

Briefing for the Public Petitions Committee

Petition Number: [PE1692](#)

Main Petitioner: Lesley Scott and Alison Preuss on behalf of Tymes Trust and Scottish Home Education Forum

Subject: Inquiry into the human rights impact of GIRFEC policy and data processing

Calls on the Parliament to urge the Scottish Government to initiate an independent public inquiry into the impact on human rights of the routine gathering and sharing of citizens' personal information on which it's Getting it Right for Every Child (GIRFEC) policy relies.

Background

Getting it Right for Every Child (GIRFEC) is a policy approach to children's services introduced over the last 12 years which seeks to ensure a holistic approach to considering a child's needs.

Part of the GIRFEC approach is that a child has a designated 'named person' as a point of contact and advice. Attempts to legislate for the named person have stalled following the [Christian Institute](#) case. Amending legislation which seeks to ensure the information sharing function complies with data protection and human rights legislation is [currently at stage 1 in the Parliament](#). Committee consideration is on hold pending the development of a draft Code of Practice.

Therefore, the current named person scheme where it is used in local authorities is based on policy rather than legislative requirement.

Separately from any Scottish legislation, information sharing must be compatible with data protection legislation and human rights law. The recent coming into force of the GDPR means that many organisations have had to consider their data protection procedures.

This petition relates to the current legal situation rather than the prospective legislation from the 2014 Act and 2017 Bill. Current information sharing under GIRFEC must be done in accordance with both data protection legislation and human rights requirements.

Scottish Government Action

The following sets out advice issued on information sharing in relation to the named person scheme.

The March 2013 [advice from ICO](#): stated that:

“If there is any doubt about the wellbeing of the child and the decision is to share, the Data Protection Act should not be viewed as a barrier to proportionate sharing.”

The GIRFEC programme board [issued a letter in April 2013](#) on information sharing, attaching information sharing advice from the ICO. This stated that:

“Whilst the ICO in its capacity as a regulator does issue substantial penalties for breaches of the Data Protection Principles, Ken Macdonald emphasises that these penalties are aimed at systemic failures and not practitioners making good faith decisions to share information in the best interests of children”

In September 2016, (following the Christian Institute case) a [statement from Head of ICO Region Ken MacDonald](#) highlighted the implications of the Supreme Court judgement to Scottish local authorities, area health boards and Police Scotland. He said:

“GIRFEC partners should now review existing procedures and policy to ensure that they are sufficiently clear. [...] The sharing of personal data without the consent of the individual is likely to take place only in very particular and clearly justified circumstances rather than as common practice.”

In July 2017, the Scottish Government issued a [policy update in July 2017](#), to advise practitioners of the impact of the Supreme Court judgement on the GIRFEC policy. This stated:

“Local Authorities, Health Boards and other organisations have worked hard to prepare for implementation of Parts 4 and 5 of the Act and should continue to implement the Getting it right for every child approach, operating within the existing legal and policy framework.”

Scottish Parliament Action

The Education and Skills Committee considered the Children and Young People (Information Sharing) (Scotland) Bill at stage 1 during autumn 2017. This focused on the proposed legislation rather than whether existing practice breached data protection requirements.

The Committee received submissions from a range of organisations including Scottish Home Education Forum, who stated that:

“We had regularly raised concerns over local authorities’ misrepresentation and misapplication of the legal framework pertaining to home education and our members had reported increasing misuse of their personal data as a result of implementation of the GIRFEC policy (which lacked statutory foundation), and the premature ultra vires operation of named person schemes that sanctioned the misuse.”

http://www.parliament.scot/S5_Education/Inquiries/170821ScotHEForum_response_amended_version.pdf

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7 June 2018

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