OFFICIAL REPORT
AITHISG OIFIGEIL

Education and Skills Committee

Wednesday 27 September 2017

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 27 September 2017

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EDUCATION AND SKILLS COMMITTEE
24th Meeting 2017, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Johann Lamont (Glasgow) (Lab)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Ross Greer (West Scotland) (Green)
*Clare Haughey (Rutherglen) (SNP)
Daniel Johnson (Edinburgh Southern) (Lab)
*Ruth Maguire (Cunninghame South) (SNP)
*Gillian Martin (Aberdeenshire East) (SNP)
*Oliver Mundell (Dumfriesshire) (Con)
*Tavish Scott (Shetland Islands) (LD)
*Liz Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jenni Brown (Dumfries and Galloway Council)
Dr Gary Clapton (University of Edinburgh)
Andrew Keir (North Ayrshire Health and Social Care Partnership)
Jackie Niccolls (Glasgow City Health and Social Care Partnership)

CLERK TO THE COMMITTEE

Roz Thomson

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education and Skills Committee

Wednesday 27 September 2017

[The Convener opened the meeting at 10:00]

Children and Young People (Information Sharing) (Scotland) Bill: Stage 1

The Convener (James Dornan): I welcome everyone to the 24th meeting in 2017 of the Education and Skills Committee. I remind everyone present to turn their mobile phones and other devices to silent for the duration of the meeting.

Tavish Scott will join us, but he will be a few minutes late. Daniel Johnson has given his apologies, as he is unwell.

The first item of business is an evidence session on the Children and Young People (Information Sharing) (Scotland) Bill. This is the third meeting at which we will consider the bill; we have already heard from the Scottish Government's bill team, members of the legal profession and the national health service. This morning's panel will focus on services that local authorities provide, including education and social work.

I welcome Dr Gary Clapton, who is senior lecturer in social work in the school of social and political science at the University of Edinburgh; Andrew Keir, who is getting it right for every child manager at North Ayrshire health and social care partnership; Jackie Niccolls, who is a team leader for social work services at Glasgow City health and social care partnership; and Jenni Brown, who is principal teacher of pupil support at Dumfries and Galloway Council education services.

If the witnesses would like to respond to a question, they should indicate that to me or to the clerk, please, and I will call them to speak. Ross Greer will open the questioning.

Ross Greer (West Scotland) (Green): To begin with, it would be useful to know the current state of play with the implementation of GIRFEC and the named person scheme in your local authorities.

Jackie Niccolls (Glasgow City Health and Social Care Partnership): GIRFEC is woven into all our policies and procedures, but the named person scheme has not been implemented in any meaningful way. A proof-of-concept hub was started last year, but that was abandoned in light of the Supreme Court ruling, so Glasgow employees—particularly social work employees—do not have a lot of experience of the named person scheme and its potential impact on service delivery.

Andrew Keir (North Ayrshire Health and Social Care Partnership): In North Ayrshire, the getting it right for every child approach has been around since 2005—I think that that is the date of the first document in which we mentioned it. We have used the term "named person", but we have not taken forward the specific functions that are spelled out in the Children and Young People (Scotland) Act 2014; people have been named persons in name only.

Until last year, we were developing a physical named person service in our headquarters. Initially, we thought that that would be a good vehicle to support named persons to share concerns with other professionals, but we put a stop to that because we were unclear about information sharing, and we reverted to the position under the Data Protection Act 1998—well, we did not revert to that; we have always kept to that act and shared information with consent.

At the moment, the sole function of named persons is to manage requests for assistance. If a family request assistance from a named person, that request will come to the hub, which will either route it to a particular service or try to find a service to support the child. It is a consent-based model only. We are not sharing information; it is only about families saying, "I need this sort of help."

Jenni Brown (Dumfries and Galloway Council): In Dumfries and Galloway, we are quite far down the road with GIRFEC, certainly in education. We have used the named person idea in education for probably the past three years, and we have shared information to some extent. A little like North Ayrshire, we had plans to set up a hub that information could come into and be routed out of into different agencies. That was put on hold when the Children and Young People (Scotland) Act 2014 was not implemented. That is how we run our policy and look after our pupils in education in Dumfries and Galloway. Although we do not have the back-up of the act actually having been implemented, everything in terms of a pupil in a school goes through a named person, and information from other agencies is shared to some extent.

Andrew Keir: I worry a little when we talk about implementation of GIRFEC. For me, GIRFEC is not a thing but a set of values and principles, a way of working and a culture, and a set of practices and systems. We have all been trying to take that approach, and we have focused especially on culture. We made the mistake of thinking that we could just construct some

systems, but that will not work if we do not change the culture. We have therefore tried to enforce the values and principles by going back to the beginning and considering what GIRFEC is about rather than worrying too much at present about the systems around it.

Dr Gary Clapton (University of Edinburgh): I can speak at second hand about the experiences of my students in the local authorities in which we run placements. I agree with Andrew Keir. From what I hear, GIRFEC is very much part of my students' placement experiences but, to date, the named person scheme has not been.

Ross Greer: Have the debate over the past year and the uncertainty about the scheme affected current practice for sharing information that falls below the child protection threshold?

