Public Petitions Committee Inquiry into Child Sexual Exploitation

Thank you for your letter of 09 May 2013 in which you ask for more information about our ongoing work to address child sexual exploitation and as discussed at the last Committee meeting on 30 April.

I would first like generally to reassure the Committee that we do not expect to finalise our work in this important area before taking account of its findings. The other responses that I have listed below correspond with the order of those more specific questions that you have asked:

1. You are aware that we are testing data monitoring and self-evaluation tools developed by the University of Bedfordshire in Scotland. The data monitoring tool is designed to enable local areas to gain a better understanding of the scale and nature of child sexual exploitation in their areas - thereby improving data on local prevalence. The self-evaluation tool helps local areas to determine how well they can respond to child sexual exploitation in terms of support and prevention.

   Committee Members will want to know that we expect the pilot to begin in the Forth Valley area (Stirling, Clackmannanshire and Falkirk Councils) by July. They will appreciate that we cannot yet confirm how long the pilot will run for. This is because we are taking advice from our local partners about how best these tools might be tested in the Forth Valley. Their advice here will help to maximise the value of the exercise and also determine the timescale. Committee Members will also appreciate that we will also only be able to offer a firm view about the timing of any wider roll-out of the tools once we know the outcome of the pilot. That said we hope to conclude all of our work here as soon as possible.
2. You also asked for more information about the mapping exercise. This has been led by the Child Protection Committees (CPCs) since 2012 and sought to identify and consider the range of local child protection protocols, procedures and guidance in place. This was with a view to identifying a core list of protocols for all areas. We expect to agree the final list of recommended protocols, including child sexual exploitation, with CPCs in June. We will then agree a date, with them, by when these protocols should be in place across Scotland.

3. Once we have the agreed list of protocols, we expect the content and shape of these to be developed over the coming months. We plan to work with CPCs on shaping the content of any protocols agreed for child sexual exploitation and also plan to take account of the Petitions Committee’s work when doing so.

4. The ongoing update to the National Child Protection Guidance is expected to be complete by December but we will take account of the Committee’s work before finalising this. We are working with Barnardo’s Scotland on how to improve the way the national guidance addresses child sexual exploitation.

5. I have attached a copy of the letter from the Information Commissioner about sharing information where a child is at risk.

6. We note the significance of breaking perpetrator networks. This will be a matter for local partners to consider when developing their local protocols. As I have said, we will work with them where needed.

7. I can say that under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (since the Act came into force until 2011-12) conviction statistics recorded twenty four people convicted of a ‘child sexual exploitation’ offence. Under this Act, twenty seven people were proceeded against for sexual exploitation offences, for the same period. The Sexual Offences (Scotland) Act 2009 contains general offences which criminalise sexual activity with a child under the age of consent or where a position of trust exists. These are more commonly used to prosecute those who sexually abuse and exploit children. The Scottish Government Criminal Proceedings database shows that 80 people were proceeded against for sexual offences against children under Parts 4 and 5 of the 2009 Act in 2011-12 and 66 were convicted. In addition to this, 146 people were proceeded against and 115 convicted for sexual offences against children under the old common law and statutory provisions in force prior to December 2010. The Scottish Government Criminal Proceedings database holds information on completed/closed cases only. COPFS internal systems will record information on pending cases which is not available to the Scottish Government.

Committee Members will appreciate that much of our work in this very important area is ongoing and needs careful consideration together with our local partners. In light of that, I plan to write again to the Committee in the autumn to provide a further update, in particular around the development of local protocols. In the meantime, I would hope that those broad timings that I have provided are helpful to the Committee.

AILEEN CAMPBELL
28 March 2013

Information Sharing Between Services in Respect of Children and Young People

The Information Commissioner’s Office (ICO) is contacted regularly by practitioners seeking advice and guidance on whether they can share professional concerns about their clients/patients and, if so, what level of information may be shared. Often, the Data Protection Act 1998 (the Act) is viewed as preventing such sharing and it can be fear of non-compliance that becomes a barrier, even though there may be a concern about a child’s or young person’s wellbeing. While it is acknowledged that practitioners need to be sure their actions comply with all legal and professional obligations, fear that sharing genuine concerns about a child’s or young person’s wellbeing will breach the Act is misplaced. Rather, the Act promotes lawful and proportionate information sharing, while also protecting the right of the individual to have their personal information fairly processed.

Most practitioners are confident about appropriate and necessary sharing where there is a child protection risk. The problem can be where the circumstances do not yet reach the child protection trigger yet professional concerns exist, albeit at a lower level. Getting It Right For Every Child (GIRFEC) introduced eight indicators of wellbeing: safe, healthy, achieving, nurtured, active, respected, responsible and included (SHANARRI). In many cases, a risk to wellbeing can be a strong indication that the child or young person could be at risk of harm if the immediate matter is not addressed. As GIRFEC is about early intervention and prevention it is very likely that information may need to be shared before a situation reaches crisis. In the GIRFEC approach, a child’s Named Person may have concerns about the child’s wellbeing, or other individuals or agencies may have concerns that they wish to share with the Named Person. While it is important to protect the rights of individuals, it is equally important to ensure that children are protected from risk of harm.

Where a practitioner believes, in their professional opinion, that there is risk to a child or young person that may lead to harm, proportionate sharing of information is unlikely to constitute a breach of the Act in such circumstances.

The Act requires that an individual’s data be processed fairly and lawfully and that specific conditions/justifications for processing are met. The Act provides...
several conditions/justifications for processing, only the first of which rely on consent and, where required, it should be fully informed and freely given. However, the issue of obtaining consent can be difficult and it should only be sought when the individual has real choice over the matter. Where circumstances exist such that consent may not be appropriate, for example where an assessment under the SHANARRI principles raises concerns, the Act provides conditions to allow sharing of this information, such as ‘for the exercise of any other functions of a public nature exercised in the public interest by any person’ or ‘in the legitimate interests of the data controller or the third party to whom the data are disclosed so long as it is not prejudicial to the child’, and procedures should be clear about those circumstances which may necessitate processing without consent.

It is vital that data controllers put appropriate and relevant protocols in place and that they are conveyed to practitioners to provide them with a support mechanism for the decision making process. It is also vital that a recording process is included in the protocol so that the decision – including the rationale behind making it – is formally recorded. Such protocols will assist in providing confidence to practitioners in the event the decision is challenged.

**It is very important that the practitioner uses all available information before they decide whether or not to share. Experience, professional instinct and other available information will all help with the decision making process as will anonymised discussions with colleagues about the case. 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.**

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Information Commissioner’s Office