

Regional guidelines for nurses,
midwives and specialist community
public health nurses when sharing
information with the guardian ad
litem agency

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Introduction

Effective safeguarding children practice depends upon information sharing, collaboration and understanding between families, agencies and professionals. Nurses¹ are required to work in partnership with other disciplines and agencies to safeguard and promote the health and wellbeing of children and young people². This includes working in partnership with the guardian ad litem (guardian) appointed by the court when making decisions regarding the best interests of a child or young person.

This guidance replaces previous regional guidance³. Regional implementation will ensure that information held by nurses is shared with the guardian in a consistent, timely and appropriate manner, so that informed decisions can be made in the best interests of children and young people. This guidance reflects the need for nurses to adhere to their professional code, legislation and regional safeguarding policy and procedures. It describes the process agreed with the Guardian Ad Litem Agency for requesting and sharing of information. Record keeping, confidentiality, consent and disclosure are addressed.

The revised guidance has been developed by a regional working group with representation from each of the Health and Social Care Trust's specialist safeguarding nursing teams and the Guardian Ad Litem Agency (see Appendix 1). It should be implemented by the five Health and Social Care Trusts and Guardian Ad Litem Agency.

¹ For the purpose of this document, the term 'nurse' is used to refer to all nurses, midwives and specialist community public health nurses. Safeguarding children nurse specialists will be referred to as "SCNS" within the document.

² DHSSPS (2003) Co-operating to Safeguard Children. Belfast: DHSSPS.

³ Northern Ireland Senior Nurse Forum for Child Protection (1998) Guidance on Nursing, Midwifery and Health Visiting liaison with the Guardian Agency.

Legislation

The legislative framework for protecting and safeguarding children is found within the Children (NI) Order 1995 and Human Rights Act (1998). This incorporates certain rights and freedoms within United Kingdom law, as set out in the United Nations Convention on the Rights of the Child (1989) and the European Convention on Human Rights (1950).

The Children (NI) Order (1995) brings most of the public and private law relating to the care, upbringing and protection of children together in a single coherent statutory framework. The Order aims to strike a balance between the rights of children to express their views on decisions made about their lives; the rights of parents to exercise their responsibilities towards the child; and, the duty of the state to intervene where the child's welfare requires it.

The Human Rights Act (1998) (Article 8) deals with the respect for privacy within family life. Under the Children (NI) Order (1995) where conflict exists regarding the sharing of information, the child's welfare is always paramount and overrides all other considerations including the right to privacy and confidentiality.

The Role of the Guardian Ad Litem in Public Law Proceedings

The Northern Ireland Guardian Ad Litem Agency was established with the implementation of the Children (NI) Order 1995. The role of the guardian is to provide an independent and objective recommendation to court as to what is the best option for the child whose future the court has to decide. The mandate of the guardian is enshrined in the Agency's mission statement:

'To advise the Courts of children's wishes and feelings and independently represent and safeguard the interests of children in specified public law and adoption proceedings in Northern Ireland' (COAC, 2010)⁴.

The role and functions of the guardian is determined by relevant legislation and therefore is a statutory function. In public law proceedings, the child is a party to those proceedings and it is the role of the guardian to ensure the child is legally represented. The statutory duty of welfare is dictated by the principle enshrined in the Children (NI) Order 1995, which is that the welfare of the child is the *paramount consideration*.

In order to effectively perform a duty of welfare, the guardian shall make such investigations as may be necessary for him/her to carry out requisite enquiries. In accordance with such duties the Children (NI) Order 1995 states that the guardian has a right (Article 61) to examine and take copies of records which are compiled for the purpose of '*relevant functions*' which are defined as '*personal social services functions*'.

With regard to records which are held by health professionals Article 61 does not apply except where they form part of a social services file.

The DHSSPS introduced guidance in 2009⁵ to promote collaborative working between parties in the best interests of the child. The purpose of

⁴ Children Order Advisory Committee (2010) Best practice and Guidance. 2nd Edition.

⁵ DHSSPS (2009a) Guide to case management in public law Belfast: DHSSPS.

this guidance is to make public law proceedings more efficient by reducing delay and thereby improving outcomes for children.

This principle of 'working together' permeates much of the new thinking in working collaboratively with partner organisations and agencies. Sharing of information with a guardian is determined by a public interest requirement.

