



## **Children and Young People (Information Sharing) (Scotland) Bill Children's Parliament submission to the Scottish Parliament's Education and Skills Committee**

### **About Children's Parliament**

Children's Parliament is Scotland's centre of excellence for children's participation and engagement. Through our projects, programmes and consultations we work with children, the adults who love and care for them, and the wider communities in which they live. We work across the domains of home, school and community. Our purpose is to promote understanding of, and commitment to, implementation of the rights of the child. We do this by helping children and adults to learn that rights-based relationships are built on the core idea of human dignity alongside empathy, kindness and trust. We emphasise the need to address the needs and rights of *children* as distinct from young people or adults, but remind every individual citizen and Public Body that children's rights are human rights.

### **Background**

In 2012 Children's Parliament consulted with children on the Scottish Government's proposals set out in the Children and Young People Bill<sup>i</sup>. This Bill set out ideas for taking forward an approach to children's rights and services and once agreed would become the Children and Young People (Scotland) Act 2014.

Children's Parliament works creatively, using the child's imagination and lived experience to make the complex comprehensible, fun and engaging. The starting point for the engagement process with children in 2012 was to find a way in to the range of issues presented in the Bill and so we started with the idea to think about Scotland as the best place to grow up. As a way of thinking about the proposals in the Bill, we imagined Scotland as a beautiful garden and each and every child as a unique and special plant, growing in that garden – with adults supporting and nurturing the child as they grow. In the course of the consultation, 107 children aged between 9 and 12 years old attended 2 full day workshops so that they had the time to talk and think about children's lives and the adults who help them. The workshops took place in Angus, Edinburgh, Glasgow, Fife, Stirling and West Lothian. A 'garden' display, bringing together all the views of the children, was exhibited at the Scottish Government, Victoria Quay.

## **What children said about Named Person and Child's Plan**

We present children's views here so that members of the Education and Skills Committee can decide whether the current Bill or proposed new legislation have yet ensured that both aspects are designed and delivered with children's views (both positive and concerns) properly considered and addressed.

### ***On the Named Person provision:***

Children were provided with a very basic outline of the idea of Named Person, we wanted their views on the broad idea of such a role. Firstly, we asked children *what they might need a 'Named Person' to do for them*. In the 2012 consultation *they said*:

- The named person needs to be someone you can go to – for children and parents.
- It would have to be someone you know and they would have to know each child.
- They would put you first.
- They act quickly if you are in danger.
- They try to fix what is happening.
- They talk to me to find out if I am okay or have a worry, help you and care about you.
- They visit where every child lives and talk to adults too.
- They would be nice and not shouty; you can talk to them and they make you feel good about yourself.
- They would protect you and make you happy and don't let you be in trouble.
- They would check on you – check with you and with people who work with children.
- They would side with you which would be good.
- They would make sure children are clean and check you've got a happy environment.
- They would keep an eye on developing skills.
- They watch over children to make sure that they are happy, healthy and safe and get all their needs.
- They could help people if they get stuck.
- They would stop bullies, stop violence and stop us being exposed to drink.
- They would help you to learn to take care of yourself.
- They would have to be nice and kind and not scary.
- They would fight for your rights.

With this in mind, we also asked children what they thought *might be difficult about doing the job of a Named Person* and *they said*:

- To listen, communicate, have the time, all at the one time.
- It would be a hard job to do if you don't learn about the child.
- There is no point in picking someone you barely see.
- You need to give guidance but try hard not to be bossy.
- They might have other responsibilities and other things to do.
- Finding out what children need and making sure they get resources.
- It would need a lot of organisation.
- There would be arguments and fights, so dealing with people who get upset or angry.
- You would find out private things about the family.

- Adults might refuse to talk to them about the children.
- Adults might refuse to get the help they need.
- You have to keep up with all the technology.
- It would be a stressful job.
- They would try to listen to the person's problems but it might be tricky to solve the problem.
- They would need to try to be patient and not shouty.
- Everyone is so individual it would be difficult to look after everyone.

