Submission of evidence from the Early and Effective Intervention (EEI) Practitioners Forum in response to the Scottish Parliament's Education and Skills Committee seeking views on the Children and Young People (Information Sharing) (Scotland) Bill.

The EEI Practitioners Forum is a collective of EEI practitioners and associated agencies involved in the delivery of EEI across Scotland with current attendees from Local Authorities, Police Scotland and Third Sector. The forum identifies issues and barriers to implementation and delivery of EEI with a focus on developing multi-agency practice to ensure children are diverted from formal systems whilst responding to identified needs as appropriate in line with GIRFEC.

Response

Early and Effective Intervention (EEI) seeks to provide appropriate, proportionate and timely support to children 8-17 years at risk of or involved in offending behaviour and seeks to understand this behaviour within the holistic context of that child or young person’s world and respond proportionately. EEI forms an integral part of the Scottish Governments attempts to divert under 18s from formal statutory process as far as possible and as appropriate as part of the Whole System Approach. Key to the function of EEI is strong multi-agency collaboration and working together to respond to children in an appropriate and proportionate manner by the right person, at the right time in the right way.

The impact of the Named Person Service (NPS) has been significant in relation to existing EEI practice nationally and at local levels. The preparation for linking with NPS and subsequent uncertainty as to how these processes would interconnect was exacerbated by the delay of the full implementation of the CYPA 2014 and lack of clarity or understanding as to what this meant in practice. The proposed Information Sharing Bill or draft code of guidance has not alleviated this. There remains a need for clarifying the thresholds for sharing information in relation to well-being concerns and support for the professionals involved to develop robust understanding in relation to the legislation governing information sharing as this is not evident. This complex landscape of legislation requires to be translated through provision of examples, easily understood concepts and thresholds.

A further concern related to the sharing of information as outlined is the question as to whom information should be shared with. Should this solely be for the NPS as within the EEI process this is highly likely to result in children failing to be diverted from formal systems and criminalised as a direct result of this. In order to address this unintended consequence a dual tracking process for children involved with the police and eligible for EEI consideration would allow sharing with NPS and the local EEI Co-ordinator or equivalent. However this does not resolve the initial challenge to understand what can be shared, when and with whom.

In addition, the aspect of consent is not appropriately covered within the proposed legislative change whilst outlined within the draft code of guidance. There is no clarity as to when consent or explicit consent is required and this may result in breaches of confidentiality and failure to take account of child rights and for their voice to be heard and their views sought. Further issues regarding consent relate to the age at which the DPA 1998 states that the individual child can provide consent, this being 12 years, though it is acknowledged this is to be measured against age and stage and capacity. A complication to this particularly in consideration of children involved in
offending behaviour is the evidence that a significant proportion have an undiagnosed speech, language and communication needs that often times they have become adept at masking. This is concerning for the following reasons. Who is making the assessment that a child over 12 years and under 16 years has the capacity to make an informed decision as to what they are fully consenting to? What skills and knowledge does such a professional have to make such an assessment and in addition what is that individual professionals understanding of the matters they are seeking consent on as limitations to this will impact upon the information and explanation being provided to that child or young person. What action is permissible by law when a child or young person gives consent or explicit consent and their parent/guardian does not- which decision carries the greater weight and how is this measured against child’s rights? If a child is deemed to have the capacity from 12 years to provide appropriate consent does this mean that the parent/guardian need not be informed?

Significant concerns relate to the skill of NPS and their ability to recognise that offending behaviour is a manifestation of need and what this may signify for that child. Then from this, their ability to understand the presenting need and what will support that child and their family to reduce that need and move away from further involvement in offending. Significant support is required for NPS to understand the SHANARRI indicators in relation to the wide range of needs a child may present, how these needs interact and can compound each other and that the manner in which a child presents may be masking the real need is vital. The understanding of how well-being concerns present across all systems in which a child interacts and lives is required, not just within one system, and what this means in the context of that child and their situation. Also when a well-being need may be masking a more serious concern of significant harm and become child protection.

This response has been submitted on behalf of the EEI Practitioners Forum.

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