

**Working Document 1/2008 on the protection of children's personal data
(General guidelines and the special case of schools) of the EU Article 29
Data Protection Working Party**

NSPCC Response to the Working Document
June 2008

Introduction

The National Society for the Prevention of Cruelty to Children (NSPCC)¹ is the UK's leading NGO specialising in child protection and the prevention of cruelty to children. The NSPCC aims to end cruelty to children by seeking to influence legislation, policy, practice, attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, lobbying, campaigning and public education.

The NSPCC believes that, given the will, most cruelty can be prevented. In order to achieve this, it is vital that all children, whatever their needs, have a range of services that are flexible and offer them support and protection. The NSPCC has more than 180 services in the UK and the Channel Islands. These services aim to:

- Prevent children being abused by working with parents and carers in vulnerable families to improve their knowledge and skills in safeguarding, and giving children and young people someone to turn to through the provision of our Listening Services.
- Protect vulnerable children and young people from abuse by providing direct services in a number of settings, including schools and young people's centres. We also protect them by providing a helpline for adults to ensure they have someone to turn to with their concerns; by ensuring that abused children and young people are identified and effective action is taken to protect them, and by working with young people and adults who pose a risk to children and young people to reduce the risk of abuse.
- Help children and young people who have been abused overcome the effects of abuse and achieve their potential.

The NSPCC's comments on this consultation document² are based on our expertise in safeguarding children and promoting their welfare. In particular, as an organisation working with children and young people we gather and store significant amounts of data concerning those we work with and must

¹ www.nspcc.org.uk

² http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2008/wp147_en.pdf

adhere to legal and best practice requirements concerning the storage and use of this data.

Evolving data sharing arrangements in the UK, in particular arising from developments in technology, have driven recent changes to which we continue to adapt. As an NGO we have appointed a data protection officer in order to ensure that we are compliant in both ensuring children's rights and effective application of child and data protection laws. We consistently deal with situations where other bodies, in particular police, social services and the courts, request personal data about a child and/or family that we are supporting. Our interest therefore is in ensuring that any policy on data sharing is based on an approach which recognises the rights of children to have information about them used appropriately, and in collaboration with them.

Comments on the Working Document

The NSPCC welcomes the Working Document on the protection of children's personal data. We consider this to be a useful contribution to existing legislation and guidance at EU level on data protection, in light of the specific issues surrounding protection of children's personal data highlighted in the document. We also consider this to be a good example of the principle of 'mainstreaming' of children's rights throughout relevant EU legislation, policy and programmes, as discussed in the Commission's Communication of July 2006 "Towards a European Strategy on the Rights of the Child"³.

The NSPCC welcomes the reassertion of children's rights, especially the emphasis on recognising the evolving capacity of children and young people.

We offer the following specific comments.

- The need to balance the rights of representatives with the rights of a child to privacy is an important issue, which requires more exploration as this is rarely straightforward.

One example from the NSPCC's experience is where we have received requests for access to information from an alleged abusive parent whose child is receiving counselling from our domestic violence project. In such cases we have refused access to this information on the basis that this would breach confidentiality.

The situation becomes more complex when the child is too young to understand the nature of the access to records request, but where we do not think it is in the best interest of the child to release the information to the parent. However much of our work is premised on providing children – even very young children - with confidential space in which to explore their experiences and we think this must be

³ COM (2006) 367 final, 4.7. 2006

protected, even from parents where appropriate. Fortunately to date we have been able to persuade parents to respect their child's right to confidentiality and this refusal of access has not been challenged.

The NSPCC would be happy to provide more detail if this is required. We fully support the Working Party's proposition that conflict between the rights of a representative and a young person be resolved by reference to what is in the best interests of the child.

- We also support the position that rather than stipulating an arbitrary age at which a child can give consent, the real deciding factor should be the capacity of the child to understand the meaning of decisions in relation to their personal information. We recognise that whilst this works in relation to the provision of a public service it may not work so well in a marketing context. We therefore take the view that protecting children from direct marketing may require a stricter line on the need for parental consent.
- In relation to access to data (d.2, p 13) it is noted that access to data in a student file "must be strictly regulated and limited to school authorities, school inspectors, health personnel and law enforcement bodies". However, other professionals and organisations, such as social workers, may also have a legitimate reason for access, which should be acknowledged.
- The suggested on children's photos (pg 16 e) runs contrary to the UK Information Commissioner's guidance on the use of pictures taken in school, which does not currently suggest that consent is obligatory. Where a school takes a photo for use in its prospectus for example, the guidance suggests that the UK's Data Protection Act will not be breached provided that the children and their parents and guardians are advised that the photo is to be taken and how it will be used. The Data Protection Working Party should be aware of such discrepancies between EU and national guidance.

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