Education and Skills Committee
Scottish Parliament
Holyrood
EDINBURGH
EH99 1SP

9 August 2017

Dear Sir/Madam

I write with regard to the call for evidence and survey on the draft Code of Practice, the Children and Young People (Information Sharing) (Scotland) Bill.

I have read the illustrative draft Code of Practice (Information Sharing) under parts 4 and 5 of the Children and Young people (Scotland) Act 2014.

The draft Code of Practice requires very careful reading but, once I had read it thoroughly, I came to the conclusion that, while it would still be perfectly possible to share information with other agencies in the interests of a child’s welfare and well-being, the need to gain consent and to weigh that need against the ECHR (Article 8), the DPA and aspects of common law would be bound to make it less likely than at present that information, especially sensitive information, would be shared, to the detriment of the child. I also felt that the draft code of practice added an additional layer of necessary documentation to the duties of the named person thus further bureaucratising the system.

In my view, the proposed code of practice will in practice, be unworkable and militate against beneficial action in favour of the child being taken by the named person.

The rationale for my thinking is that the draft Code of Practice, rather than facilitating the sharing of information, deliberately places a whole series of legal and moral obstructions in the way of that happening. This is likely to discourage or intimidate those with the authority to share information and possibly dissuade them from doing so, not least on account of the consequences of their judgement being seriously questioned should they make a decision to share information with other agencies even if, in their view, this were necessary and proportionate. I also think that the illustrative draft Code of Practice, on account of its weighting, places the named person or the lead professional in a very awkward position since that lead professional as a professional has a duty of care towards the child and therefore is bound to act in his or her best interest or to the advantage of his or her health and well-being, yet the illustrative draft Code of Practice places what I regard as an unreasonable obligation on the named person to undertake a whole series of tests, some of which
can only be proved legally in a court of law, before making what ought to be a simple decision to act in the best interest of the child’s welfare, health and well-being.

I hope you appreciate the quandary that this draft Code of Practice provides for those who would be required to follow its stricures, should it be adopted.

Yours faithfully

(Principal)