The Role and Responsibilities of Nurses when Sharing Information with the Guardian Ad Litem Agency

The Nursing and Midwifery Council (NMC)⁶ is the regulatory body responsible for standards of practice within nursing and midwifery. The NMC recognises the complexity of providing health care through multi-professional and multi-agency activities and endorses the concepts of support, co-operation, good working relationships and mutual respect.

The following principles apply:

- A proper balance must be struck between protecting children and respecting the rights and needs of parents, families and any individual who may pose a risk to children;
- Where there is conflict, the child's welfare must come first;
- There must be effective communication and partnerships between agencies to manage the risk of harm to children;
- The guardian, as an independent officer of the court who is appointed to safeguard and promote the welfare of the child, requires relevant information in order to effectively fulfil this responsibility.

Records and record keeping

Effective record keeping is an integral part of nursing practice and is essential to the provision of safe and effective care. Effective record keeping:

- Improves accountability;
- Demonstrates how decisions are made;
- Supports effective clinical judgements and decisions;
- Facilitates effective multi-professional and multi-agency communication.

The Data Protection Act (1998) describes a health record as:

'Consisting of information about the physical or mental health or condition of an identifiable individual made by or on behalf of a health professional in connection with the care of that individual'.

⁶ NMC (2007) The code: Standards of conduct, performance and ethics for nurses and midwives

All personal data should be kept in accordance with the principles of the Data Protection Act (see Appendix 2)

Confidentiality

Practitioners who create, access and use records have a duty to protect the confidentiality of the client's record. Nurses must respect people's right to privacy if they are to maintain public confidence in their profession. People have a right to expect that information given to a nurse or midwife is only used for the purpose for which it was given and will not be disclosed without permission. This includes information that is disclosed to the nurse by others. Patients and clients have a right to know about the standards of confidentiality maintained by those providing their care. These standards should be made explicit by the health professional at the first point of contact.

The issue of confidentiality is addressed by the NMC in its additional guidance and advice⁷. Nurses are personally accountable for actions and omissions in their practice and must always be able to justify their decisions. The NMC requires nurses to:

- Respect people's right to confidentiality;
- Ensure that people are informed about how and why information is shared by those providing their care;
- Disclose information if they believe that someone may be at risk of harm, in line with the law of the country.

Maintaining confidentiality is not an absolute duty.

'Disclosure in a service user's best interests would usually be justified where without disclosure you would not be acting in the overall best interests of a child, who does not have the understanding to make the decision, and where it is impracticable or inappropriate to obtain consent from the person with parental responsibility' (DHSSPS 2012).⁸

⁷ NMC (2007) Confidentiality www.nmc.uk.org

⁸ DHSSPS (2012) Code of Practice on Protecting the Confidentiality of Service User Information

Information can be shared if any of the following apply:

- Informed consent has been given to share the information;
- There is an overriding public interest to disclose information;
- A court order requires information to be shared.

The nurse will be accountable for all information released and he or she should discuss the matter fully with his or her professional line manager or safeguarding children nurse specialist prior to any disclosure. All information shared should be proportionate to the context and in line with the best interests of the child.

Article 61 of the Children (NI) Order (1995) states that where a person has been appointed as a guardian, he shall have the right at all reasonable times to examine and take copies of 'any records' held by an authority compiled in connection with 'relevant functions'. Relevant functions means personal social services functions. Records held by social services in connection with a named child or family may include nursing information and reports. The guardian will have access to this information.

The guardian does not have automatic right of access to health records held by a health professional. The guardian may apply to the court for direct access to health records. This should only be necessary in exceptional circumstances and where perceived conflict exists. Under such circumstances the court will be asked to determine whether the guardian should have access to health records for the purpose of examining them and if copies of such records can be taken.

Consent

Whilst consent is not essential when sharing information is in the public interest, nurses must make all reasonable efforts to inform the client of the guardian's request and the need to share information. Nurses should seek consent from the client to disclose information contained within health records that has been provided by their own discipline and other disciplines if this is to be disclosed, as the holder of the information is ethically and legally responsible for its confidentiality. This includes information provided by doctors, allied health professionals and other disciplines or agencies.

The nurse should explain:

- Why information needs to be shared;
- What information is to be shared;
- Who the information will be shared with;
- The implications of information being shared or not shared.

If a client cannot be contacted prior to disclosure, the reason for and nature of disclosure should be explained as soon as possible thereafter.

