Response: Education and Skills Committee call for views on the Children and Young People (Information Sharing) Scotland Bill

4th September 2017

About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. It brings together over 2,000 members, including a large network of national and local third sector organisations, associates in the statutory and private sectors and individuals.

Our vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

Introduction

The ALLIANCE welcomes the Education and Skills Committee’s call for views on the Children and Young People (Information Sharing) Scotland Bill.

The ALLIANCE’s ‘Getting to know Getting it Right for Every Child (GIRFEC)’ programme held a consultation event with ALLIANCE members on Monday 21st August to discuss the call for evidence. This response is informed by the parents, carers, and representatives of organisations that represent and support children and young people that participated in that event.

Response to the Bill

The ALLIANCE understands that this Bill relates to the information sharing provisions contained in Parts 4 and 5 of the Children and Young People (Scotland) Act 2014 only. We also understand that the Illustrative Code of Practice which accompanies the Bill is for illustration only. Our response is framed by this understanding.

Nevertheless, we want to make clear that the ALLIANCE fully supports the introduction of the Named Person service and Child’s Plan provisions by law. We agree with the Supreme Court’s statement that the policy intentions of making a Named Person service available to children and young people are both legitimate and benign. Disabled children and young people, those living with long term conditions and their parents and carers have told us that when the Getting It Right for Every Child approach is used effectively, they are much more likely to get the help and support they need at the right time.
It also means that children and young people are much more likely to get the support they need to reach their potential. We are concerned that two key aspects of the Getting It Right for Every Child approach, the Named Person service and the Child’s Plan arrangements, are not yet fully in place across Scotland. We consider that making these provisions available everywhere is a matter of equality. Children and young people should be entitled to the same high standard of support no matter where they live.

We are pleased that the Scottish Government has made it clear in the July 2017 Policy Update¹ and other documentation that while under Part 4 of the 2014 Act organisations would have duties to make the Named Person service available to children, young people and parents, there is no compulsion on children, young people or parents to accept any information, advice or support offered by the Named Person service. Getting this key message across widely will help everyone to understand that the Named Person service is there to assist children, young people and parents if and when they want and need help.

The Bill

The ALLIANCE is of the view that proportionate sharing of relevant information, within the law relating to data sharing and upholding children’s and human rights, is essential to ensure that children, young people and their parents get the right help and support at the right time. Children, young people and parents we have engaged with, and third sector organisations that work with them, have told us that children, young people and parents want to be “in the driving seat” in relation to information sharing and that they expect the purpose of information sharing to be directed at helping children and young people achieve their potential and to support their wellbeing.

We have also heard many parents, children and young people say that when they ask for help, it is not always forthcoming, that they are not always listened to, even by those who would have Named Person roles when Part 4 is implemented. These reports of a lack of coherent information sharing practice are supported by findings by the Care Inspectorate² in their reports on the Joint Inspection of Children’s Services 2014-2016. These reports, and evidence from the Scottish Government engagement on information sharing (Autumn 2016)³, show that while information sharing practice at the level of child protection concerns may be well embedded across Scotland, information sharing, leading to support being made available for children and young people with wellbeing needs below the level of child protection is not as well embedded.

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² http://www.careinspectorate.com
³ http://www.gov.scot/Topics/People/Young-People/gettingitright

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The ALLIANCE, therefore, welcomes the proposed new provisions set out in the Bill.

Firstly, the duty (on organisations having duties under Parts 4 and 5 of the 2014 Act) to consider whether sharing information could promote, support or safeguard the wellbeing of a child or young person, makes clear the aim of information sharing. It puts the child or young person at the centre. The duty to share information “relevant to the functions of the Named Person service” in place in the 2014 Act is removed. Instead there is a duty to consider whether sharing information could be helpful to children and young people.

The ALLIANCE believes this duty provides a proportionate legal prompt to ensure that wellbeing needs are considered and not overlooked when brought to these organisations’ attention. We do not think that it is enough to rely on the existing legislation governing information sharing. A proportionate legal prompt is needed to ensure that children and young people have the same entitlement to excellent practice in relation to the consideration of a child’s or young person’s wellbeing needs wherever they live. The current arrangements are not working well enough for all.

The second new proposed provision is also important. Any information sharing by those with duties under Parts 4 and 5 of the 2014 Act must be provided in compliance with data protection law and other relevant law. This provision should give assurance to children, young people and parents that information will be shared lawfully and that it will be done in ways that respect their rights. We believe that further guidance on the application of the law on data processing is needed to ensure a coherent and consistent approach and further comment on this matter will be made in relation to the Illustrative Draft Code of Practice.

