

Regional guidelines for Nurses and Midwives when sharing information with the Guardian ad Litem Agency

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1.0 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 reflects the need for nurses to adhere to their professional code, legislation and regional safeguarding policy and procedures when working with a Guardian. 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) and replaces previous regional guidance³. Regional implementation by the five Health and Social Care Trusts and Guardian Ad Litem Agency 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.

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 (2016) Co-operating to Safeguard Children and Young People

³ Northern Ireland Senior Nurse Forum for Child Protection (2012) Guidance on Nursing, Midwifery and Health Visiting liaison with the Guardian Agency and Regional guidelines for Nurses and Midwives when sharing information with the Guardian ad Litem Agency v3.0 (2015)

2.0 Key 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.

For children who cannot live with their birth parents (whether temporarily or permanently) the key objective is to provide permanence throughout childhood and beyond. Under the Auspices of the Adoption (NI) Order 1987 and the Human Fertilisation Act (2008) the welfare of the child must be the first or paramount consideration.

3.0 The Role of the Guardian Ad Litem in Public Law Proceedings

3.1 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 Guardian Ad litem 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.

3.2 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*.

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

3.4 The DHSSPS introduced guidance in 2009⁵ to promote collaborative working between parties in the best interests of the child. The purpose of this guidance is to make public law proceedings more efficient by reducing delay and thereby improving outcomes for children. The 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.

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

⁵ Children Order Advisory Committee (2009a) Guide to case management in public law

4.0 The Role of the Guardian Ad Litem in Non-Public Law Proceedings

4.1 Adoption (NI) Order 1987

Under the provisions of the Children (NI) Order 1995 and the Adoption (NI) Order 1987 a Guardian Ad Litem is appointed by the Court. The powers and duties of the Guardian Ad Litem in Adoption proceedings should not be confused with the role of the Guardian in specified public law proceedings. The Principal duty of the Guardian Ad Litem under the Adoption (NI) Order 1987 and the Children (NI) Order 1995 is to represent the child in order to safeguard their interests before the Court.

4.2 Human Fertilisation Act (2008)

Under the provisions of this legislation applicants make an application to Court for a Parental Order in accordance with Section 54 of the Human Fertilisation and Embryology Act (2008).

It is the role of the Guardian is to consider the welfare test as the welfare of the child is the paramount consideration. In considering what is in the child's '*best interests*' the Guardian must advise the Court on the granting of the parental order and whether this would be in the child's best interests in the context of the child's current care arrangements.

4.3 Guardian Ad Litem Enquiries

When a Court appoints a Guardian Ad Litem under the Adoption (NI) Order 1987 or the Human Fertilisation and Embryology Act (2008) the nature of the Guardian's enquires may be viewed as distinct from those undertaken under the Children (NI) Order 1987. Where adoption is the preferred option, the Guardian's enquires will consider the child's permanence needs and to what extent an adoptive placement will meet those needs.

Where the application is for a Parental Order in accordance with Section 54 of the Human Fertilisation and Embryology Act (2008) the Guardian must be satisfied that the

Child is achieving his/her developmental milestones that immunisations are up to date and the child has made steady developmental progress.

Where the Guardian requests information from Nurses, midwives or specialist community public health nurses under the auspices of the Adoption (NI) Order 1987 or the Human Fertilisation and Embryology Act (2008) the focus will be on how current care arrangements are meeting a child's 'permanence needs' with whom a child is expected to live for the duration of his/her childhood and beyond.

5.0 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.

⁶ NMC (2015) The code: Professional Standards of Practice and Behaviour for Nurses and Midwives (implementation date 31st March 2015)

6.0 Records and record keeping

Effective record keeping is an integral part of nursing practice and is essential to the provision of safe and effective care⁷. 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’.

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

7.0 Confidentiality

7.1 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 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.

7.2 The issue of confidentiality is addressed by the NMC in its additional guidance and advice⁸. Nurses are personally accountable for actions

⁷ NMC (July 2009) Record Keeping Guidance for Nurses and Midwives

⁸ NMC (2007) Confidentiality www.nmc.uk.org

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.

7.3 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).⁹

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.

7.4 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.

7.5 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.

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

7.6 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.

8.0 Consent

8.1 Whilst consent is not essential when sharing information 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.

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

8.3 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)¹⁰. Refused consent and any subsequent disclosure must be documented within the client's file.

¹⁰ DHSSPS (2012) Code of Practice on Protecting the Confidentiality of Service User Information

9.0 Information supplied by a third party

9.1 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.

9.2 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.

9.3 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.

10.0 Request for Information by a Guardian

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. The Guardian should state which legislation is relevant to the request.

11.0 Guidance for Nurses on Request for Information from a Guardian

11.1 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.

11.2 Timescale for the meeting:

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.

12.0 Informing others of the Guardian's request for information:

- Nurses must inform the SCNS and line manager of the Guardian's request for information as soon as the request is received.
- 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.

13.0 Advice and Support from the SCNS / Line Manager

- The SCNS and the line manager will provide support and advice as required.
- The line manager will ensure that the Nurse has access to this regional guidance document.
- The SCNS will ensure that the Nurse understands the legal principles underpinning the sharing of information with the Guardian.
- 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.

- 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.
- The SCNS and line manager will record all discussions and agreed actions on the safeguarding children supervision contact sheet¹¹. This will be filed in the child or young person's health records and a copy retained by the author.
- 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. The SCNS or line manager will always be present if the Nurse requests that this support is available.

14.0 Meeting the Guardian

- 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.
- 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.

¹¹ DHSSPS (2010) Safeguarding Children Policy for Nurses and Midwives

- The Nurse should 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.

