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

The independent sector engaged closely with the Scottish Government, Police Scotland, and other key partners on implementing the requirement of the Children and Young People Act. Structures and procedures were in place in 2016 to commence the Named Person and Child’s Plan aspects of the Act. Independent Schools are committed to the GIRFEC approach and SCIS has recently issued Interim Practice Guidelines for Schools. In the spirit of working collaboratively, these will be shared with the GIRFEC team at Scottish Government. Our Guidelines state:

“The values, principles and the core components of GIRFEC recognise the significance of effective and proportionate information sharing to make sure all relevant information is available to get the right supports in place for children and young people when they need them, and to avoid them having to repeat the same information over and over again”. Section 4.5, SCIS Guidelines

In order to enable practitioners to fulfil this role, and future-proof in relation to the General Data Protection Regulation (GDPR) in 2018, it is critical that there is clarity with respect to two number of aspects of the Bill, these are outlined below:

‘Duty to consider’

The introduction of a duty to consider is potentially fraught with complexities. It is unclear as to what meets the ‘new’ threshold whereby information can be ‘considered for sharing’ (and is not currently) or even be shared without the consent of a child/young person. Whilst the Bill aims to bring “consistency, clarity and coherence” to the practice of sharing information about a child’s wellbeing, there is an inherent issue: the definition of wellbeing is so broad that different practitioners will interpret this in various ways. The grey area of significant wellbeing concern (that is not child protection) would benefit from being more clearly defined before any rationale for information sharing can be determined. Further to this issue, the expectation that practitioners will be fully informed about the legal framework on data protection, the ECHR and the law of confidentiality, places significant demands on practitioners, which may be perceived as unrealistic.
Draft Code of Practice

The Draft Code of Practice raises a number of questions. The accessibility of the language that is used is questionable. As alluded to above, the expectation that practitioners will be fully cognisant of relevant legislation could be detrimental to the decision to share. The Code would benefit from support resources including flow charts, case studies, etc. In essence, a risk assessment tool is required, to use in making a decision about sharing or not sharing.

It is not obvious how practitioners would be empowered to act differently than is currently the case. The goal of the legislation appears to be that those working with children and young people should be enabled to share information more readily. However, the complexity of the code, the framing of it in existing Acts and the vagueness of what constitutes a wellbeing concern (that is neither child protection or significant risk of harm) makes it even less likely people will consider sharing or share at all, particularly without consent.

There is a danger that the draft Code of Practice, rather than facilitating the sharing of information, may have an adverse effect and discourage or intimidate those with the authority to share information and dissuade them from doing so. In particular this could arise on account of the consequences of their judgement being seriously questioned, should they make a decision to share information with other agencies even if, in their view, this were necessary and proportionate.

Up until to the point of sharing (with consent) the framework is straightforward. However, if GIRFEC is a collaborative approach between children/young people, families and professionals, it could be undermined if consent is not given and information then shared. If there is the view that there is a lower threshold whereby information should be shared, and confidentiality and privacy no longer guaranteed, then what constitutes this threshold and how it differs from current child protection needs to be clarified.