To: Terry.Shevlin@scottish.parliament.uk

Title: NHS Lothian response to Scottish Parliament’s Education and Culture Committee - call for written submissions – Education Bill 2015

Health related comments

NHS Lothian have had discussion in the four Lothian CPPs, but mainly focussed on links with GIRFEC and CPP Inequality Plans and we would like more details on how this Act interfaces with the Community Planning Bill and focus on reducing inequalities, and the new Children and Young Person’s Act and Children’s Wellbeing and GIRFEC?

In Health, we support the post of Chief Officer for Education, but with a caution that integration of Education as part of wider Children and Young People’s services is a good thing and that if under one single Director for example the way it works in Edinburgh City that can be an advantage and improve collaboration and integration.

NHS Lothian agree with the health related comments and issues submitted by City of Edinburgh Council and East Lothian Council as written below:

1. Additional Support for Learning

Q16 Response: East Lothian
The Information Commissioner’s Office (ICO) has advised that practitioners’ fears about sharing genuine concerns – without consent – about a child’s or young person’s wellbeing are misplaced. Whilst a child aged 12 or over has rights (if the child has capacity) and should be consulted prior to any information sharing in order to protect the rights of individuals, there will be times when we overrule that right when it is clear that there is a child protection issue or when someone has a genuine wellbeing concern and that a reasoned decision has been taken to share without consent (with a clear record kept). The GIRFEC approach gives everyone a set of common tools to ensure that decision-making is consistent and based on using the wellbeing indicators.

It would be helpful if young people who have additional support needs/severe and complex needs are included in the SLDR figures/destinations post school.

Extending rights to children with capacity aged 12 and over may compromise family situations. An example is of a child who has additional support needs and whose parents have complained to an authority that their child’s needs are not being met. The complaint has reached Stage II and the parents have requested copies of support that have been put in place (including confidential information on the child’s IEP). On the grounds that the child is over 12 years of age and has capacity, the child has the right to refuse his parents access to his personal data unless there is a ‘wellbeing concern’ that would be detrimental to the wellbeing and safety of the child. The child can give a signed mandate to parents or
a third party to act on his/her behalf. He/she, however, can refuse parental access to his/her confidential record on the basis that he/she would be discriminated against.

Q16 Response – Edinburgh

Additional Support for Learning
16. The Bill would extend rights under the Education (Additional Support for Learning (ASL)) (Scotland) Act 2004 to children aged 12 and over with capacity. In Edinburgh the “having your say” pro forma is used through GIRFEC meetings to capture the views of the child if that child has capacity.

Extending rights in this direction is therefore to be welcomed. There may be some tension in the rights of the child and the rights of the parent, also enshrined in legislation, if these rights seem to be pulling in different directions. This tension has existed in the past but has never been tested in law. By extending legal rights to children over 12 with capacity it may be that legal challenges will occur.

17. The Bill also contains proposals that not all rights be extended to children with Additional Support Needs (ASN). Not extending rights to children with ASN in light of previous discussion in the legislation about equalities could be seen as discriminatory. Further, whilst the desire to prevent children making their own placing requests for out of catchment schools is being proposed to prevent disruption of family life, this is clearly a right that would have some impact (for example if one of the many advocacy groups became involved).

18. The Bill also proposes a statutory children’s support service. CEC already has a variety of well-established statutory services (e.g. Educational Psychologists, hospital teaching). Edinburgh has also rolled out the GIRFEC approach to ensure that the reach of statutory services extends to all children. CEC should therefore be able to meet its statutory obligations as in the past whilst also striving to meet the needs of every child.

Q17 Response

With reference to the above, the extension of children’s rights is not about undermining parents’ role in their family or in relation to their child’s rights under the 2004 Act. Any changes would be about enabling children, who have the capacity to and who want to, have a direct influence on the support that they receive. It also provides an opportunity for vulnerable children whose parents are unable to look after their interests to exercise their rights and best serve their own interests.

2. Learning and Childcare

Q26 Response: East Lothian

We can see no reason for children with guardians not to receive the same entitlements as those in kinship care.
Q26 Response: Edinburgh
No – the Bill will address the unintentional exclusion of a small group of children from the early learning and childcare provisions.

3. Specific Actions of Education Authorities
More generally, perhaps education authorities might be encouraged to engage in a wider range of actions within the child poverty agenda as well as collaborative working with other LAs on a Hub model and/or with the third sector. For example, Edinburgh has a strategy to reduce the effects of child poverty. This is based on the same three outcomes as the national Child Poverty Strategy for Scotland, the second of which is to ‘Improve children’s wellbeing and life-chances (Prospects)’. Its principal focus is on raising attainment, and it includes actions to improve attendance and attainment, reduce the attainment gap, further develop engagement with families (including support for the home learning environment), develop access to out of school learning and breakfast clubs, and ‘poverty-proof’ schools. These sit alongside actions for the other two outcomes: maximising household resources (Pockets); and, children from low-income households live in well-designed, sustainable places (Places).

Financial Memorandum
Question 4:
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

In addition, the number of ASN referrals emanating from pre-nursery and nursery has increased by 88% in just the last 5 school sessions including the current session which has not yet finished. This places a prioritisation requirement on Educational Psychologists and other ASN teams.

Approved by: Sally T Egan, Child Health Commissioner/Associate Director, NHS Lothian

Date: Friday 29 May 2015