The nurse should seek advice from the SCNS or line manager regarding the need to disclose so that the welfare of the child remains paramount if consent to share information is refused by a client. The decision to share information in these circumstances is based on the principle of public interest which can legally justify breaching confidentiality (DHSSPS, 2012)⁹. Refused consent and any subsequent disclosure must be documented within the client's file.

Information supplied by a third party

Nursing records may contain information and reports received from other professionals. In these circumstances the nurse who holds the file is the custodian of that information. It is appropriate to verbally share some third party information held within health files, for example, information from general practitioners or speech and language therapists that has influenced nursing practice and service delivery.

Details of third party authors may be provided to the guardian if more detailed third party information is required, for example, a copy of a report. The guardian should request this more detailed information directly from the author or service provider.

In exceptional circumstances and following a discussion with the SCNS or line manager, the nurse may provide the guardian with detailed third party information. This action must be justifiable to safeguard the welfare of a child and information shared must be relevant. All reasonable efforts to seek consent from the author must have been made.

⁹ DHSSPS (2012) Code of Practice on Protecting the Confidentiality of Service User Information

Request for Information by a Guardian Ad Litem

The guardian should make direct contact with the nurse to request a meeting as soon as possible to allow the nurse adequate time for preparation. This request will be made no later than 10 working days prior to the date that information is required.

Guidance for Nurses Following a Request for Information from a Guardian

It is important that nurses meet with the guardian to provide a verbal explanation of nursing involvement with the family and to share relevant nursing information contained within health records or reports. This will avoid misunderstanding or misinterpretation.

Timescale for the meeting:

1. Nurses should make all reasonable efforts to ensure that meetings with the guardian take place as soon as possible and no later than 10 working days of the initial request unless mutually agreed. In exceptional circumstances, a meeting or report may be required within a shorter period of time, for example, due to urgent court proceedings. In these circumstances the nurse should make every effort to accommodate the guardian.

Informing others of the guardian's request for information:

2. Nurses must inform the SCNS and line manager of the guardian's request for information as soon as the request is received.
3. All reasonable efforts must be made to inform parents, and the child or young person if this is in keeping with the child or young person's level of understanding and competence, of the guardian's request for information and this must be recorded in health records.

Advice and Support from the SCNS / line manager

4. The SCNS and the line manager will provide support and advice as required by the nurse.
5. The line manager will ensure that the nurse has access to this guidance document.
6. The SCNS will ensure that the nurse understands the legal principles underpinning the sharing of information with the guardian.
7. The nurse will consider and decide about the level of information to be shared and ensure that information to be provided is accurate. Nurses should always seek advice from the SCNS or manager if uncertain regarding the relevance of some information to the guardian's assessment.
8. If the nurse intends to share detailed third party information or reports and has been unable to acquire the consent of the author or service, he or she must:
 - Seek the advice of the SCNS or line manager ;
 - Justify this action as being necessary to safeguard the welfare of the child or young person.
9. The SCNS and line manager will record all discussions and agreed actions on the safeguarding children supervision contact sheet¹⁰. This will be filed in the child or young person's health records and a copy retained by the author.
10. The nurse may be accompanied by the SCNS or line manager during meetings with the guardian. This will depend on Trust policy, the experience of the nurse in safeguarding children court processes, and, the complexities of the child's situation. A SCNS

¹⁰ DHSSPS (2010) Safeguarding Policy for Nurses and Midwives. Belfast: DHSSPS.

or line manager will always be present if the nurse requests that this support is available.

Meeting the Guardian

11. The nurse responsible for the child or young person's current or most recent nursing or health plan is usually the best person to meet with the guardian. If this is not reasonably possible, then the line manager, in consultation with the SCNS, will attend or delegate this to the most appropriate person.
12. The nurse should check the identity of the guardian at the beginning of the meeting. As the custodian of the nursing record and information, the nurse must remain with the file throughout the meeting.
13. The nurse must share relevant information with the guardian, taking time to provide explanations and clarity where this is required, for example, the reason for a targeted service; the level of service required over and above the core child health surveillance programme; concerns regarding engagement with the service; outcomes of the service provided; role in the multi-agency care plan; challenges or barriers to improvement; professional views regarding the impact of abuse and neglect on the child's health.

