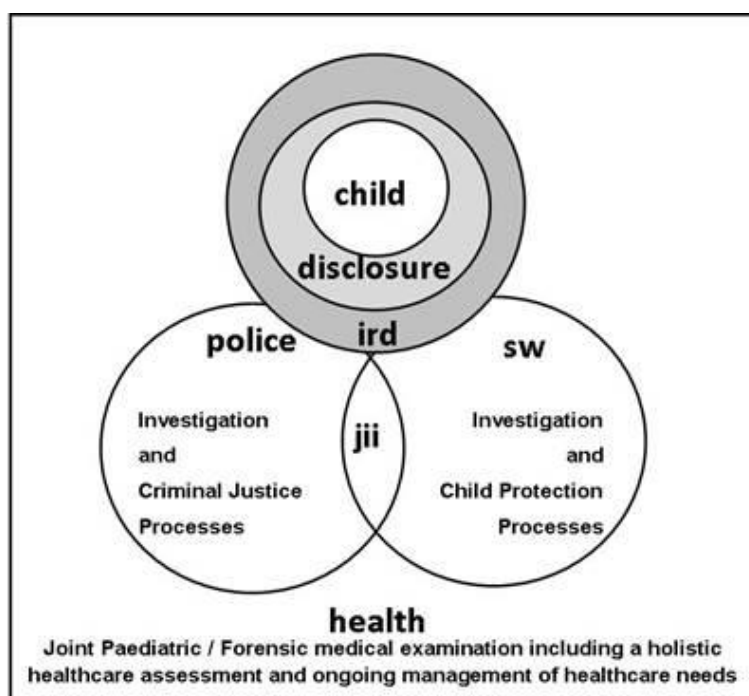
**3. Do you have any comments or suggested amendments to the information flow diagrams (as detailed in question 1 of the DPIA)?**

The Adult clinical pathway diagram (P14, shown for information) could be clearer and we think requires to be re-drafted so that it looks more like this:



SCRA have some concern that the placement of safety concerns within the diagram as is could mean that they are considered as a tangent – not as an immediate response within at the start of any pathway of engagement with a presenting individual.

SCRA would also ask that the child / young person clinical pathway diagram is reviewed (P15). The diagram currently makes clear that the processes are not linear – but the linear presentation of the separate tripartite agency involvement in relation to a child / young person is confusing. It may be that a model approach is clearer – for example (although we are not suggesting this as an alternative – just as an approach to consider):





**4. Do you have any comments or suggested amendments to the sections of what personal data will be used and the legal conditions (as detailed in questions 2 and 3 of the DPIA)?**

No.

**5. Do you have any comments or suggested amendments on the collection, use, transfer and updating of data (as detailed in question 4 of the DPIA)?**

No – other than to say that SCRA would expect every Health Board to have an ‘approved protocol for the use, storage and later processing of evidence, meeting legal requirements’ (the wording in the Adult Clinical Pathway diagram on P14 could be read as some Boards will not have this protocol and will therefore not be able to provide this service).

**6. Do you have any comments or suggested amendments to the right to be informed and individual rights in relation to the use of personal data (as detailed in questions 5 and 6 of the DPIA)?**

No. It is good that this is stated clearly.

**7. Do you have any comments or suggested amendments to data retention, disposal and sharing arrangements (as detailed in questions 7 and 8 of the DPIA)?**

No. It is good that this is stated clearly.

**8. Do you have any comments or suggested amendments to organisations’ processes (as detailed in questions 9 to 13 of the DPIA)?**

The links to other key information sharing agreements is important. There is a risk that the landscape can become too confusing here for service users and there should be a simplified version, giving access to supports which could enable understanding/ provide explanations.

**9. Do you have any comments or suggested amendments to the sections on risk (as detailed in questions 14 to 16 of the DPIA)?**

No additional comments.

**10. What additional guidance would you need to implement this document?**

This document is not directly relevant to SCRA’s work. An ISA is being developed for NHS Health Boards and SCRA, and that will help clarify processes and will sit within the context of wider information sharing principles and agreements.

In addition, it may be that guidance on referral to the Reporter is also helpful (<https://www.chip-partnership.co.uk/wp-content/uploads/2016/02/Guidance-on-Referral-to-Reporter-.pdf> is available online) and may be something that health partners may not be familiar with.

**11. Do you have any general comments which are not covered in previous sections?**

No.





**Information Sharing Agreement (ISA) for victims of rape and sexual assault  
Introductory Questions:**

**12. Will the national information sharing agreement bring clarity and consistency to NHS Boards?**

Yes

The ISA is comprehensive and well considered and will align separate Health Boards in respect of the single approach and the areas which require to be considered. This will make the landscape clearer for partner agencies and should, in time, also make the approaches taken in different circumstances clearer for service users (whether of the NHS or any other public service). For this we would like to commend the work.