The Getting It Right for Every Child approach is a relational approach which fully acknowledges and supports children and young people’s rights, and parent’s rights to self-determination (albeit with caveats relating to the protection of children and vulnerable adults from risk of serious harm and in relation to the prevention or detection of crime). It is an approach which recognises children’s and parents’ strengths, views and opinions as key starting points around which the provision of co-produced support to help meet a child’s wellbeing needs should be constructed.

The proposed provision of a power, rather than a duty, to share information (after the first two proposed provisions have been met) supports this relational approach. Under this provision, information may be shared but it need not be shared at that time or at all. This proposed provision gives the opportunity for practitioners exercising the functions of organisations having duties under the 2014 Act to pause and to check the views of children, young people and, where appropriate, their parents, before a decision to share or not to share is made. Equally, it provides the
option for practitioners to exercise professional judgment in relation to whether information should be shared quickly in cases of urgent necessity.

**Illustrative Code of Practice**

The Bill proposes a duty on Ministers to issue a code of practice about the provision of information, and about the consideration of the provision of information by organisations having duties under Parts 4 and 5 of the 2014 Act. The proposals in the Bill make it clear that such a code of practice must provide for safeguards relating to the appropriate sharing of information. It is also proposed that the code of practice must be followed by those exercising these functions.

It is, therefore, our understanding that this would be a mandatory code of practice which would have legal standing as secondary legislation. The code of practice would have a clear legal status which is much stronger than the current Draft Statutory Guidance on Parts 4 and 5 of the 2014 Act, which must be given due regard by organisations having duties under these Parts of the 2014 Act but which does not need to be followed by law. The ALLIANCE believes that a mandatory code on information sharing could help drive consistent practice and that it could – and should – help children, young people and parents know what standard of practice to expect.

It is clear, however, from reading other secondary legislation and mandatory codes that these are often high-level documents which set out the law in legal terms and are not always fully accessible to children, young people, parents or practitioners.

The ALLIANCE is therefore pleased to learn from the Scottish Government that a proposed mandatory Code of Practice would be accompanied by a suite of materials, including revised Statutory Guidance, practice materials and information accessible to children, young people, parents and practitioners. We are also pleased to learn that there will be training on the new information sharing provisions and on the proposed code. The ALLIANCE will be pleased to work in partnership with the Scottish Government and other stakeholders in the development of these materials.

We understand that a “formal” draft code of practice cannot be issued for consultation until the Bill has Royal Assent. The Committee and the Scottish Government will no doubt take account of comments made on the Illustrative Draft when considering the content of the “formal” draft.

The ALLIANCE would like to make 3 key points about a code of practice.

Firstly, information sharing should be consent driven. This enables children, young people and parents to be in “the driving seat”. The code should emphasise that the key legal gateway to share personal sensitive information is through gaining explicit and informed consent of the child or young person. In this regard, consideration will need to be given to the provisions of the General Data Protection Regulation.
(GDPR) which will apply from May 2018, and to the expected UK response to these Regulations before the draft is finalised for consultation.

Secondly, to support both a relational and rights based approach, those considering sharing information about children or young people should have a duty to ascertain the views of the child or young person at key stages in this process. Firstly, when services or practitioners are thinking about whether sharing information could help to promote, support or safeguard a child or young person, and, secondly prior to deciding to share such information. Such a duty could usefully be placed on the face of the Bill or made clear in a mandatory code of practice.

Thirdly, while there may be legal or practice precedents for always considering that children over 12 years of age may have capacity to give informed views and consent, or to withhold consent, to sharing information about them, it should be made clear that steps must be taken to ascertain the views of all children, with appropriate support, irrespective of their age or capacity.

Concluding remarks

The ALLIANCE supports making available a Named Person service and Child’s Plan provisions to children and young people on a statutory basis.

We consider that the proposals set out in the Bill are required and proportionate.

We think that further work is required to ensure that any mandatory code of practice on information sharing is both clear and accessible. It will need to be supported by revised Statutory Guidance, clear national practice guidance and materials, and accessible information for children, young people and parents. We are pleased that the Scottish Government has said that it will work with partners to produce these materials. The ALLIANCE will offer support for this work, to help ensure that these materials are informed by the lived experience of disabled children and young people, by those living with long term conditions and their parents or carers.

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