One child summed up the challenges of the Named Person role like this: "If you have to make sure children are safe and they keep up everyone's rights they'll be very busy because there are a lot of people to look after".

Children also talked about whether the Named Person should change for different ages of children. Some children thought the person should stay the same and be alongside the child as they grow and be someone they could learn to trust. Some children thought the person would need to change as they grew up because you have different needs as you grow, and because people change jobs.

Some children asked whether or not the Named Person could be changed if "you didn't like them or couldn't get along with them".

These views were shared with the Bill team, the current Committee may want to consider if enough consideration was given to many of the challenges the children identified.

### ***On the Child's Plan provision***

Some of the children engaged in the 2012 consultation were involved with several support agencies, and so we talked with them about the idea of one Child's Plan. Information sharing is of course a central issue here. Of course, many were already aware of Plans being made on their behalf. Overall, most children thought it would be a good idea to have one Child's Plan. Reflecting on an experience of planning at the moment one child said: "Everyone was just getting in a muddle and we needed the plan to help each other".

Children said an important part of having a Plan would be that they have their say and that all the adults pay attention to it. Some quotes from children illustrate this further:

- "Of course I want to have a say. I want to tell what I'm like, what I like and what kind of people I want to go with".
- "Yes, and make sure everyone knows how important the Plan is".
- "Yes, it helps teamwork to have one Plan".
- "Yes, there should be one Plan because if you did loads of plans you wouldn't know which one to pick. Make sure it's emailed to all the people that need to read it".

Children also said that if you have a Child's Plan it can't always stay the same, so it would need to change and grow with you as you got older and had your say too. One child said: "We would need to make the Plan grow. All the different adults would need to add their own bit and the child would give their ideas too".

Children decided the points listed below would need to be in place to make the Child's Plan work – many relate to the child's understanding and contribution. *They said:*

- Stop adults shouting.
- Plan talking times so that if things happen you can talk and it doesn't boil over.
- Make sure adults are not doing other things at the same time.
- Have someone tell adults that they have to listen properly.
- Have a worker (like from Who Cares?) who comes to your house and talks about what's coming up.
- Adults should have eye contact, sit beside the child.
- Ask the parents and everybody to ask the children first. If parents or other people just ask first then you can have your say.
- Consult children about Plans, meet with them and explain what their choices are.

### **Comments on the new Information Sharing Bill and (illustrative) Code of Practice**

Children's Parliament does not advocate or speak on behalf of children and so these limited comments are based on questions or concerns which are informed by the earlier 2012 consultation as well as current practice, we have not consulted again with children.

Firstly, the new legislation and supporting Code of Practice (with the illustrative draft in mind) must explicitly and throughout address the rights of the child to participate fully and have their views heard. Before addressing concerns about what has been provided it is worth remembering why children think adults do not adequately listen or involve them. From the 2012 consultation children were unanimous in their desire to be heard, but thought they were not when any one or more of these factors were in place:

- Adults think children don't understand.
- Some adults can be stubborn but they do have to listen.
- Adults think they know what's right.
- If you go to them too much, they stop listening.
- Maybe they get bored. If children get into trouble all of the time people might stop listening to them.
- Maybe they don't want children involved in what they are talking about.
- They don't realise children have good ideas or they think the children won't understand.
- They think that if they were trying to tell the child something they didn't like, then the child might make a big fuss and they think it'll be a lot easier if adults just decide.
- Some adults don't want children to know what's happening.

Our first concern is with the illustrative Code of Practice when it talks about informing and seeking the consent of children and young people. Section 5 reads as follows:

5. Throughout this Code of Practice, reference is made to informing, and seeking the consent of, children and young people. In many cases a child will be too young or immature to understand the full implications of information sharing. Where a child or young person is too young or immature to have capacity to make their own decisions about these matters, reference to a child or young person should be taken to include

reference to their parent. The DPA provides that a child under the age of sixteen is deemed to have capacity to exercise any rights they have under the DPA, provided they have a general understanding of what it means to exercise those rights. A child of twelve years or more is presumed to be of sufficient age and maturity to have such understanding. You must therefore ensure that you consider whether the child or young person has the capacity to make their own decisions in relation to information sharing.