**13. Does the national information sharing agreement acknowledge and support the person at the centre of the process?**

Yes

**Children and young people services:**

**14. Will the national information sharing agreement be of benefit to children and young people who have experienced child sexual abuse?**

Yes

As long as the integrated and holistic approach of different relevant ISA's is navigable and understandable.

**15. Will the national information sharing agreement be of benefit to non-abusing family and carers of children and young people who have experienced child sexual abuse?**

Don't know.

The approach will be of benefit in terms of the way in which professionals offer a responsive service, but the wider direct benefits may depend on the ways in which information is communicated.

**16. Are there benefits to your organisation in implementing this agreement for children and young people?**

Don't know

Any benefits for SCRA will depend on the interplay between our own ISA's with Police Scotland, Social Work Scotland and the NHS. This agreement may impact on the work we do, but it may not.

A clear national process will bring improvements in respect of our expectations of service delivery and in respect of the evidence that we would expect to be available in cases of rape and sexual assault. Both of these things will benefit the children, young people and families we work with and will help with the impacts of trauma.

**17. Are there challenges to your organisation in implementing this agreement for children and young people?**

Don't know

There may be challenges for the understanding of children and young people, and these may well depend on the way the agreement is communicated more widely.





#### Adult services

**18. Will the national information sharing agreement be of benefit to adults who have experienced rape or sexual assault?**

Yes

As long as the integrated and holistic approach of different relevant ISA's is navigable and understandable.

**19. Will the national information sharing agreement be of benefit to non-abusing family and carers of adults who have experienced rape, sexual assault or child sexual abuse?**

Please see our response to Q15 above.

**20. Are there benefits to your organisation in implementing this agreement for adults?**

Please see our response to Q16 above.

**21. Are there challenges to your organisation in implementing this agreement for adults?**

Please see our response to Q17 above.

#### General Questions

**22. Are there any key areas missing, or any general amendments you would suggest?**

Nothing additional to suggest.

**23. Is there sufficient existing guidance on when healthcare information should be shared with the police in the wider public interest?**

No answer given.

**24. What additional guidance would you need to implement this document?**

No answer given.

**25. Do you have any general comments or additions on topics which are not covered in previous sections?**

Some additional comments would be:

1) that the DPIA could more clearly distinguish between the two key elements of:

- 1) identifying ways to comply with data protection obligations
- 2) meeting individual's privacy expectations

2) This is a complicated information exchange landscape – which could be simplified by the use of an effective model or graphic – particularly in relation to the different responsibilities for forensic collection, preservation and sharing which are created by the police / non police routes through the forensic examination. SCRA is an organisation with a statutory child protection function, and we require all Scottish Health Boards to invest in a robust and tested evidential procedure.





3) The bulleted list of purposes for information exchange (P11) could be refined. Does it stand as an exhaustive list? If a purpose is not on the list does that mean information sharing is not allowed? The list as currently drafted may be used as a check list and may also be open to interpretation in different areas which could impact the intended consistency of a national approach (bullet points 4 & 6 for example could be interpreted widely). The list of purpose may be more successful if it was re-ordered, with the taskforce priority first, followed by purposes linked to individuals accessing healthcare and then purposes linked to the function of statutory or other bodies.

4) The flow charts in relation to information flow are helpful and can help simplify the complexities of the landscape. There is a danger in information overload though – and it maybe that the information flow diagrams (P18 -23), the personal data category table (P24) the legal category table (P25&26) and the risk assessment matrices could form an appendix, rather than being included in the body of the DPIA. They are quite difficult to follow and interrupt the flow of the document.

5) Section 11.4 of the Information Sharing Agreement, ***Non-routine information sharing and exceptional circumstances*** – SCRA think it would be helpful if Children’s Hearings proceedings could be specifically mentioned in relation to this section.

6) The ISA at paragraph 1.2.2 says information shared with the Police is for the purposes of the prevention and detection of crime or the apprehension or prosecution of offenders. However, Police Scotland may need information for other reasons, for example the safety and protection of a child, and it maybe that this omission requires to be rectified. The ISA in the table goes on to list other legal bases. The DPIA at paragraph 1 (page 11) lists a whole range of potential purposes for the exchange of information, but it is not entirely clear which information exchanges this relates to.

7) The Pathway at page 71 has a deadline of 7 days since the incident for carrying out a forensic examination and says it is not possible to do one longer than that after the incident. We are not sure that this is always the case and specifically that it may not always be the case with the examination of children. It maybe that the definition of forensic examination needs to be clarified, and that it is other medical examinations which can be carried out after the seven day window has closed. The Pathway doesn’t expressly refer to children but we think it might be helpful to be clear whether it is intended to apply to them. If it is not intended to apply to children then a pathway for children and young people specifically would be helpful.

SCRA Practice & Policy Team, October 30<sup>th</sup> 2019.