15.0 Copies of health records

- Should the occasion arise that the Guardian needs 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.
- 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.

16.0 Contact with the Guardian following the meeting:

- One face to face meeting between the Guardian and the Nurse is usually sufficient. A further meeting may be arranged if required.
- Confidential personal information regarding the child or family health should not be discussed with the Guardian via telephone. However, it may be appropriate to provide brief clarity on a specific

point already discussed during the face to face meeting. 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.

17.0 Additional Information Request Template: (Appendix 4)

The use of this template is to assist information sharing between Guardians ad Litem and Nurses, it's sole purpose is to ensure effective communication and information sharing and does not affect existing statutory functions or supersede any existing policies, guidance or standards. It should only be used to exchange additional and/or brief information as requested and agreed between the Guardian and Nurse and does not exclude the need for an initial face to face meeting that involves a review of records and explanation of the role of the Nurse.

Conclusion

Decisions affecting children who are subject to court processes are complex. The Guardian is appointed by the court and has an important role in ensuring that the wishes and feelings of the child is heard and that all relevant information is available to the court so that decisions are made in the child's best interests.

Nurses and Midwives, due to the nature of their work with families, hold information that may inform court decisions. It is important that Nurse and Midwives work in partnership with the Guardian ad Litem Agency to ensure that relevant information is shared in a professional manner and in keeping with the nursing and midwifery professional code.

This guidance has been developed to support effective partnership arrangements between Nurses, Midwives and Guardians and should be implemented in all cases where a Guardian has been appointed by the court.

Appendix 1

Guidance for Nurses and Midwives when sharing information with the Guardian Ad Litem Working Group

Loretta Crumlish	Named Nurse for Safeguarding Children	Western Health and Social Care Trust
Alison Dickey	Safeguarding Children Nurse Specialist	South Eastern Health and Social Care Trust
Amber McCloughlin	Named Nurse for Safeguarding Children	Northern Health and Social Care Trust
Joan McMahon	Named Nurse for Safeguarding Children	Southern Health and Social Care Trust
Maggie Morgan	Named Nurse for Safeguarding Children	South Eastern Health and Social Care Trust
Peter Reynolds	Assistant Director	Guardian Ad Litem Agency Northern Ireland
Emily Roberts	Safeguarding Children Nurse Consultant	Public Health Agency
Una Turbitt	Designated Nurse for Safeguarding Children	Public Health Agency
Eileen Woods	Assistant Service Manager	Belfast Health and Social Care Trust

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 ad Litem 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? _____

Relevant Legislation _____

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 nursing / midwifery record

Copy to be retained by Guardian

Appendix 4

ADDITIONAL INFORMATION REQUEST TEMPLATE

Child's Name:		Parent or intended Parent's Name: (delete as appropriate) _____
Child's DOB:		
Has consent been obtained by GAL to request information		Yes / No
If not, reason why:		
Reason for Information Request : (To be completed by GAL)		
Name of Guardian		
Telephone Details		
Date of Request		
Has consent been obtained by Nurse to share information		Yes / No
If not, reason why:		
Nursing Information		

Name of Nurse	
Telephone Details	
Date of Request	

NB: If being sent electronically secure HSCNI email must be used and document must be password protected.

Appendix 5

Frequently Asked Questions

What is this guidance?	This is a revised version of the 2012 regional guidelines for nurses, midwives and specialist community public health nurses when sharing information with the Guardian ad litem agency
Why is it needed?	To support nurses and health visitors who are requested to sharing information with the Guardian ad Litem Agency so that this can be done in a consistent, timely and appropriate manner.
What / who is a Guardian ad Litem?	A Guardian ad Litem is a Court appointed officer (usually from the social work profession) whose role is to independently share the child's wishes and feelings and represent and safeguard his/her interests in Court proceedings.
What if Guardian ad Litem requests copies of health records?	The Guardian ad Litem has a right to access records held by social services but does not have automatic right to access health records and must make a request in writing to access each child health record. Copies of relevant extracts can be made available without direction from the Court but only after the initial meeting with the health record's author (nurse/health visitor/doctor). A copy of the information provided to the Guardian ad Litem must be signed by the nurse sharing the information and retained in health record. For all requests seek advice from your SCNS.
What is the nurse's role when sharing information?	As per the NMC Code, the nurse's duty is to protect the confidentiality of individual patients/clients and their health records. This guidance will support nurses in making decisions as to what, how and when to share health information with the Guardian ad Litem.
Do I need consent of the child /parent to share health information?	Yes, where possible nurses should seek consent from the child or parent before disclosing information contained within the health record. However, where gaining consent is not possible, and it is in the public interest, information can be shared without consent.
What if consent is refused?	Discuss with line manager and/or SCNS and document refusal in the patient's/client's file.
Can I share third party information?	Yes, you can verbally share <i>some</i> third party information held within files, e.g., GP, Speech and Language Therapy reports that may have influenced nursing or health visiting practice. Seek advice on this from your SCNS.
Can I provide a copy of information or reports by 3rd party?	Yes, but only in exceptional circumstances and with the consent of the author. Seek advice on this from your SCNS.
Can I discuss information with Guardian via telephone?	No. Confidential personal information should not be discussed over the telephone.
Do I need to be accompanied by someone when meeting the GAL?	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 or line manager will always be present if the nurse requests that this support is available.

For further advice please contact your Safeguarding Nurse Specialist (SCNS).

Further Information

Do not hesitate to contact your Trust's safeguarding children nurse specialist team for advice and support if you feel that would be useful.

Frequently asked questions and brief answers are provided in Appendix 5.

Information on where to get further information is available in Appendix 6. 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.

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4th floor
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Tel: 02890321313
www.publichealth.hscni.net

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