Jackie Niccolls: They have in Glasgow. The pilot for the hub scheme caused a bit of confusion. Information was sent direct to the hub, and in some cases a child's allocated social worker was not informed about an incident that had occurred.

In addition, the practice of providing information became more defensive. In one example, the police rightly shared a notice of concern because children had been removed to family over a weekend because of an incident in the family home, but they would not provide social workers with the grandmother's phone number. Their view was that the information should be provided on a need-to-know basis. They had told us about the incident, and we had the address, so we could go there. That was probably just an overzealous implementation of the need-to-know aspect of information sharing. That is one example, but there were similar experiences in which we encountered a reticence to share information that would have been helpful in enabling us to check on the welfare of children.

Andrew Keir: In our experience in North Ayrshire, we have wasted a lot of valuable time. When we implement an act or statutory guidance, we obviously do not wait until the last minute—the midnight hour—to train our staff, produce materials and have people ready for implementation. We had a long time—it was possibly a year—before the 2014 act was due to be implemented. We produced materials that were based on what was in the act and what was written about information sharing at that time, and we trained all our named persons. We now have to go and unpick all that, I guess, and go back to the status quo on information sharing under the 1998 act. There has been a lot of wasted time for us.

The Convener: I am sure that that was not done deliberately by anybody.

Jenni Brown: I was seconded from our education department as a GIRFEC support officer last year. The officer's role partly involved training staff, but we also took phone calls in an advisory capacity, most of which were about whether information at the level just below child protection should be shared. Staff felt vulnerable and were very wary of sharing information in circumstances in which they had perhaps been more willing to share previously. There was concern about people being held personally liable.

I do not know how much members know about the SEEMiS wellbeing software program, which we use in education to record pastoral notes and form chronologies on pupils. The need to ensure that the topic of consent is discussed in relation to an assessment of a child is built into that new program, which I believe has been rolled out across the whole of Scotland. When we went through the training, staff expressed concern that they would be held personally liable, because we had to state whether we had consent and what the views of the parent and child were, and we had to date that information.

Ross Greer: How much of a change from current practice does the duty to consider represent in your authorities?

Jackie Niccolls: From a social work perspective, it does not represent much of a change at all. Day and daily, we take in information, process it and decide what information it is appropriate to share and who it is appropriate to share it with. We might inform education services of an incident that we believe has caused a child trauma, but we might withhold some of the details that the police provided to us if others do not need to have those in-depth details. I do not see that as a shift at all.

Andrew Keir: I reiterate that. I work across the partnership with colleagues in social work, health and education. Practitioners have always considered what information it might be relevant to share. However, the duty to consider might have an impact on adult services, such as in cases in which a family who are involved with addiction services or mental health services have a dependant child. It might help adult services to consider the impact on that child and what to do with that information. There might therefore be an advantage of the duty to consider for adult services. However, that is already part of the psyche for principal lead professionals in social work.

Dr Clapton: I agree. One of the main principles that we teach in social work is that partnership with parents is the ne plus ultra of good social work practice. One of the concerns about the named person scheme that still hangs in the air is that it was about parents rather than for parents.

That phrase has hung around. Many of the social work students with whom I work have talked about that, because it butts against basic social work values about partnership. The duty to consider is part of what we do; it is, as Andrew Keir said, part of our psyche.

Jenni Brown: In education, staff consider very carefully whether to share, and that has always been the case.

Johann Lamont (Glasgow) (Lab): If there was a duty to consider in law, would there be a different expectation about providing evidence of what you had considered? I presume that you do consider information as professionals, but you would not necessarily have to record that in the way that you would be asked to under the duty to consider. Alternatively, would there be no difference?

Andrew Keir: Information comes to practitioners all the time. The difficulty would arise in knowing when to record that they had either decided to share or decided not to share. That could become a bureaucratic nightmare. It would be resource intensive if, every time a practitioner received information and thought about whether to share it, they had to record why they had or had not shared it. I do not know where the threshold would be for recording all that.

Liz Smith (Mid Scotland and Fife) (Con): I seek your comments on evidence that we took previously. Three weeks ago, the bill team told us that the concept of wellbeing was well utilised and well understood. Last week, witnesses from the legal profession and other witnesses representing the Royal College of Nursing and various other professionals told us that they did not agree with that. What is your perspective on it?

Jackie Niccolls: I know that, when I studied the 2014 act, legal services were critical of the shift away from the term "welfare", which was easily defined in legal terms. In legal terms, "wellbeing" remains a bit of an unknown. Practitioners are quite clear about the holistic needs of the child that are incorporated in the term "wellbeing." It is not necessarily child protection; there may be more of an understanding at a front-line practitioner's level than can be taken into the legal system.

10:15

Liz Smith: You have raised a very interesting point. Given your answers to Ross Greer, do you feel that there is a need for the named person policy? The implication is that you are highly professional in how you approach things already in terms of GIRFEC and working through the system, so do we need a named person policy at all?

Jackie Niccolls: I am aware that, as a social work representative, I am dealing with only a relatively small number of Scotland's children—although it does not always feel like that. When I am speaking about my involvement, it is in relation to that small group of children who come into the social work arena.