Copies of health records

14. Should the occasion arise that the guardian would like a copy of an extract of the health file, the guardian must request this in writing using the Guardian Request for Photocopy/Copies of Files form (see Appendix 3). This must be completed for each child. Copies of relevant extracts can be made available upon receipt of this form without direction from the court but only after the initial meeting. The Guardian Ad Litem Request for Photocopy/ Copies of Files form must be filed in the child or young person's health records. All original documents must remain in the health file. The SCNS and

line manager must be informed and the nurse should document this within the health record.

15. The transfer of the copied extracts must be received by the guardian in person from the nurse. A copy of the signed and dated information provided should be retained by the health professional and filed in health records.

Contact with the guardian following the meeting:

16. One meeting between the guardian and the nurse is usually sufficient. A further meeting may be arranged if required.
17. Confidential personal information regarding the child or family health should not be discussed with the guardian via telephone. However, brief clarity on a specific point already discussed during the meeting may be provided. Trust policy regarding telephone calls must be adhered to including checking the identity of telephone callers who request information and making arrangements to return the call to a recognisable office. Consideration should be given to the use of email via the secure hscni network.

Further Information and Guidance

DHSSPS and HSC (August 2011) *Protocol for Sharing Service Information for Secondary Purposes*

DHSSPS (2005) *Area Child Protection Committee Regional Policy and Procedures*

DHSSPS (May 2011) *Confidence in Care. Guidance on Information Sharing to Provide Assurance* Draft V2.

DHSSPS (2002) *Use and Disclosure of Health Data – Guidance on the Application of the Data Protection Act 1998*

DHSSPS (2007) *Framework Code of Practice for Sharing Personal Information*

Information Commissioners Office (2011) *Data Sharing Code of Practice* ICO.

Appendix 1

Guidance for Nurses, Midwives and Specialist Public Health Nurses when sharing information with the Guardian Ad Litem Working Group

Alison Dickey, Chairperson	Safeguarding Children Nurse Specialist	South Eastern Health and Care Trust
Peter Reynolds	Assistant Director	Guardian Agency Northern Ireland
Eileen Woods	Safeguarding Children Nurse Specialist	Belfast Health and Care Trust
Amber McCloughlin	Named Nurse for Safeguarding Children	Northern Health and Care Trust
Anne McNally	Safeguarding Children Nurse Specialist	Southern Health and Care Trust
Denise Armstrong	Safeguarding Children Nurse Specialist	Western Health and Care Trust
Una Turbitt	Safeguarding Children Nurse Consultant	Public Health Agency

Appendix 2

Data Protection Act Principles

Personal data must be:

1. Processed fairly and lawfully.
2. Processed only for one or more specified and lawful purpose.
3. Adequate, relevant and not excessive for those purposes.
4. Accurate and kept up to date - data subjects have the right to have inaccurate personal data corrected or destroyed if the personal information is inaccurate to any matter of fact.
5. Kept for no longer than is necessary for the purposes it is being processed.
6. Processed in line with the rights of individuals - this includes the right to be informed of all the information held about them, to prevent processing of their personal information for marketing purposes, and to compensation if they can prove they have been damaged by a data controller's non-compliance with the Act.
7. Secured against accidental loss, destruction or damage and against unauthorised or unlawful processing - this applies to you even if your business uses a third party to process personal information on your behalf.
8. Not transferred to countries outside the European Economic Area - the EU plus Norway, Iceland and Liechtenstein - that do not have adequate protection for individuals' personal information, unless a condition from Schedule four of the Act can be met.

Appendix 3

Guardian Request to Copy Nursing Records

Guardian Details

Name of Guardian _____

Office Location _____

Contact Number _____

Email _____

Legal Proceedings

Nature of Current proceedings _____

Court Directions Relevant to Request? _____

Nurse Details

Name of Nurse responsible for the file _____

Designation of Nurse responsible for the file _____

Family Details

Name of Family/File _____

Current Address _____

Name of Child/Children	DOB	Address

Why does this information need to be copied?

List Documents Requested to be Copied	Document copied Yes / No

Signature of Nurse providing copies to Guardian

Print Name _____ **Date & Time** _____

Signature of Guardian receiving copies of nursing records

Print Name _____ **Date & Time** _____

Original copy to be held in child's notes*

Copy to be retained by Guardian*

Public Health Agency

4th floor
12 – 22 Linenhall Street
Belfast
BT2 8BS

Tel: 02890321313
www.publichealth.hscni.net

NI Guardian Ad Litem Agency

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