

SOCIAL SERVICES INSPECTORATE PRACTICE GUIDELINES ON:
CHILDREN'S ACCESS TO INFORMATION

Background

The Social Services Inspectorate, in the course of carrying out inspections of children's residential centres, has observed policies and practice about what information children are allowed to see. These practice guidelines, whilst not intended to be definitive, are provided to assist health boards, and other providers of children's residential services, in addressing this issue by advising on good practice, legislation and international convention. They are set out in the form of a discussion paper, to encourage debate and action on addressing children's rights of access to information.

Why give access to information?

Within the field of personal social services it is generally good practice to share information with people accessing services. Key child care and social work principles of **empowerment, equality, openness, rights** and **participation** crucially rely upon the provision of information to service users for their effective implementation.

There is a **legal imperative** for public bodies, including health boards (and other providers of children's residential services who are contractually providing a service on their behalf) to share information. This is set out in the Freedom of Information Act, 1997. Its provisions build upon other pieces of legislation, national strategies and policy initiatives intended to emphasise greater openness and accountability. Essentially, the Act provides five basic statutory rights¹.

- 1) Individuals and groups have a right to know the basis upon which public bodies have made any decisions affecting them.
- 2) Every person has the right to access personal records kept by public bodies. There is a presumption, under the Act, that people are entitled to know what is written about them.
- 3) People are entitled to seek to have any public records held on them corrected, if these prove to be inaccurate or misleading.
- 4) Every person has a right to obtain general information held by public bodies about their structure and organisation, what services they provide to the public, what types of records they keep, and what arrangements they have made to facilitate rights of access to these and other information held. Public bodies are obliged to publish details of procedures, guidelines and practices that inform the decisions they make which may affect the entitlements of people using its services.
- 5) There is a right of appeal against refusal to provide information, to the independent Office of Information Commissioner.

¹ Qualified by the need to maintain 'third party' rights to privacy and public interest immunity.

Why give children access to information?

The rights listed above are not qualified by virtue of age and extend to any child who is capable of understanding the implications of being provided with the information sought. If anything these rights are actually strengthened for children by Article 8 of the United Nations Convention on the Rights of the Child 1989. Compliance with Article 8, concerning the preservation of identity and respect for family life, requires that children have “... access to all files held about him or her and that support is provided in accessing files and understanding their implications”.² This principle had been reinforced in a landmark European Court of Human Rights³ judgement concerning a young person brought up in care who was denied access to his records. This judgement confirmed that rights to personal information, even retrospectively, are implicit within the child’s right to identity. Children have a right to establish their own identity as individual human beings and, in principle, they should not be obstructed from obtaining information which is essential to their ability to understand who they are.

Withholding information kept as personal records is likely to encourage children to think that health boards, and other providers of children’s residential services, have something to hide and are being less than open about plans for the child’s care. Understandably, this may prove unsettling for some children and contribute to undermining any sense of trust that professionals are seeking to develop in their relationships with them. Also, denying children coherent information about their past lives may cause them to suffer emotional and psychological harm. In the absence of facts there is a possibility that children might substitute this void of information with their own fictional accounts of past life and family circumstances. There are examples from practice of children sensationalising some of the more traumatic events. The damage that can sometimes be caused, when this happens, is potentially greater compared with children’s resilience in coping with what has actually happened to them.

Generally speaking, children and young people have the right to see files which contain information about them. **Children require access to information so as to understand why they are in care, meaningfully participate in decisions affecting their lives and know what services are available to them.** Best practice involves service providers being proactive in making sure that children know precisely what information they are entitled to see. Children may need preparation in order to understand personal information they may see and how this may make them feel. Health boards, and other providers of children’s residential services, should consider children’s need for support and counselling. However, this need should never prevent them from seeing written records that they are entitled to have access to, having due regard to their age and understanding.

What if releasing information could be damaging to children?