I do not think that anybody could argue with the principle of the named person scheme. In our understanding of adverse childhood experiences and the impact of trauma on children, it is well documented that the presence of one consistent person can ameliorate the negative impact of those experiences.

My worry is that, as long as being a named person is an additional task for a teacher or a health visitor, it may not be as meaningful. If we are serious about it, can it be someone's job to be a named person? They could have a group of children they are the named person for and that is what they do.

Liz Smith: Everybody has agreed that the most important focus here is our most vulnerable children—that has come across loud and clear in all the evidence, irrespective of whether people are for or against the named person element. However, if you feel that the professional standards that are used by practitioners are working well enough without the named person element of GIRFEC, that brings into question whether it is right to have this new bill and to have a different code of practice. I am interested in your views as practitioners who know far more about this on the front line than we do.

Jackie Niccolls: I did a presentation to a group of practitioners on the named person scheme and I think that they would all say that they can see the merit in having a named person, but not for their child. That is the bottom line—people will say, "Oh, yes, I can see it being very useful, but not for my child—not for my grandchild. I don't need that—I don't need a named person."

Liz Smith: Why do you think that they are saying that?

Jackie Niccolls: Because they believe that, as parents or grandparents, they are among the group of adults who hold the wellbeing of their particular child as the priority. Unfortunately, we know that that is not the case for every child in Scotland. We also know that not every child who is not having that positive experience is known to social work. The named person would be useful for vulnerable children who may not be identified as quickly.

Gillian Martin (Aberdeenshire East) (SNP): I will pick up on that. We were looking at it from the parents' perspective there but, from a child's perspective, the named person provides a single

point of contact. The child might otherwise have difficulty in knowing who to go to to unlock a whole lot of services. That is a major part of the named person's role. Do you see that being affected at all by the proposed change?

Jackie Niccolls: In terms of information sharing?

Gillian Martin: Yes.

Jackie Niccolls: It is a little more difficult for me to comment on the named person. I am speaking as a social work practitioner with limited experience of the role and responsibilities of the named person, so I am not entirely sure what the parameters of that role will be.

Gillian Martin: It may be a better question for Jenni Brown, given that she will be a named person, no doubt.

Jenni Brown: Sorry—can you repeat your original point?

Gillian Martin: We have been talking about this so far largely in relation to the impact that it has on parents and those who become a named person, but the whole ethos of having a named person is for a child to have a single point of contact.

Jenni Brown: Education possibly had that ethos anyway, with a principal teacher for pupil support—we talked about that earlier. The principles that are aligned with GIRFEC are all good, such as looking at the child holistically and early intervention. A good pupil support teacher probably did those things anyway and was a good point of contact. Education is currently emphasising nurturing principles, which all work together. It probably could work—as it did work—without the named person role being there.

Gillian Martin: What do you want to happen now for clarity with regard to the code of practice, for example? This is your opportunity to feed into a forum about what practitioners want from the code of practice.

Jenni Brown: I want something that is very straightforward and backs up professional judgment, which is very sound most of the time. It is based on putting the child at the centre and doing the best for the child. I want the code to back up the decisions that are currently being made and make sure that a teacher is not exposed to legal retribution in whatever way.

It has to be done in a very straightforward manner. Teachers are extremely busy; the environment is constantly changing with regard to exams and other things. This scheme is an additional workload; for secondary school teachers in particular, exams are at the core of what they do.

Gillian Martin: You have just said that you are in effect already doing what a named person will do, so why do you see it as an additional workload? What aspect do you see as onerous?

Jenni Brown: The child's plan process that comes with the named person scheme is additional. It has pretty much always been the case that there has been an individual who could be approached by a child and who has an overview on everything that is happening in the child's life.

Gillian Martin: I ask for the social work point of view. You engage with schools. What do you want to see from the code of practice?

Jackie Niccolls: I do not think that the code of practice needs to be in legislation. It needs to be robust. I looked at the draft code for what it says on the perennial issue for services of information sharing. The last item in the list in the code, which is about whether a decision is in

"the best interests of the child",

comes back, again, to professional judgment. We have discussed that; as the document says, it is the responsibility of the local authority, not of the named person as an individual. The named person needs to be aware that, ultimately, they are not going to be personally liable if they share information or, indeed, do not share information. They need guidance about what information can be shared.

Andrew Keir: On the question of having a named person policy, the concept of having a named person to co-ordinate at a lower level is a fantastic idea. We need someone to co-ordinate support for those children who need it. The difficulty comes from how we interpret "wellbeing". From one practitioner to another, they may have very different views of what it means to be respected or responsible or anything else, dependent on their personal and professional experience. The concept of wellbeing has its difficulties for interpretation and thresholds.

However, like my colleague, I do not think that we need to have the code linked to legislation. We seem to have forgotten about the practice around getting it right for every child. There is a practice model with five practitioner questions—what is getting in the way of this child's wellbeing? What information do I need? What can I do? What can my agency do? What help do I need from others?

We need to attach to the robust guidance examples of what that might look like in practice, linked to GIRFEC. We seem to have disassociated ourselves from GIRFEC and taken a legal route. I would like to us to come back to having a robust practice document around the established national practice model questions and processes rather

than having a legislative document. This would then become real to practitioners and they would know when and at what points they needed to share. To be honest, if I am in the field and I am busy, I do not have time to answer someone who says, "Andrew, does that comply with schedule 2?" I need something very quick that I can make sense of.

