



Social Work

SCHOOL of SOCIAL and POLITICAL STUDIES

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Children and Young People (Information Sharing) (Scotland) Bill: call for evidence

The following comments are drawn from our long experience of delivering social work qualifying programmes at BSc (Hons) and Masters levels, our knowledge of our students' experiences on practice placement and our contact with the social workers.

Well-being

The Bill fails to address fundamental concerns that were expressed during 2015-2016 regarding arbitrary interference by the State in private and family life. Whilst the gathering and recording of information is a statutory duty relating to issues of **significant harm**, the Bill repeats the intentions of those sections of the Act it seeks to amend by continuing with the notion of seeking to gather and record information relating to **well-being**, despite neither the original Act (Children and Young People (Scotland) Act 2014), or the Bill offering a definition of well-being.

Any definition of well-being (and importantly who is to be held responsible for the lack of well-being) is likely to be disputed by the public, academics and professionals because of the subjective nature of the various social, cultural, national, and religious dimensions and standards (to name a few) that may be argued, when positive, constitute well-being. Therefore, practically speaking, well-being is likely to be an issue on which rational disagreement between parents and social workers, or the named person will exist. Professor Eileen Munro, writing about the Every Child Matters agenda in England, and disagreements between parents and professionals, observes that:

In policy debates, there seems to be an assumption that there is some objective measure of what is in a child's best interests and some objective standards of good parenting applicable in all social circumstances. The possibility of rational disagreement between a parent and a professional on what is in the child's best interests at a particular point in their lives is not addressed. (2007, 'Confidentiality in a preventive child welfare system', *Ethics and Social Welfare*, 1 (1), pp. 41-55)

In this respect then, the failure to offer a definition of ‘well-being’ could then set up conflict between parents and the authorities over the minutiae of family life in which the state ought to have no part; the amount of tv watching, sugar intake, disagreements over clothing choices are just a few of the items around which well-being may be disputed when the authorities shift focus from statutory duties to protect child to poorly-defined ‘concerns’ about the manner in which children are raised.

In direct reference to ‘very wide scope’ of well-being and its associated SHANARRI factors, the Supreme Court judgement expressed concern that, during intervention by social workers, that parents’ failure to co-operate ‘will be taken to be evidence of a risk of harm’ and an:

...assertion of such compulsion, whether express or implied, and an assessment of non-cooperation, as evidence of such a risk (The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland) [2016] UKSC 51)

We believe that it is hugely important that disagreement by parents is not seen as dissembling or denial of evidence of maltreatment by them, and thus cause for formal and baseless investigations and interventions, that lead in turn to increasing vilification of social workers that will be expressed by all members of the public, and perhaps extend to children and family social work agencies in both the statutory and non-statutory sectors.

Another worry, relating to the Scottish Government-sponsored lists of well-being ‘risk indicators’ already published (e.g. Calder, McKinnon and Sneddon, 2012), is that named persons and social workers will engage in ‘totting up’ exercises in which exceeding x number of well-being indicators will trigger official intervention. Either that (but possibly as well as), in both a blurring of ‘well-being’ and child protection, professionals will come to adopt the lower thresholds of ‘well-being’ as grounds for referral for child protection as a means of being ‘better safe than sorry’. The numbers of children and families then drawn into to official investigative processes may well result in a system overload that could dilute attention to proven child maltreatment and abuse.

Human Rights

The Supreme Court judgement cited above goes on to suggest that statutory intervention on the basis of a notion of risk to well-being ‘...could well amount to an interference with the right to respect for family life which would require justification under article 8(2) of The Human Rights Act 1998’. Although the Supreme Court called for the Scottish Government to take care to emphasise the voluntary nature of the advice, information, support and help which are offered under the named person scheme, the draft Bill continues to fail to convince that the overall intentions of the legislation, and its execution, are, and will be, benign and comply with respect for family life.

In conclusion, in the words of Norman, regrettably the Scottish Government has missed a second opportunity to maximise ‘buy-in’ to what is purported to be a scheme with the welfare of Scotland’s children and their families as its aim (2016, <http://www.pinktape.co.uk/cases/the-named-persons-scheme-when-protecting->

wellbeing-is-totalitarian/. This lack of 'buy-in' to the welfare intentions of the Named Person scheme of the original Act extends to significant sections of Scottish society including the social worker profession. If the Government believes it has the support of academics and professionals, then it ought to publish the evidence for support for the Named Person Scheme.

We ask that the Scottish Government go back to the drawing board and craft policy and legislation that, whilst continuing to discharge duties relating to the protection of children, do not undermine or cause conflict or suspicion with families whose basic concern is the welfare and protection of children.

In particular, the Government needs to ensure that its 'wellbeing' principles are evidenced, clear and unambiguous, and that their meaning is compatible with children's and parental rights.

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