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

SASW is part of BASW, the largest professional association for social work in the UK, with offices in England, Northern Ireland, Scotland and Wales. We’re here to promote the best possible social work services for all people who may need them, while also securing the wellbeing of social workers. BASW has established an arm’s length trade union, the Social Workers Union (SWU) which together with our Advice & Representation Service offers a range of services to improve the protection of our members in the workplace. By joining the Association, our members are committing to the values set out within our Code of Ethics and enjoy an unrivalled range of services and benefits. BASW is governed by a Council consisting of members of the association. National Standing Committees of members provide guidance and assistance to country staff teams in the four nations of the UK. Our membership in Scotland is growing.

SASW has previously commented on the Information Sharing components of the Children and Young People Act (Scotland) 2014 and the controversial Named Person scheme.

Within those observations we have referred to Article 8 of the UN Convention (The Right to Family Life) We were concerned from the outset that the threshold for intervention into family life could be lowered because of the scheme, as there is a significant difference between acting on concerns about a child being “at risk of significant harm” and a concern about “wellbeing”. While the first concern is well covered within existing child protection legislation, the latter, despite best intent, allows for a wide interpretation which sadly may not result in the most desirable outcome.

SASW has expressed its concerns about the previous manifestation of the information sharing proposals, in related to the “Named Person” debate and the role of social work within the concept. Some of our members have strongly suggested this Bill has become toxic and should simply be repealed. It is evident that such is no longer under consideration; the Bill will proceed. We understand that amendments have been carefully considered since the judgement by the Supreme Court and are now reflected within the illustrative draft Code of Practice. We do not believe this Code is clear, and we fear it may leave our members confused and even worried about the action they should take.

We wish to stress that social workers generally seek to work with consent in all but the most limited circumstances, and do so because it is much more likely to be effective, as well as because of a respect for human rights.

The “duty to consider” sharing information with the test of “wellbeing” is however far more complex than “at significant harm”. We are concerned that the guidance ("using your own discretion") feels heavier than before, the “voluntary nature” of cooperation is not addressed and the description of “lack of buy in” to services offered to parents/ carers appears very subjective.

The latter is even more challenging in a context of declining resources within communities. Where previously a community group, after school club, or family centre may have allowed a parent/ carer and child to benefit from low level targeted support which enabled and empowered families to
make the adjustments or changes to prevent escalation of identified issues, such is increasingly no longer possible as local authority budget cuts have affected third sector and community provision.

Where there are significant child protection concerns we have clear legislation, policy and procedures. The complexity arises when we consider “necessary” intervention as opposed to “desirable”, as who decides and how?

When social work intervenes, sensitive case records will be produced detailing this process. This adds another dimension to the human rights aspect. It is important to appreciate that the principle of necessity, in relation to human rights, is also embedded in Article 8. Article 8 of course allows for intervention. But, as with data protection, any interference in private and family life must be “necessary” and not simply desirable.

Necessity in data protection law and in Article 8 have a shared meaning: if interference with family life is not necessary, then interference with data protection rights cannot be necessary either. We believe it to be desirable within this context to note the GDPR (General Data Protection Regulation) which comes into effect in May 2018.

The relevant test for seeking consent is not whether the individual has real choice over the matter but whether seeking consent would result in “increased risk of suffering significant harm”. Even if a child is considered at risk of significant harm, consent should be sought unless the process of doing so would result in additional harm.

SASW believes the legal push should be proportionate, and not an added burden on social workers who are reacting in an investigative manner on information shared with or to the Named Person. We support the principles of the GIRFEC approach, which include the need to share information in a lawful manner.

We understand that the Scottish Government’s intention is that “informed consent” is absolutely the rule. The importance of appropriate information sharing, wherever possible with consent, also between adult and children’s services, is not under discussion here. What does exercise us is the matter of “necessity” of sharing information, which in our opinion must be clear and unambiguous. We are concerned that increasingly referrals will be made to social work where this test has not been fully explored, and where a “better safe than sorry” principle will be applied. This will result in increasing referrals to social work departments, where there will be a duty to investigate. It means that the first contact a family has with social work is one of an investigative nature. If parents disagree, the lack of cooperation can be viewed as denial, or even a confirmation of risk to a child. Social work will be regarded as agents of state surveillance or control, as opposed to a service to support and protect.

Social workers should always act according to key principles within our Code of Ethics: we uphold and promote human dignity and wellbeing, we respect the right to self-determination, we want to treat each person as a whole, we identify and develop strengths. Our members are concerned that an increase in referrals may lead to a bottleneck in the system and subsequent overload, and this in turn could result in child protection referrals not receiving the attention they should get.

We believe it is imperative that any guidance related to the Children and Young People (information Sharing) Scotland Bill should be unambiguous; it should not be about the “What”, but instead relate to the “How”. SASW have asked for clear and concise examples of how we can communicate what needs to be shared and why and under which circumstances.
We sometimes refer to the theory that social work in Scotland is founded on Scottish Enlightenment, a 18\textsuperscript{th} century, early 19\textsuperscript{th} century humanist and rationalist outlook grounded in a concept of “wellbeing” (!) for all. Enlightenment “asserted the importance of human reason combined with a rejection of any authority that could not be justified by reason”.

We wish to focus on the moral legitimacy of support and its difference from intervention and the need to engage with and develop a family support project for the twenty-first century which the GIRFEC policy should allow for. This means that we should not confuse early intervention (which ideally should be available through targeted community based universal services which can be accessed by families) with child protection.

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