If health boards, and other providers of children’s residential services, consider that revealing information could do harm to a child they should not make it accessible, but the child concerned is entitled to an adequate explanation of the decision reached. In

² ‘UK Agenda for Children’, Children’s Rights Development Unit, April 1994

³ European Court of Human Rights: Gaskin v UK, Strasbourg judgement (7 July 1989)

any decision concerning a child in care **the welfare of the child is the paramount consideration.**

What information should be shared with children?

Basically, as a general principle, **children should have access to any information which is about them** or is likely to affect them. Many children in care today are likely to be aware of their files and other records, and the nature of information contained in them. Children in residential care should have regular access to daily logbooks, or equivalent, and case files maintained by both the centre and social workers. Some records might be poorly written or maintained, but these are not acceptable reasons for withholding information. Instead, they provide evidence of the need to **ensure high standards of report writing and record keeping.** Staff training can make a significant contribution to improving practice in this area.

Children should also have access to information about services provided by the health board, or other providers of children's residential services, about the particular centre they are in and about their rights whilst in care. This information should specifically include any rules and sanctions applied in the centre, details of the complaints system in operation and arrangements for giving children access to their files. Some centres have shown the way by developing helpful **information guides for children and their families**, so that they have some idea of what they can reasonably expect. The best examples include a detailed statement of children's rights which is characterised by consulting children about their content. Other centres and social work services are encouraged to follow suit.

What information should be treated as confidential?

The Freedom of Information Act, 1997 protects the **privacy of individuals** by restricting access to persons that the information does not relate to. Ordinarily, people are only entitled to seek personal records that are about themselves. For any other person to access this information they require the expressed consent of the person who is the subject of the record. Under the terms of the Freedom of Information Act, 1997 this type of information should ordinarily be treated confidentially. However, children's interests are likely to be better served by knowing this information, when it relates to members of their own family. People working with children in care understand that 'third party' information that is about family can affect the welfare of individual children. Positive relations between health boards, or other providers of children's residential services, and parents are indicated if children are to benefit from access to information specific to members of their own family.

Where personal information has been provided by persons or organisations not holding the record good practice indicates that their permission is sought before sharing it. However, this is not a prima facie reason for withholding the record. In respect of a person or organisation contracted by a health board to provide a service any records they hold may well be deemed accessible under the Freedom of Information Act, 1997.

What contributes to good practice?

There are a number of key factors which typically apply where there is evidence of good practice in sharing information with children.

- 1) Health boards, and other providers of children's residential services, have clear statements emphasising their **commitment to an 'open access' policy**. Access to information is promoted and happens routinely as a matter of good practice.
- 2) Child care staff, social workers and managers understand and apply the policy.
- 3) Service providers are **proactive and consistent in the practice of sharing information with children** that is written about them, avoiding their need to instigate formal requests for access. Children of sufficient understanding are allowed regular access to files and other written records.
- 4) Service providers accept when the record is wrong and have fair and speedy processes in place for making necessary corrections.
- 5) Children are informed, orally and in writing, about their right to access information recorded about them and are guided in the exercise of that right.
- 6) Children are provided with **booklets advising about life in the centre**, what it is like being in care and about other services available.
- 7) Children's files are organised so as to **facilitate easy access to information**, and includes a 'confidential section' for keeping records that are restricted.
- 8) Child care staff, social workers and managers have an understanding of the provisions of the Freedom of Information Act, 1997 and receive training in record keeping and children's access to files. Records are written intelligibly and in a way that clearly distinguishes between fact and opinion. Statements of both fact and opinion are supported by evidence.
- 9) **Children are advised about their rights in care** and more generally, as set out in the United Nations Convention on the Rights of the Child 1989. People working with children understand that access to information is an important right, which underpins children's ability to know about and exercise many others.
- 10) In order for permanently held or archived records to be accessible these have to be retained in a manner that enables **information to be easily located and retrieved**. This applies to records kept in a variety of formats (manual copies, audio tapes, microfiche, electronic disk etc.). Health boards, and other providers of children's residential services, will need to consider within the context of their information policies how they propose to store personal information.