7 September 2017

Dear Sirs,

Response to the call for views on the Children and Young People (Information Sharing) (Scotland) Bill

The Scottish Child Law Centre is one of only a few dedicated providers of guidance and information on matters of law concerning children and young people. We provide services throughout the whole of Scotland.

We help children and young people, their families and carers, and professionals working for and with children by providing free expert legal advice and information through our advice line, email and website.

We provide a wide range of training to organisations and individuals across Scotland, and produce a range of publications on various legal issues. We also undertake visits to schools and young people’s groups to improve their understanding of rights and the law.

The SCLC supports the GIRFEC approach and the principles of proportionate early intervention. We see from our own work the extent to which children and families would benefit from a central point of contact to help them navigate complex legal processes and access the supports to which they are entitled. Lawful and proportionate sharing of information can be a key part of that role and we welcome the Scottish Government’s attempt to redraw these provisions to take account of the legitimate concerns expressed by the Supreme Court.

However, we still have some concerns about the Bill and its associated documentation.

We do not believe that it is necessary or helpful to state in ss1 and 2 that information sharing must comply with existing law. This is a redundant provision and adds nothing to the legal framework except the potential for further confusion. Ensuring that information
sharing is lawful is clearly critically important but given the different legal powers named persons will have (for example a health visitor as compared to a teacher) this could be more clearly and usefully set out in the Code of Practice, which will also need to distinguish situations where information sharing is not simply enabled, but is required by law, for instance where the test for referral to the Reporter is met.

Although we recognise that the Committee is primarily considering the Bill, it is clear that the information sharing element of the named person role will stand or fall based on the Code of Practice. This document is what practitioners will rely on to guide their decision making when wrestling with complex decisions on whether to share information and how to go about it lawfully.

Unfortunately, the illustrative Code produced alongside the Bill is wholly inadequate in this regard. It is hard to imagine how a teacher or health visitor would find it of any assistance whatsoever in navigating the complexities of data protection law. We believe it will need to be substantially redrafted. We would also suggest that there is a pressing need for a child-friendly version that sets out clearly children’s rights, including the right to privacy, and how their views and informed consent will be sought when decisions are made on sharing information.

On the issue of consent, while it is to be welcomed that the Code refers to the need to seek consent from children and young people when considering sharing their personal information, it needs to be more clearly defined what this means. In particular, the need for consent to be informed should be made as clear as possible. Seeking and taking account of the child’s views is a key part of this process and this is one element that should appear in primary legislation by reflecting as closely as possible the wording of Article 12 of the UNCRC.

We note that the forthcoming implementation of the General Data Protection Regulation (GDPR) in May 2018 will significantly increase the responsibility of data controllers and processors around consent. This will be particularly true where there is an imbalance of power between the data subject (the child) and the named person. We suggest that both the Bill and the Code of Practice will need to be drafted in a way that is GDPR compliant from the very start. Our suggestion above would assist with this, but it would be helpful for the Scottish Government to make clear how it has sought to achieve future-proofing.

We thank you for the opportunity in being able to submit our views on the Bill after passing of the official deadline.

Please do not hesitate to contact us if you have any questions or if we could be of any further assistance.

Yours sincerely

The Scottish Child Law Centre