

The Catholic Parliamentary Office

An agency of the Bishops' Conference of Scotland



Submission to the Education and Skills Committee following its call for evidence on the Children and Young People (Information Sharing) (Scotland) Bill

25th August 2017

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Concerns remain about the named person scheme generally, particularly around the need for the scheme when greater investment in the existing system could bring about the outcomes required to improve the safety and wellbeing of our children, while at the same time respecting and protecting basic rights of parents and of the family, including the right to a private and family life. The need for new legislation in this area remains highly questionable.

It is, however, welcome that the Bill makes clear that information will only be shared if it is likely to 'promote, support or safeguard the wellbeing' of the child or young person. Also welcome is the voluntary nature of the scheme. There are, however, outstanding concerns around the term 'wellbeing' and the lack of statutory provision around the scheme's voluntary aspect, and these are explored below.

The Policy Memorandum acknowledges that most of the support a child or young person needs will come from their family, but if additional support or information is required *"the 2014 Act will empower children, young people and parent to access support to promote or safeguard a child's or young person's wellbeing, if and when they need it, through a named person service that makes a clear contact available to work in partnership with them."* This section of the Policy Memorandum alludes to the voluntary nature of the scheme.

The Policy Memorandum further states that *"the information sharing provisions contained in the Bill will ensure that the rights of children, young people and parents are respected when information is shared under Parts 4 and 5 of the 2014 Act for the purposes of promoting, supporting or safeguarding children's or young people's wellbeing"* and that *"Children and young people, and their parents, can accept or reject advice or services offered in pursuance of a child's plan for targeted intervention under Part 5 of the Act.... This freedom of choice must be made clear to them. Refusal to accept advice or services offered or refusal to cooperate with a child's plan is not in itself to be taken as evidence of a risk of harm."* Again, the voluntary nature of the scheme is referred to. Yet before exploring concerns about the truly voluntary nature of the scheme there remains a question mark over the threshold applicable to the principle regarding a refusal to accept advice or services offered. Will there be instances when a named person is duty bound to record such refusal to cooperate as evidence of risk of harm? In which case is this principle not absolute?

As the Policy Memorandum makes clear: the service is voluntary and, as a result, we would expect there to be no uncalled for, unwanted, unwelcome or unnecessary intrusions into the life of a child or young person and their family by a named person. However, this element is not included in the legislation itself which begs the question as to whether or not the scheme is genuinely voluntary. In order to be truly voluntary surely the principle should have the full weight of the legislation behind it? The principle of the scheme being voluntary is further called into question by the inability of parents to opt-out of having a named person appointed to their child. Again, if the scheme is to be truly voluntary then surely the option to opt out must be built in.

The accompanying Code of Practice correctly points out that when sharing personal information the consent of the person to whom the information relates must be sought before the information is shared. Recourse must be had to the Data Protection Act when proposing to share sensitive personal data and this layer of protection is welcome though entirely expected. There remain, however, deep reservations about how this new legislation relates to the Data Protection Act and other relevant pre-existing legislation.

There is a fundamental responsibility on the part of the authorities to respect a person's right to respect for private and family life as protected under Article 8 of the European Convention on Human Rights (ECHR). Only lawful and proportionate interference is legitimate under Article 8 and authorities must tread very carefully in this area. The authority must be satisfied that it meets the required test and there can be little room for doubt. It is imperative that Article 8 of the ECHR is fully respected and that public authorities do not interfere with family/private life in a way that compromises the protections offered by Article 8. This would be tantamount to a gross intrusion on the part of the state. Public authorities, should they believe interference to be necessary, must be certain of the legitimate aim and ensure that any interference is proportionate to achieve that legitimate aim. There can be no abuse of or cutting corners in relation to this fundamental right.

We are greatly concerned by the Faculty of Advocates response to the Bill, in particular the Faculty's overriding view that some of the Supreme Court's criticisms "*will continue to apply if the Bill as drafted is passed and the accompanying Code of Practice is approved*" and its concern that the Code of Practice lacks clarity. The Code would certainly benefit from clearly defined technical terms and a chart or diagram illustrating the various steps required to be taken when considering whether or not to share information. Without clearly defined parameters there is an increased risk of the legislation not being properly applied and the proposed system failing. This is complex law and complex law requires greater clarity, including precise terms and ease of accessibility to those expected to apply it.

The draft Bill would itself benefit from changes such as the addition of terms on consent and informing relevant persons that information is to be shared, as stipulated in the Code of Practice. It would also benefit from a clearer definition of wellbeing. These are fundamental elements of the process and they should be given due reverence by being included in the legislation and not an accompanying document which carries little weight in comparison. The same must also be said with respect to the supposedly voluntary nature of the scheme.

Ultimately, this legislation must balance the responsibility of the state to do what it legitimately can within its purview to protect children and young people with the rights of parents and children to live a family life in private. The proposed changes address some of the failings of the original legislation though there still remains a question mark over the need for the legislation at all. It is absolutely critical that in applying the provisions of this Bill all stakeholders, including the Scottish Government, acknowledge that respect for parental primacy and the right to private family life is paramount.