Legal Proceedings in Relation to Child Protection Policy

<table>
<thead>
<tr>
<th>Author:</th>
<th>NHSL Child Protection Professional Lead</th>
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<tbody>
<tr>
<td>Responsible Lead Executive Director:</td>
<td>Executive Director of Nursing, Midwifery and Allied Health Professionals</td>
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<tr>
<td>Endorsing Body:</td>
<td>NHS Lanarkshire Public Protection Group</td>
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<tr>
<td>Governance or Assurance Committee:</td>
<td>Healthcare Quality Assurance and Improvement Committee</td>
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<tr>
<td>Implementation Date:</td>
<td>August 2004</td>
</tr>
<tr>
<td>Version Number:</td>
<td>4.0</td>
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<td>Review Date:</td>
<td>August 2022</td>
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<td>Responsible Person</td>
<td>NHSL Head of Public Protection</td>
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## Consultation and Distribution Record

### CONSULTATION AND DISTRIBUTION RECORD

| Contributing Author / Authors: | Child Protection Advisors  
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| Consultation Process / Stakeholders: | NHS Lanarkshire Public Protection Group  
| NHS Lanarkshire Lead Child Protection Paediatrician  
| Scottish Children Reporter Authority  
| Police Scotland |
| Further consultation: | Comments sought through staff briefing |
| Distribution: | NHSL Intranet: FirstPort |

## Change Record

### CHANGE RECORD

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<td><strong>August 2004</strong></td>
<td>Nurse Consultant Child Protection &amp; Vulnerable Children Child Protection Advisors</td>
<td>November 2013</td>
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<td><strong>November 2013</strong></td>
<td>Nurse Consultant Child &amp; Adult Protection and Vulnerable Families Child Protection Advisors</td>
<td>Updated November 2015</td>
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<td><strong>March 2016</strong></td>
<td>Nurse Consultant Child &amp; Adult Protection and Vulnerable Families Child Protection Advisors</td>
<td>Reviewed and updated to reflect change in National policy and legislation August 2016</td>
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<td><strong>May 2018</strong></td>
<td>Risk Department</td>
<td>GDPR statement added into section 3 and updated name of Data Protection Act</td>
<td>3.0</td>
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<td><strong>August 2019</strong></td>
<td>NHSL Head of Public Protection</td>
<td>Reviewed and updated to reflect change in National policy and legislation August 2019</td>
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1. INTRODUCTION

NHS Lanarkshire (NHSL) has developed this policy to support staff when they are requested to attend court cases as a witness. The policy will also support NHSL staff with their legal responsibilities when disclosing patient’s medical/clinical records to police, solicitors or any other legal professionals where they can potentially be treated as evidence.

2. AIM, PURPOSE AND OUTCOMES

Taking cognisance of the General Data Protection Recommendations (GDPR) this policy aims to inform NHSL staff who may within their role be involved in legal proceedings in relation to Child Protection such as:

- Attendance at court in relation to a criminal or civil case
- Cooperation with the Scottish Children’s Reporter Administration (SCRA) or other legal representative in relation to precognition statements
- Co-operation with Police Scotland/ Procurator Fiscal (PF)/Sheriff on request for health records

3. SCOPE

3.1 Who is the Policy intended to Benefit or Affect?

This Policy is to support all NHSL staff who may be involved in legal proceedings relating to Child Protection.

3.2 Who are the Stakeholders

The Policy applies to all staff within NHSL

“NHS Lanarkshire take care to ensure your personal information is only accessible to authorised people. Our staff have a legal and contractual duty to keep personal health information secure, and confidential. In order to find out more about current data protection legislation and how we process your information, please visit the Data Protection Notice on our website at www.nhslanarkshire.scot.nhs.uk or ask a member of staff for a copy of our Data Protection Notice.”

4. PRINCIPAL CONTENT

The various types of legal proceedings in relation to child protection for this policy include:

- Citations for Court
- Attendance at Court
- Request for health records by Police Scotland on behalf of the Procurator Fiscal or any other legal professionals where they can potentially be treated as evidence.
- Civil Proceedings in Relation to Children
- Reports to the Scottish Children’s Reporter Administration (SCRA)
- Precognition Statement
5. **ROLES AND RESPONSIBILITIES**

5.1 **Citation for Court**

A citation is a legal order requesting your attendance at court. The citation explains:

- type of court case - Criminal, Civil or Children’s Hearing
- time, date and court location

Attendance at court is compulsory. If you are unable to attend, for any reason, you must immediately contact the person who issued the citation. Failure to do so could result in prosecution.

