Introduction

Families Need Families Scotland aims to support individuals who have come up against difficulties in securing or maintaining meaningful parenting time with their children after separation. We also seek to raise broader awareness of the institutional obstacles that often act to make conflicts worse rather than better, not just for the fathers (and other extended family members) involved but above all for the children of the relationship.

FNF Scotland grew out of the UK Families Need Fathers organisation which always had individual members in Scotland since it was founded in 1974. Project funding was provided in 2009 by the Equality and Human Rights Commission to ascertain the demand for a separate Scottish organisation. FNF Scotland was separately constituted as a charity in 2011 though still retains a relationship with FNF in England and FNF Cymru in Wales.

FNF Scotland isn’t a father’s rights organisation. The majority of those who contact us are non-resident fathers but a significant proportion of our requests for help and information and who attend monthly group meetings are new partners, aunts/uncles, grandparents and some mothers. The number of contacts has grown steadily and has exceeded 3,500 in the current year from just under 900 individuals.

Submission on Children and Young People (Information Sharing) (Scotland) Bill

FNF Scotland has taken an agnostic attitude to the Named Person scheme - accepting the good faith behind the proposal while acknowledging that some of its crucial concepts such as ‘wellbeing’ remain inherently subjective and potentially troublesome.

It is therefore difficult to foresee, even as amended, that the named person provisions will usher in a consistency of practice across Scotland. When applied well, sensitively and constructively they may well be of assistance to a child and his/her family but there will be no guarantee in the hurly burly of daily practice in every corner of the land.

Our submission focuses on issues of ambiguity and lack of clarity in some of the wording of the indicative draft guidance against which the Bill should be read.

The Guidance itself must be read against the Policy Memorandum which invokes the GIRFEC approach to Getting It Right For Every Child.

In fact we have raised these issues in each of our previous submissions in connection with the legislation over the years. It is disappointing that we have to raise them again at this 11th hour.
First, what is meant by parent? We understand that for children attending school the underpinning definition will be the broad one set out in the 1980 Education Act, recognising the status of both biological parents.

However, the indicative draft guidance fudges the issue in several places, referring to “their parents”. It will need to be clear to the Named Person whether that means "a ‘named’ parent", "either parent" or "both parents".

We have raised in previous submissions to several Scottish Government and Scottish Parliament consultations that for the Named Person of school age children to fulfil their obligations the current system for collecting the names of parents is insufficient. It will have to be overhauled in order to ensure that the details of non-resident parents are known.

At present annual data update forms are sent to only one parent. Where parents live separately it is left to the parent who receives the form to decide whether to include the details of the other parent. While this system has been in place for years if not decades it is doubtful if it would be seen to be equalities compliant if it were drawn up today when 30% of children at school have parents who live separately.

The UK Supreme Court judgment puts its finger on the problem at several points. For example, in paragraph 84 it identifies the issue for the Guidance: “The RDSG is only guidance, speaks of “routine good practice”, and leaves it to the discretion of the information holder whether to involve the parent or parents. … While para 10.14.2 of the RDSG advises that a record should be kept of the rationale behind a decision to share information, such a record will not assist a child, young person or parent who is not informed that the information is to be or has been shared.”

At least in schools there is a basic structure in place which can be overhauled. The same problem will arise for those Named Persons who are health visitors.

Our experience is that health visitors do not place a priority on developing a relationship with fathers in general and non-resident fathers in particular. Their understandable priority is the health and welfare of a mother and new baby but our view is that that will be insufficient for them to fulfil their Named Person obligations.

If the Named Person scheme proceeds we anticipate that there will have to be a change in the information gathering structures for both health visitors and head teachers and something of a change in mindset too.

FNF Scotland has been heavily engaged for several years with schools, including speaking at cpd sessions and publishing several editions of a highly praised ‘user guide’. We are equally willing to engage with health visitor training.

At another point in the indicative draft guidance the phrase "estranged parent" appears. That is unhelpfully vague. Is it a parent whose parental rights and responsibilities have been removed by a court or modified in some other way after due process. If not, who will be the judge of the estrangement?

Finally, there are several references in the indicative draft guidance to "the health or safety of the child or another person". “Another person” needs to be defined and a test set out for what is meant by the alleged risk to health or safety.
We have brought to the attention of several Scottish Parliament committees that the vagueness of the “another person” concept and the lack of any objective test that was introduced by the Educational Records Regulations 2003 has been open to abuse. We know of several examples where schools have withheld information from a non-resident parent under this section. Because the decision making is not transparent the perception is that in several cases it is being used by one parent to control the involvement in the child’s life by the other without due process.

FNF Scotland’s experience - supported by much research evidence – is that in general children do better in most aspects of their life when they have a meaningful relationship with both parents, including parents who live separately. The Named Person scheme and GIRFEC itself will benefit from ensuring that both parents are engaged as a resource for supporting their children rather than a risk to them.

25th August 2017