Dr Clapton: The benign element of the named person scheme seems to have been lost in the mists of time, with all the discussions and debates that have taken place in the past couple of years. It strikes me that one of the challenges is articulating the added value that the scheme brings to the table of existing services, such as headteachers and health visitors.

As Andrew Keir said, we missed an opportunity to articulate things. "Wellbeing" remains undefined. There are eight safe, healthy, achieving, nurtured, active, respected, responsible and included—SHANARRI—indicators, but there are 269 sub-indicators, and they have grown arms and legs; some of the definitions are very technical. One is "laughs a lot". One of the main concerns that I expressed in my written submission is that that increasing thicket of indicators might lower the threshold for intervention, and mistrust might therefore develop.

Existing child protection procedures have their difficulties, but they are fairly well articulated—we have the children's hearings system, definitions of abuse and so on—but when we start to move wellbeing on to the table, things become messy and conflated. That is a major challenge.

The Convener: I will bring in Oliver Mundell very briefly.

Oliver Mundell (Dumfriesshire) (Con): Andrew Keir said that a code of practice should not be in legislation. The problem is that the Supreme Court asked for some of these things to be legislated on so that they are clear in law. I just do not see how it is possible to match up what professionals need and the legal certainty that people need. The Scottish Government says that it is difficult to put that in primary legislation because such legislation would need to be very precise and specific and to cover all the different possibilities.

Andrew Keir: I just do not see what the bill gives us in addition to what we already have in the Data Protection Act 1998 and the Human Rights Act 1998, apart from the duty to consider sharing information. Why legislate when legislation is already in place? All we are saying is, "Refer to this legislation." That is an argument for legal services, but practitioners need something very simple. It cannot be prescriptive, because every single situation is different and people's lives are different.

That goes back to the point about wellbeing. When we compartmentalise ourselves into indicators, we lose subjective wellbeing. We can look at subjective wellbeing as having two elements. The first is personal wellbeing—things such as how a child feels about themselves, their resilience, their identity and their belonging, which SHANARRI does not really give us. The second is social wellbeing: what is their community like? Do they have trusted adults? What are their relationships like? Again, I do not think that SHANARRI gives us those things. When we consider sharing, practitioners do not just look at wellbeing in those very narrow SHANARRI terms; they look at other things that impact wellbeing and then decide whether to share.

I think that the code should be put in legislation as long as it does not confuse practitioners—however, it is confusing them now. Practitioners are retreating back to thinking that they had better not share anything because they feel that they do not know where they are supposed to go to get their legal advice from. I think that that practitioner message is clear.

10:30

Ruth Maguire (Cunninghame South) (SNP): I should draw folks' attention to my entry in the register of members' interests, as I am a former councillor on North Ayrshire Council.

We have taken quite a bit of evidence on the code of practice and I know that colleagues have touched on it. What I am hearing is that it needs to be clear and accessible and in language that is meaningful to all the practitioners who are involved with children and families.

To what extent are your views on the bill dependent on the content of the finalised code of practice?

Dr Clapton: I do not know.

Jackie Niccolls: What we think of the bill will absolutely hinge on the final code of practice. It is useful to debate that, but the finished article could sway our view of the bill in its entirety.

Andrew Keir: As it stands, the code is an illustrative draft. I think that if the final version is overly legalistic, it will have no impact on practitioners. The code of practice needs to have some meaningful triggers in it so that practitioners can say, "I know what questions I need to ask to be able to take this a step further."

There is other material out there, from the Information Commissioner's Office and others, with examples that walk you through what things you should consider and when in quite accessible language.

My plea would be to put the code of practice in a language that practitioners find easy to navigate and which is not overly legalistic. It comes back to the question of who the code of practice is for. I am not quite sure who it is for. Is it just for named persons? Is it for all practitioners who come into contact with children? I am unsure. The shape of the code of practice depends on who the audience is.

Jenni Brown: If information sharing is at the heart of this whole act and is about named persons working to advantage, this code of practice is right behind that. It has to be accessible, easy and quick to use. If it is to help named persons and support their decisions, it has to be straightforward, quick to read, flow chart-type information, otherwise, staff will not use it—they will not have the time to use it. It has to be very accessible.

Ruth Maguire: What involvement would you expect your organisations to have in forming a code of practice and what involvement have you had previously with this type of thing?

Andrew Keir: I would expect that each health and social care partnership and local authority would be consulted but, more than that, the legislators need to learn from practice experience. It would be good to have representations from practitioners at some point in that journey rather than just a consultation on the draft at the end.

The Convener: One thing that has come out of the evidence sessions is that the Government will have to listen to stakeholders about the code of practice. That is perfectly clear.

Oliver Mundell: The panel has talked about flow charts and making the code easy to understand. These are really difficult, complex legal questions, which is why the previous legislation wenft all the way to the Supreme Court and was weighed up at length, with the court balancing past cases and looking at different bits of legislation and how they interact.

Can that ever be explained in a flow chart? Will practitioners and people on the ground ever understand the intricacies around proportionality and how all the different bits of legislation fit in? Is it possible to simplify that and still meet the legislative standard?

