Education and Skills Committee Inquiry Call for Views on the Children and Young People (Information Sharing) (Scotland) Bill

Response from Social Work Scotland

Social Work Scotland welcomes the opportunity to respond to the Call for Views issued by the Education and Skills Committee of the Scottish Parliament on proposed amendments to the Children and Young People (Scotland) Act 2014 by Information Sharing Bill.

Introduction

Information sharing between professionals and agencies is crucial in ensuring the wellbeing and protection of children and we support the Scottish Government’s aim to bring clarity and consistency to information sharing. It is essential that all legislation, associated regulations and guidance support practitioners work in accordance with the principles of the GIRFEC approach¹. Social Work Scotland believes that significant work on the Code of Practice will be required to achieve this.

The Children and Young People (Information Sharing) (Scotland) Bill

The reference to “wellbeing” in the proposed replacement for S26 of the 2014 Act is welcome. This enables a practice in which “information holders” consider sharing information beyond that which is clearly a child protection concern. The ‘wellbeing indictors” (SHANARRI) provide practitioners with a framework for understanding wellbeing within the GIRFEC approach. Social Work Scotland believes that it is right that the Bill states that an information holder “must” consider whether sharing information will promote and support the “wellbeing” of the child as this ensures that consideration will still be given to sharing information, within the law, when it appears the child may need additional support to meet their needs. In this way the Bill is consistent with the GIRFEC approach of securing early support to a child to promote their wellbeing. However, the Code of Practice as currently written does not provide the necessary clarity for practitioners when consent to share information is not forthcoming.

The practice of sharing information where there is a clear child protection concern is well established in Scotland. It is important to note, however, that such concerns form a minority of child welfare work. In fact, child protection concerns often only become clear, particularly around emotional abuse and neglect, after information held by different service providers has been shared and put together². Again, the Code of Practice will need to support information holders to reflect on what information may be shared in circumstances when consent is not granted. It is important that the Code of Practice (COP) and any updated guidance linked to the Bill do not impact negatively

¹ http://www.gov.scot/Topics/People/Young-People/gettingitright/what-is-girfec/foundations

² Weaknesses in information were identified as a factor influencing a poor outcome or increased risks in 11 of 20 SCRs analysed by the Care Inspectorate. http://www.careinspectorate.com/images/documents/3352/Learning%20from%20Significant%20Case%20Reviews%20in%20Scotland%202012%20-%202015.pdf
on the improvements in multiagency working that the GIRFEC approach has established. To some respect there has been a loss of confidence among professionals brought about by the recent Supreme Court judgement and there is a need to ensure that we can overcome this with clarity of purpose and practice – which should be supported by the COP.

Social Work Scotland highlights the substantial amount of information that comes to the attention of Police Scotland, especially with regard to domestic abuse. Information between Police Scotland and children’s services has led to substantial improvements in the early identification of the risk to children in recent years and support being put in place. To ensure that the good arrangements that have been developed between local authorities, health and Police Scotland to share information function well, Social Work Scotland believes that clear and robust guidance is issued around informing parents/children about information sharing and the circumstances in which consent to share will be dispensed with.

Views of the Child

Social Work Scotland is concerned that the Bill would remove the requirement “to ascertain and have regard to the child’s views” that is currently a provision within the 2014 Act.

The emphasis the Code of Practice places on ensuring consideration is given to whether the young person has the capacity to make their own decision about information sharing is welcome. Social Work Scotland believes that Scottish Government should publish a guide to consent for children and young people that explains their rights and helps them give informed consent about sharing information. This would also assist the named person and other professionals in discharging their duties.

Training

Training in relation to information sharing will be vital in ensuring that the legal issues are understood within the GIRFEC approach at local level. It is important that practitioners are confident in how to apply the law and are not unduly anxious about making decisions in a way that creates risk averse practice. Social Work Scotland notes the Financial Memorandum attached to the bill and is concerned that resourcing for training is insufficient to meet the training needs of the full range of practitioners employed across the children’s sector and within the police. Any resources developed at national level also need to recognise the significant multi agency training work that is taking place within local areas to implement GIRFEC. Support to this activity, including additional financial resource, is welcome but not any duplication.

The Code of Practice

Social Work Scotland welcomes the amendment to Section 26 of the 2014 Act to place a duty on Scottish Ministers to provide a Code of Practice in relation to the provision of information.

Social Work Scotland has considered the illustrative draft Code of Practice that has been prepared to aid the Scottish Parliament’s consideration of the Children and Young People (Information Sharing) (Scotland) Bill. We note the government intends to consult on this.

The Code of Practice sets out the legal basis upon which information can and should be shared clearly. The Codes states that it is ‘addressed to persons exercising functions under Parts 4 and 5 of the Act. This includes front line professionals who may not be familiar with the high level, technical and legal language of the document. As such, the Code may in fact have the paradoxical effect of impeding information sharing as users of the document will find it off putting and inaccessible.
Social Work Scotland will respond to the Scottish Government consultation on the draft Code when it is issued but in broad terms the code would be improved by

- Providing an introduction with regard to how the Code fits with the Getting Right approach, the National Guidance for Child Protection and the Code of Practice for Additional Support Needs which is relevant for teachers when considering concerns around wellbeing.
- Giving illustrative practice examples that will support to practitioners around the challenges of information sharing rather than just restating the law. For example, guidance as to circumstances in which refusal to give consent can be understood to be “unreasonable”. This is a key concern for practitioners.
- Addressing how to deal with any difference of view about consent between the child and their parents.
- Defining legal terms (such as ‘relevant authority’, ‘vital interests’) with examples
- Illustrative examples to help explain when information may or may not be shared.
- Making it more succinct, using plain English and explaining phrases such as ‘explicit consent’.
- Clarifying for whom the Code is written and whether there will be an expectation on local areas to produce further guidance for those professionals exercising duties under Parts 4 and 5 of the Act at the front line

Social Work Scotland would welcome the opportunity to give evidence to Committee.

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