While some of the problem with the age guide used may come from the DPA it is not acceptable to have an arbitrary cut off so that under 12s will likely be considered to lack maturity or capacity. Children's Parliament works with children in middle childhood and – illustrated by the consultation we have referenced – children in the primary school years are perfectly capable of engaging with issues concerning their best interests. The Code of Practice as it stands is at risk of doubly discriminating against children with learning disabilities and give professionals permission to deem them incapable of being informed and having their say. It is surely the professional's responsibility and role to engage children under 12 in ways that are appropriate to the child. We cannot support practices that disempower the vulnerable child further.

In terms of the Code of Practice section 22 which refers to the DPA principles, number 6 states (bold text our emphasis):

6. When using personal information, **you must respect the rights of the child or young person**, and any other person to whom that information relates.

This would surely suggest that the adults making decisions about information sharing actually know and understand what the rights of the child are. We would ask: *Do they?* What evidence is there that professional/adult duty-bearers actually know what the human rights of children are and how they must inform or guide their professional role? We already have an excellent piece of Guidance in place in terms of the Common Core of Skills and Knowledge and Understanding for the Children's Workforce<sup>ii</sup> which embeds the rights of the child in professional training and practice – yet few people know about it, particularly in the field of Schools/Education. If we fail to respect the rights of the child we fail to address the challenges about information sharing.

The issue of consent is also important. In the illustrative guidance section 25 it states (bold text our emphasis):

25. Often, you will obtain the consent of the person to who the information relates (commonly the child, young person or their parent), or explicit consent in the case of sensitive personal data, to the processing of the information. **Consent must be active and informed.** If you are relying on consent, you must ensure that those to whom the information relates, commonly the child or young person or their parent know what information sharing they are consenting to and understand the implications.

Again, we must ask: *What do professionals in the field of education, social work or 3<sup>rd</sup> sector know and understand about the meaning of active and informed consent in work with*

*children and young people?* If the answer is little, what detailed guidance or training or support will be given to make this work in the best interest of the child?

### **To conclude**

The illustrative Code of Practice does not provide clarity as to when or how to share information about children and young people. This may be explained by it being ‘illustrative’ – but why are we commenting on (or dependent on) something that is only illustrative?

The new Bill has repealed the requirement to “*have regard to the views of the child or young person*”<sup>iii</sup> and in doing so, to “*take account of the child’s age and maturity*”<sup>iv</sup>. This requirement was introduced into the 2014 Act to ensure that “*both the information holder and Named Person are far less likely to appear that they are infringing on the right to privacy, as decisions will be more inclusive and transparent*”.<sup>v</sup> No equivalent provisions have been included on the face of the new Bill. It is not enough to rely on a draft/illustrative Code of Practice to ensure that the views of children and young people are taken into account when sharing information about them.

As a human rights organisation, our final contribution has to be about the rights of the child. In the case of this Bill it is not acceptable to pass it through the Scottish Parliament when it relies on an unpublished Code of Practice to meet obligations to children’s human rights. Across our 21 years of practice at Children’s Parliament children have told us that their rights as enshrined in the UNCRC should be the law, in full. The Scottish Parliament’s Equalities and Human Rights Committee has recently agreed this is required in their report on prejudice-based bullying. In the 2012 consultation children also told us that the Government needs to talk to parents and other adults about children’s rights, so that everyone can work together for children. One child said: “The politicians should have a discussion to the parent and decide what’s better and then look after you and protect you forever and discuss children’s rights”.

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<sup>i</sup> Children’s Parliament consultation on the Children and Young People Bill 2012  
<http://www.childrensparliament.org.uk/our-work/past-work/children-and-young-people-bill/>

<sup>ii</sup> Common Core <http://www.gov.scot/Publications/2012/06/5565>

<sup>iii</sup> 2014 Act. Part 4, Section 26(5).

<sup>iv</sup> 2014 Act. Part 4, Section 26(6).

<sup>v</sup> Pg. 11 Privacy Impact Assessment. See <http://www.gov.scot/Resource/0044/00447626.pdf>