Andrew Keir: It is difficult to simplify such a complex subject. It is not only the law that is complex; there are a lot of ambiguous terms in relation to what is required and what must be considered. What do terms such as “public interest” mean? Practitioners have to apply interpretations, whatever terminology we use. The bill uses the phrase “in its opinion”, but we all have different opinions. I do not think that the bill can make the position any clearer for us or make such decisions any easier. What will make things easier is training and a consistent message about when we need to ask certain questions.

To come back to the term “wellbeing”, people interpret that in different ways, and their thresholds are different. We need to build in a model whereby practitioners can ask someone for help. We want them to ask their managers or the named person service. There is no reason why any professional cannot pick up the phone to another and say, “Here is the situation with this child—what do you think we should do about it?” They can anonymise the case and seek assistance without disclosing any information about the child. We need to build in safeguards so that practitioners can get assistance in thinking a situation through. It is a complex area, and people have different thresholds. That is the difficulty.

The Convener: What suggests to you that the safeguards are not in place now? I suspect that that is how you work now—you phone a colleague and anonymise the situation. Why would anybody think that that does not happen?

Andrew Keir: I am suggesting that that is what happens. Why do we need an act if that is already happening?

The Convener: We needed a named person act, but we are here to discuss the effect of the Supreme Court’s decision. That is exactly what this session is about. We are here because the Supreme Court has told us to be here.

Andrew Keir: To take the practice forward, I need to be clear about the legislative landscape. I am sure about what the landscape is like now, but I do not know what it will be like in the future. We have to plan for the future and train our staff—that does not happen overnight. We have to prepare for it, so we need to know now.

We have such processes in place. My question is whether they will still be in place. If the answer is yes, why are we changing anything? We have the 1998 act, and processes are in place already. I do not understand why we need a new bill to tell us what we need to do in the future if we are doing it already.

Oliver Mundell: I think that the Government’s policy memorandum says that there are possible options to allow the named person scheme to continue without the bill at all.

I have one final question. You have said that you want more than consultation and that you want involvement in the process. As practitioners and people who are working in this field, do you find it odd or unusual that members of the Scottish Parliament will not have a vote or a formal say on the final code of practice? Do you find it unusual that it is not deemed necessary for the members

of this committee, for example, to go through the code in detail? Given the importance of the code to the bill, would you expect members of the Parliament to have more of a direct say on whether it is signed off?

Dr Clapton: I think that you should have that, but I am not a practitioner—you can address the question to the practitioners.

Jackie Niccolls: I was not aware that MSPs would not have a final say or overview on signing off the code.

The Convener: A code of practice is normally drafted after a bill is passed, so the situation that we are looking at is unusual. We were given an illustrative code of practice to help us—it will be interesting to see whether we get one the next time a bill is introduced.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Jenni Brown mentioned concerns about consent, which I will explore a bit more. To what degree are the witnesses aware of the changes under the general data protection regulation and their implications for practice on seeking consent for information sharing?

Jackie Niccolls: My knowledge of that matter is limited.

Jenni Brown: I am afraid that my knowledge of the legislation is limited, too.

Andrew Keir: The changes will strengthen the seeking of consent and the rights of children and adults. Consent is always a difficult issue. We should always have been asking for consent, unless that places the child at additional risk or there are criminal proceedings, for example.

It is always good practice to work alongside families in partnership. I do not know whether we can ever achieve full partnership with families, because we are in a different power differential as a result of the nature of what we do. In "Child Protection: Messages from Research", Hedy Cleaver spoke of how practitioners can build that partnership and trust through honesty, integrity and so on. Once we have trust with families, consent is a lot easier to discuss, because it becomes part of the conversation rather than something that we spring on people. The issue is about getting support and help.

We should always ask for consent as a first port of call, and the GDPR will strengthen that. The issue then becomes how and where to record the consent and what to do if consent is refused. The Data Protection Act 1998 covers those issues with regard to the risk—or potential risk—of significant harm and the public interest. It is right and appropriate that consent is there, given people's rights to participate.

Colin Beattie: I was struck that the Information Commissioner's Office submission says that the GDPR means that

"a public authority will not be able to rely on consent as a legal basis for processing in any case where there is a clear imbalance between it and the individual to whom the data relate."

Is that significantly different from where we are now?

Jenni Brown: I am not sure.

Andrew Keir: It is a hard question.

The Convener: Ask an easier question.

Colin Beattie: I will go on to an easier question. In the context of the named person service, how best can you ensure that consent is explicit, freely given and easy to withdraw after it is given?

Oliver Mundell: Is that question easier?

Jackie Niccolls: No—it is not any easier.

Jenni Brown: I think that I can answer. It is always easier when we have a relationship and have built up knowledge of the child and the parents, but that is not always in place.

Colin Beattie: Do you always get written consent? Is verbal consent satisfactory?

Jenni Brown: Schools are probably moving more to written consent, to consent for sharing and to naming who information will be shared with.

The Convener: The information commissioner will be at our meeting next week to address such questions.

Colin Beattie: I will certainly follow up that point.

Should the bill refer to consent, or is it enough for consent to be in the code of practice, which will be mandatory? Does that make any difference?

