
EXERCISING THE POWER OF WELL-BEING

1 SUMMARY

- 1.1 This report seeks the Council's consent to exercise the power of well-being contained within the Local Government in Scotland Act 2003 to legitimise the collection, sharing and use of personal data on all children for the Vulnerable Children and Young People Project.

2 OFFICER RECOMMENDATION(S)

The Council agrees to promote the well-being of vulnerable children and young people within its area, as provided for in section 20 of the Local Government in Scotland Act 2003, by developing and using the reporting system which is described in this report and which facilitates the collection, use and sharing of personal data required for the Vulnerable Children and Young People Project.

3 CONSIDERATIONS

- 3.1 Vulnerable children and families have been the focus of Community Planning Partners for many years. Following the Stirling Child Protection Report in 2010 the Care, Health & Wellbeing Strategic Forum used the opportunity to investigate 80 families across Stirling who were deemed to be 'vulnerable'. The Strategic Forum's role was to explore the challenges faced by these families and develop new and creative interventions for the future that would reduce the financial burden on the public services and more importantly offer families greater life choices and better outcomes in their lives.
- 3.2 In any independent fatal accident enquiry or review of child protection cases it is known that the chair often states that the public sector knew all of the individual pieces of data about the family and the child but did not share them at an early enough stage to make an impact on key life stage decisions. The aim of the project was to gather multi-service information about vulnerable children and introduce effective interventions at an earlier stage.

- 3.3 The partner agencies (Council, Police and Health) were tasked with gathering information about families at risk of future harm and critically analysing the interventions that would offer the best solutions in the families' chaotic lives. With the development of the Christie Report, and the emphasis on earlier and more effective intervention, we are now keen to share information between public sector partners where we have lower level concerns.
- 3.4 In December 2010 initial discussions took place with a business analytics company to pull together appropriate data sets from across the Council to identify families in need. This was conducted in a pilot project. Information from the following Council information systems was consolidated and analysis of those children and families has proved highly valuable in decision making regarding services and interventions.

Service Area	System
Social Services	SWIFT
Education	SEEMIS
Housing	Northgate
Youth Services	Cognissoft IO
Community Wardens	APP Civica
Research Team	Government demographic data, CACI ACORN Segmentation data
Substance Misuse	Government demographic data
Forth Valley GIS	Gazetteer

Given the successful outcome of the pilot project, the Council now wish to enter into a contract to fully develop this reporting system with a view to a go live date at the Public Protection Hub in Larbert in January 2013. Central Scotland Police have agreed to share the cost of this next phase of the project.

- 3.5 As a result of the pilot phase, it was possible to see, at a glance, the full history of a vulnerable child on the screen. The information allowed decision making staff and case workers to see school attendance, attainment, previous addresses, changes in name, housing repairs, police reports pertaining to the address and Criminal Justice data sets, to name but a few.
- 3.6 Demonstrations of the system were undertaken with front line staff, partners, Elected Members and other key national figures including Sir Harry Burns, Chief Medical Officer for Scotland and Derek Feeley, Chief Executive, NHS Scotland. All were impressed with the value of the data solution and analytics product.
- 3.7 In November 2012 the Assistant Chief Executive (Care, Health & Wellbeing), Assistant Chief Constable and the Council's legal adviser met with representatives from the Information Commissioner's Office. The purpose of the meeting was to apprise the Information Commissioner's Office of the Council's plans to develop this reporting system. The Information Commissioner's Office endorsed the proposal to exercise the power of well-being to legitimise the collection, sharing and use of personal data on all children for the Vulnerable Children and Young People Project.

Data Protection

- 3.8 The development of the reporting system amounts to the processing of the personal data of children and young people. This must be carried out in accordance with the requirements of the Data Protection Act 1998 and the eight Data Protection principles provided for in the Data Protection Act 1998. The first Data Protection principle requires such personal data to be processed “fairly and lawfully”. The following section on Stirling Council’s powers addresses the issue of lawful processing and the section on the Privacy Impact Assessment addresses the issue of fair processing. Of the other seven Data Protection principles the seventh Data Protection principle requires appropriate security measures to be in place to prevent the accidental or deliberate disclosure of personal data. The Council’s existing policies on Information Security and Data Access will apply and a new procedure will be developed for the Service Desk to prescribe how user access rights to the reporting system are allocated. Access to the reporting system will only be available via a designated computer located at the Public Protection Hub in Larbert and also within the Children’s Intake Team in Social Services. The designated computer at the Public Protection Hub will only be accessible to Stirling Council staff.