5.2 **Attendance at Court**

NHSL staff on receipt of a court citation must inform their Line Manager. If any member of staff wishes to discuss the case or their attendance at court further, they should speak directly to their line manager or contact the child protection team for advice and support.

NHSL employees may make a request to the person citing them to be on standby for court attendance. This is usually granted however the health professional must be available to be contacted by telephone and be able to attend court at short notice.

Following attendance at court the staff member may wish to discuss or de brief on the case with their Line Manager/ Senior Nurse or from a Child Protection Advisor.

5.3 **Request for Health Records by Police Scotland on behalf of the Procurator Fiscal**

Where there are possible criminal proceedings or investigations the health professional’s records may be requested by the Procurator Fiscal/Police as part of the investigative process. In some cases, a health professional may receive a request for health records from a lawyer/solicitor. Records should not be provided unless there is evidence of an appropriate written request or court order.

If an NHSL employee’s records are requested they must:

- Ensure written authorisation is received from the Procurator Fiscal /Sheriff /Lawyer /Solicitor
- Obtain a written receipt from the Police Officer receiving the records.
- Record the details of the request in the child’s record and chronology
- Inform their Line Manager of the request and ensure records are released in line with their departmental arrangements for sharing records. Printed electronic or photocopied records should be shared with Police Scotland and arrangements made for the records to be collected.
- Further advice or support may be obtained from: NHSL Information Governance Manager, or from a Child Protection Advisor.
5.4 Civil Proceedings in Relation to Children

Civil proceedings can include actions between parties unconnected with NHS Lanarkshire. In relation to children, civil cases are likely to relate to matters such as divorce, contact and residence orders.

In Civil cases there is no duty to provide information however, co-operation is encouraged where it is considered to be in the best interests of the child/young person.

If a request is received and is accompanied for example by a formal written request or order of court staff should seek advice from their line manager or child protection advisor.

In addition guidance can be sought from the Information Governance Manager prior to releasing any information verbal, written or face to face.

5.5 Reports to the Scottish Children’s Reporter Administration (SCRA)

The Children’s Reporter is an independent official who acts on behalf of SCRA. The Children’s Reporter has a central role within the Children’s Hearing System one of which is to investigate concerns raised about a child or young person.

NHSL staff has a duty to cooperate with the Children’s Reporter, which may be as a witness or to provide a written report. The Children’s Reporter may also request a precognition statement from you prior to a Children’s Hearing. All requests from the Children’s Reporter should be in writing.

5.6 Precognition Statement

A precognition is a distinctive feature of the Scottish legal system. It is the face to face interview of a witness who may be called to give evidence at a forthcoming criminal trial. Solicitors may employ Precognition Officers to do the precognition on their behalf. A Precognition Statement is done to evaluate the evidence that the witness will give while under oath at the trial.

Requests for a Precognition Statement should be in writing and on receipt of a request staff should:

- Discuss with their Line Manager prior to engaging in a precognition interview
- Record the details of the request in the child’s record and chronology
- Consider the need for support whilst giving a Precognition Statement from a Line Manager, senior member of staff or Child Protection Advisor. Provide an accurate verbal account reflecting observations that can be verified to the best of the practitioner’s professional knowledge.
- Precognition statements should always be conducted face to face and not by other means such as telephone, email, fax etc.
6. **RESOURCE IMPLICATIONS**

Staff should be supported to prepare and attend Court and to carry out their duties in relation to legal proceedings by either their Line Manager or a Child Protection Advisor.

7. **COMMUNICATION PLAN**

- NHS Lanarkshire Policies within FirstPort
- National and Local Child Protection Policies within FirstPort
- Briefings to NHSL Employees via managers and staff briefings

8. **QUALITY IMPROVEMENT – MONITORING AND REVIEW**

Policy will be reviewed in August 2022 and then every 3 years or as required.

9. **EQUALITY AND DIVERSITY IMPACT ASSESSMENT**

This policy meets NHS Lanarkshire’s EDIA

10. **REFERENCES**

- Children and Young People (Information Sharing) Scotland Bill (2017)
- Scottish Government: Children and Young People (Scotland) Act 2014
- General Data Protection Regulations (GDPR) (2018)
- Data Protection Act (2018)
- Scottish Government: Sharing of Personal Sensitive Information (Medical/Clinical Records) for Court Proceedings (2016)