Andrew Keir: I do not want to speak too much. Whether consent should be in the bill depends on what it says about consent. A person should consent only in relation to particular information for a particular purpose. That is difficult in practice, because our intervention with a family is often multifaceted—we have different information at different times and might use it differently. It is difficult to record every time that we have a new piece of information that we want to share, perhaps for a different purpose. However, it is important to record that. Good luck with how you make sense of all that in the bill.

10:45

Colin Beattie: I will give you an easy final question. Should the bill include a requirement to consider the views of the child, young person or

parent when you are considering whether to share the information?

Andrew Keir: The bill's purpose is to enable consistency. I know that 99.9 per cent of practitioners would ask the child their views—although that depends on the child's age and circumstances—but there will always be one practitioner who does not do that. I am not sure about having a blanket obligation. The requirement for consent and the child's view should sit in the code of practice, rather than the legislation. If the code of practice is robust and clear enough, that should be sufficient.

Clare Haughey (Rutherglen) (SNP): I will pick up on the point about current information-sharing practice that Jackie Niccolls and Jenni Brown talked about. How do you currently operate when you have information about a child you have concerns about?

Jackie Niccolls: I can give you my perspective as a social work front-line practitioner and manager—as I said, I am not a named person. As part of the intake team, I deal with referrals from members of the public and other agencies about children who are not allocated—they do not have a worker. We get referrals in a myriad of situations. For example, we get a lot of domestic abuse referrals from the police. We aim to inform the universal services that there has been an incident that children have witnessed or been nearby to and we use our discretion about how much detail to give.

Do you want me to comment on getting consent?

Clare Haughey: We are talking about consent and what accompanies it.

Jackie Niccolls: In a domestic abuse case, we always aim to speak to the victim, and we tell them that we will speak to the universal agencies that are involved in the child's life. Depending on the nature of the incident, social work services could hold that information and never see the child, whereas their teachers see them five days a week, and having that information might impact on how teachers supported that child in the future.

I would seek the consent of the parent adviser. Sometimes families have very personal reasons for not wanting to inform the school—perhaps because the secretary is a neighbour. We use our discretion, perhaps by speaking only to the headteacher and not discussing the child's name with anyone else at the school. We use our professional judgment all the time about how much information to give to protect children without infringing on people's right to a private life.

Clare Haughey: So you currently do that and use your professional judgment.

Jackie Niccolls: Yes.

Clare Haughey: You already decide that information should be shared or that it should not be shared without consent. Is approaching someone for consent the first thing that you do?

Jackie Niccolls: Normally, the first thing that we do is check that the family are okay and, as part of that, we discuss the situation with the school. That is not always possible—sometimes we cannot make contact with the family, for whatever reason—so other agencies might well be approached before we gained consent.

Jenni Brown: The difficulty is always the level below child protection.

Clare Haughey: Child protection is quite clear.

Jenni Brown: Absolutely—in a way, it is clear in schools, and that is absolutely fine. In my experience, at the level below child protection, if we did not have consent, or if we had tried to gain consent and it had been refused, we would probably go to an adviser of some description—we have a child protection officer—in an anonymised fashion and ask for advice.

Without going into the detail of situations, it is hard to say where information was not shared—where nothing was done—and where it was. That would mean going into the minute detail of why one situation was okay and why one was not. In such circumstances, most named persons would go to an adviser in an anonymised fashion and ask, "What do you think?" It is normally social work services that we would want to share information with.

Clare Haughey: You have gone into the realm of us having named persons. I was not talking about that; I was talking about current practice. Have local authorities looked at ways of supporting social work and education staff by providing them with places to go and with information?

Jenni Brown: Although the named person is not statutory, we have been using that approach in our area. That is how we operationalise our business, if you like.

I am sorry; I have forgotten the question.

Clare Haughey: I asked what has been put in place or what local authorities intend to put in place. You say that you operate what might be called a shadow named person system.

Jenni Brown: Yes.

Clare Haughey: What support and guidance do you have in place for your staff?

Jenni Brown: We normally work in teams in schools, so we talk about information that we have

within the team. There is normally an adviser who we can speak to at the regional level, and educational psychologists normally visit schools monthly. We would bring up in an anonymised fashion pupils who were causing concern.

Clare Haughey: Has that support for staff been working well in the shadow system?

Jenni Brown: Yes, so far.

Clare Haughey: What support have local authorities put in place, or what support are they looking at putting in place, particularly for child and family social workers?

Jackie Niccolls: There is obviously a line management structure, so if a worker is in any doubt about information sharing, they speak to their line manager. We get requests for information from solicitors, for instance, and in such cases we seek advice from our legal section and from the data protection advisers in the local authority.

On the question of people in education phoning us to ask what we think about a piece of information, we have relationships with the headteachers of schools in our area, so it is quite possible for us to get such calls. That is not a formal structure; it is much more informal—it is just people we have met at different venues seeking a bit of guidance—but there is also the formal structure of social care direct.

Clare Haughey: In normal circumstances, outwith immediate child protection concerns, would the first step for both of you be to seek permission to share the information? Is it the case that you would not share information immediately without seeking permission from the child, if they were of the appropriate age, or the parent or caregiver?