Stirling Council’s powers

- 3.9 Stirling Council derives its powers entirely from statute. To ensure that it does not act beyond its powers, the Council must ensure that all of its actions are provided for in statute.
- 3.10 There are no express statutory powers to collect, use and share data in relation to children and young people provided for in statute. Further, the consultation paper on the proposed Children & Young Person’s Bill, which was published in July 2012, stated at paragraph 120 that the Act will **not** contain new express statutory powers to share information between services where there are concerns about children & young People. Instead, whilst acknowledging that “information sharing can be a complex and, at times, confusing legal environment for practitioners” the consultation paper provided that “the intention is that information sharing would occur within existing legal frameworks”.
- 3.11 Section 69 of the Local Government (Scotland) Act 1973 provides that Local Authorities are empowered to do anything which is “calculated to facilitate, or is conducive to or incidental to the discharge of any of its functions”. This enables the Council to look to the service or function which the data sharing supports for its **implied** power to data share.
- 3.12 Under the Children (Scotland) Act 1995 the Council has a duty to safeguard and promote the welfare of looked after children and to promote the welfare of children in need. Data sharing clearly will support the discharge of these functions and so the data sharing may be legitimised but only for looked after children and children in need. The Vulnerable Children and Young People Project seeks to share data about **all children** and so the terms of The Children (Scotland) Act 1995 are insufficient to legitimise the Project.

The Power of Well-being

- 3.13 The Local Government in Scotland Act 2003 provides the Council with a discretionary power to “do anything which it considers is likely to promote or improve the well-being of:-
- a. its area and persons within that area; or
 - b. either of those.”
- 3.14 The term "well-being" is not defined in the Act but there is some assistance to be found in the statutory guidance issued by the Scottish Ministers on the 2003 Act, to which Local Authorities are obliged to have regard (see Appendix 1). This refers at Paragraph 1.4 to the Act as an "important part of the Scottish Executive's local government modernisation agenda and its drive to see continuous improvement in public services" and to “enable local authorities to work and deliver in partnership with other agencies and communities”. It also specifically refers at Paragraph 1.6 to social factors such as “looking after the needs of children and young people, particularly the most vulnerable” as a key factor which would contribute to the promotion or improvement of well-being.
- 3.15 The guidance makes it clear that this power is a broad ranging power and refers to it as "a power of first resort", to be used when there is doubt about whether existing powers would enable a particular course of action or service delivery. The power is subject to various limitations none of which apply in these circumstances.
- 3.16 It is considered that the Vulnerable Children and Young Persons Project is a legitimate use of the power of well-being.

Scheme of Delegation

- 3.17 Stirling Council's Scheme of Delegation expressly reserves to Council the power to make a decision to exercise the power of well-being. Council is invited to exercise the power thereby making the collection, sharing and use of personal data on all children for the Vulnerable Children and Young People Project within its powers.

Privacy Impact Assessment

- 3.18 The Council has chosen, as a matter of good practice, to undertake a Privacy Impact Assessment. The purpose of the Privacy Impact Assessment is to identify the potential effects of the collection, sharing and use of the personal data upon the privacy of the children and young people and to examine how any such detrimental effects can be overcome. Privacy Impact Assessments are not required by law but are good practice and are encouraged by the Information Commissioner's Office. They are about more than simply meeting the requirements of the Data Protection Act 1998 and the Data Protection principles but they will evidence compliance with these. Appendix 2 highlights the Privacy Impact Assessment that has been undertaken to date.

4 POLICY/RESOURCE IMPLICATIONS AND CONSULTATIONS

Policy Implications	
Equality Impact Assessment	No
Strategic Environmental Assessment	No
Single Outcome Agreement	Yes
Diversity (age, disability, gender, race, religion, sexual orientation)	Yes
Sustainability (community, economic, environmental)	No
Effect on Council's green house gas emissions	No Effect
Strategic/Service Plan	Yes
Existing Policy or Strategy	Yes
Risk	Yes
Resource Implications	
Financial	Yes
People	Yes
Land and Property or IT Systems	Yes
Consultations	
Internal or External Consultations	Yes

Equality Impact Assessment

- 4.1 The matters under this Report were considered under the Council's Equalities Impact Assessment process and were assessed as not relevant.

Strategic Environmental Assessment

- 4.2 The matters under this Report were considered under the Environmental Assessment (Scotland) Act 2005 and a Strategic Environmental Assessment is not required.

Single Outcome Agreement

- 4.3 Vulnerable children and families will have a strong focus within the SOA. Council services, Police and Health are fully committed to achieving better outcomes for this group.

Other Policy Implications

- 4.4 Policy implications may fall out of further development of this work.

Resource Implications

- 4.5 Following consideration of the resource implications of this report no relevant issues have been identified.

Consultations

- 4.6 The Information Commissioner's Office has been consulted on the exercise of the power of well-being.

	Tick (✓) to confirm
The appropriate Portfolio Holder and Depute Portfolio Holder has been consulted on this report	✓ JB/NB
The Chief Executive/appropriate Assistant Chief Executive(s) has been consulted on this report	✓ (JH)

5 BACKGROUND PAPERS

- 5.1 Stirling Child Protection Report 2010.

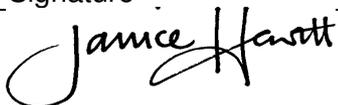
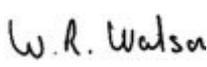
6 APPENDICES

- 6.1 Appendix 1 - The Local Government in Scotland Act 2003: The Scottish Executive Power to Advance Well-Being Guidance. Members should note that the twelve page guidance is available in the Members Lounge and online at www.scotland.gov.uk/Publications/2004/04/19276/36156.
- 6.2 Appendix 2 - Privacy Impact Assessment.

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Date 4 December 2012

Service
Reference