Jackie Niccolls: There is a myriad of different kinds of information. For example, Jenni Brown might phone to say that, for the umpteenth time, a child has come in to school grubby and smelly. That is not necessarily a child protection matter. It might be that a family needs some extra support. We might not know those involved—it might not be a family that we are familiar with.

We might contact the health visitor and ask about their experience of being in the family home and whether what has been reported is unusual. The question is whether social work needs to be involved or whether the health visitor could offer the family support instead. I would not say that the first thing that we would do would be to phone the mother to say that the school had expressed concerns and that we were going to phone the health visitor, if that is what you were asking.

Clare Haughey: So is it the case that you already share that information?

Jackie Niccolls: Yes. I would probably seek information back. At that stage, it would be a case of investigating and assessing, but that would involve sharing the information that the school had contacted us with a concern.

Dr Clapton: I mentioned a concern about the conflation of child protection with child wellbeing. A connected concern is whether the promulgation and formalisation of wellbeing indicators will trigger unneeded and unwanted attention. That is a huge question. The corollary of that is whether it will increase mistrust. We already have systems in which information is shared informally. If we legislate and formalise the material in question, there is concern that that would lead to overly formal processes that were based on what I have suggested is a disparate set of wellbeing indicators.

Clare Haughey: Are we not already using those wellbeing indicators quite widely in education, health and social work as a common language to speak about children and their development?

Dr Clapton: No.

The Convener: There seems to be a difference of opinion among the panel.

Dr Clapton: It depends on what you mean by "wellbeing".

Clare Haughey: I am talking about the GIRFEC principles. We are already using those right across a child's development.

Andrew Keir: If I remember the original question, it was about support for children. We do something in provision for the early years that I will use as an example. The existence of the health and social care partnership helps us to do it, and we are looking to extend it. We have placed social workers in the health visiting teams. The social worker is managed by the health visitor manager. To all extents and purposes, that social worker is part of the team. They are not responsible for child protection or looked-after children; they are there purely to support and assist families.

The health visitor will always identify with a family what issues there might be—they might be to do with relationships or a whole myriad of things—and ask whether a social worker who does not have child protection responsibilities can come to support the family. Nine times out of 10, the answer has been "Yes".

GIRFEC is about getting the right help at the right time to the right person. As I said at the beginning, we should not forget that it is about getting it right for every child and how we best look after children. It is not about a teacher becoming a social work assessor. It is about using the skills of the different people involved. To do that, we have to share information. Social work has great skills in

assessment and building therapeutic relationships. With the consent of families, we involve social work very early through our new model for the early years. We want to extend that to the five-to-18 age range within schools so that we can provide support at the very point that it is needed. It then becomes preventative early intervention, without having the stigma of a social work intervention. It is about using the right skills of the right people, but it is necessary to share information to do that.

Johann Lamont: Reflecting on what has been said, if I were to play the devil's advocate, I would say that some of our young people were failed as a result of professional misjudgment and professionals not speaking to one another. That has been the driver for the legislation.

Some of the evidence that we have received, including Dr Clapton's submission, suggests that if we formalise the approach, practitioners will lose their intuitive instinct for understanding that there is a problem and that defensive practice will emerge. To what extent is that a problem? If that happened, we would be going in the opposite direction from the very thing that drove the named person legislation and GIRFEC, which was to ensure that signs are spotted early. Am I overstating the danger of defensive practice emerging, which would be worse than the practice that we have currently?

11:00

Jackie Niccolls: No. I agree with you entirely. That was one of my fears. It is not that the practice that we have would look much different from what is proposed, but when there is any refocus on information sharing and the potential for workers to be prosecuted for it, there is inevitably a pulling back, whereby people do not share enough.

In my experience, when the named person scheme was trialled in Glasgow, there was definitely a lack of information coming through from different sources. When it was abandoned, we reverted to the information-sharing practice that we had already. There are quite a lot of mechanisms for information sharing between health, police and so on if we have a referral that is of concern. I know that people talk about the level below child protection, but often it is the information that is shared that makes us decide whether there is a child protection issue. There is the initial referral discussion process, which is a tripartite discussion between police, health and social work that takes place almost within 24 hours of the referral. On the basis of the information that we get, we can move to child protection mechanisms or decide that a single agency response is required, whether from health, social work or the police.

Johann Lamont: A point was made earlier about using the information and the skills that people have. The bit that we do not use well enough is education, which might be where the biggest problem will be in terms of knowing what to share. I was a school teacher for a long period of time. Teachers who see a child every day can see the deterioration, with increased absences and so on. Schools have always been a critical place to spot the early signs, but how well integrated into the information-sharing process is education? Do you think that schools might draw back from sharing information if the process is too formal?

Jenni Brown: I think that schools are just a wee bit wary about that. This time last year, or perhaps slightly before then, they were freely sharing information on the basis of trying to get early help for a child. However, I think that they are very wary of that now. It is about building that back up, so that the benefits of sharing information are realised again.

Johann Lamont: How do you manage situations in which the parents or carer and the young person have competing interests? I know of a historical case involving someone who confided in his social worker about low-level problems that he was having in his family. That information immediately went back to the family, which compounded the abuse. Regardless of the bill, are you confident that we understand the difference between the interests of the child and the broader interests of the family? Will the bill help with that?

Andrew Keir: It comes down to individual practitioners' judgment. We had a situation in which a young person wanted counselling because of something that had happened, but they did not want the school to know, or the named person. The child was 14, so that was perfectly within their rights. We need to go back to the Gillick principle and consider young people's decision making and their rights, which we have to respect. We have to approach things on a case-by-case basis. There is not one formula that would apply to every situation; it would always depend on the individual situation.

The Convener: Okay—thank you. Tavish Scott wants to come in.

Tavish Scott (Shetland Islands) (LD): I want to ask Jenni Brown about the concern that she expressed to Johann Lamont that schools are wary of sharing information. I presume that they are wary of sharing information with other agencies in the local authority rather than within school.

Jenni Brown: Yes. In some respects, I think that that is because the bigger role that we have as a named person is a new one. When we were

told that we could freely share information, we did that. Now that that is in question again, people are understandably a bit reluctant. They want to check with someone that they are doing the right thing before they share information—although, almost without exception, in the cases that I have been involved in the teacher has wished to do the right thing. It is about helping; it is definitely about putting the child, rather than parents or others, at the centre.

Tavish Scott: If I am overstating this argument just tell me, but if we enshrine all this in law, will the situation become more challenging? The point was made earlier that lawyers might start to become involved because of the need to check, legally, the position that teachers might find themselves in. In other words, will there be an improvement or does what we have at the moment work effectively?

Jenni Brown: I am not sure.

Tavish Scott: I do not blame you for that. I am not sure that any of us is sure.

The Convener: On the point about the unwillingness of staff to share information because they think that they might be prosecuted, I suppose that what you are looking for is reassurance that that will not happen. At that point, the staff will hopefully go back to doing what you talked about earlier. Correct me if I am wrong: the code of practice has to help, but would there not need to be guidance and training in place to make sure that, within the parameters, the staff are confident about what they are doing?

Once the scheme is in place, if it happens, will it not just bed in? That is a serious question—I do not know the answer. Major changes happen, but a year or so down the line they become part of what people do. You have been through change before and thought that it was horrific.

Jackie Niccolls: Yes, that will be the reality. It is just the initial refocus on information sharing that is making everybody take a step back and become a little more reticent about it. Eventually, it will embed into the system and people will revert to doing what is safest for children, which is sharing information.

As Johann Lamont was saying, long and weary is the notion that every agency has a piece of the jigsaw and that we get the full picture when we put that information together. I know that there are concerns about families and the invasion of private life. There might be concerns in one agency, but the other pieces of the jigsaw might ameliorate those concerns, with the result that the agencies do not need to be involved in families' lives. It is not all about us finding a route to be involved.

The Convener: Yes. There is no invisible army of social workers desperate to go into everybody's houses to do stuff.

Thank you very much for your attendance. That was a very useful session.

11:08

Meeting suspended.

11:13

On resuming—

Committee Reports (Responses)

The Convener: The next item of business is consideration of Government responses on three committee reports that were published in the spring: "Children's Hearing System—Taking Stock of Recent Reforms", "How is Additional Support for Learning working in practice?", and "Let's Talk about Personal and Social Education".

Do members have any comments on the responses on the children's hearings system report?

Liz Smith: I thought that most of what was said was very good.

The Convener: That is great. I suggest that we make it clear to the Government that the committee wants to be kept actively informed of the Government's progress towards commencing the provisions on advocacy for children at hearings. Do members agree?

Members *indicated agreement.*

The Convener: I now move to the additional support for learning report responses. I am interested in the independent research that the Scottish Government has said that it will commission in response to our recommendation for a quality assurance review. That is on page 10 of paper 4. I would like more details on the research, including an assurance that it will be published and shared with the committee. I suggest that we could write to the Scottish Government to seek that assurance and to ask about timescales for the work. Do members agree?

Members *indicated agreement.*

The Convener: I invite members' views.

Liz Smith: To follow up on what you have just said, I think that it is important to get the necessary detail on the timescales. Those are important in relation to some of the other things that we are pursuing.

The Convener: Thank you. The issue of additional support needs is clearly one that a number of members are very interested in and on which there are matters outstanding, so I suggest that we write to the cabinet secretary to ask about his priorities for the financial year 2018-19 in advance of our session with him on the draft budget. In the letter, we could ask about his priorities for future funding and the extent to which funding for ASN will be prioritised. Do members agree?

Members *indicated agreement.*

Tavish Scott: I particularly support that point, because the school visits that I have made at home over the past month suggest that that is the issue. It would be very good to see the Government's response to the gaps that I think that many teachers and schools see, certainly in my part of the world, and, I am sure, across Scotland. That is something that we could stress quite heavily.

The Convener: Thank you, Tavish.

The third report was on personal and social education. As members have no comments on the responses to that report, I remind them that, as previously agreed, the committee is planning to hold a chamber debate together with the Equalities and Human Rights Committee. That committee undertook an inquiry into bullying earlier this year and its report endorses a number of our recommendations. The chamber debate will give the committees the opportunity to debate those important issues with the Parliament as a whole.

That brings us to the end of the public part of the meeting.

11:16

Meeting continued in private until 12:21.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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