

Scottish Women's Aid response to the Scottish Parliament's Education and Skills Committee call for evidence on the Children and Young People (Information Sharing) (Scotland) Bill August 2017

Introduction

Scottish Women's Aid (SWA) is the lead organisation in Scotland working towards the prevention of domestic abuse. We are the umbrella organisation for our 36 member groups that provide services directly to women, children and young people affected by domestic abuse. We welcome the opportunity to respond to the Education and Skills Committee's call for evidence on the Children and Young People (Information Sharing) (Scotland) Bill (the Bill).

Background

SWA have been broadly supportive of GIRFEC and the Children and Young People (Scotland) Act 2014 (the 2014 Act) since their inception; we welcome the intention to promote and protect the rights of children and young people in Scotland, in particular the promotion of better joined up working between services supporting children and families. However, throughout the passage of the 2014 Act and consultation on draft statutory guidance around parts 4, 5 and 18 of that legislation, we repeatedly expressed concern that information sharing provisions within the 2014 Act could inadvertently increase risk to women, children and young people affected by domestic abuse. In particular, we argued that clearer guidance was needed on the practical implementation of the information sharing duties, the need for explicit reference within statutory guidance to the complexities of domestic abuse and its effects on children and non-abusing parents in the context of appropriate and safe decisions around information sharing, and the importance of robust training for Named Persons that includes a focus on the dynamics of domestic abuse.

A number of Women's Aid groups currently engage with non-statutory Named Person schemes; they report that Named Person responses to cases of domestic abuse are patchy, and depend greatly on individuals' training and awareness of the specific issues and complexities around domestic abuse. There have been extremely concerning cases where a Named Person has inappropriately shared information with a perpetrator about their child accessing Women's Aid services, thereby increasing the risk to the child and their mother and leading to children being prevented from accessing specialist Women's Aid services and support. This surely goes against the very ethos of the Named Person service to promote and support the wellbeing of children and young people.

While we are supportive of the Bill's policy objective to ensure that 'the rights of children, young people and parents are respected'¹, we are not confident that the Bill in its current form will mitigate the concerning issues around information sharing in the context of domestic abuse such as that illustrated above, and reiterate the need for clearer guidance for practitioners and robust training. We set out our comments on the specifics of the Bill in further detail below.

Code of Practice

Firstly, it is difficult to determine how the Bill will work in practice when accompanied only by an illustrative draft Code of Practice. The provision for a mandatory Code of Practice within the Bill has the potential to be powerful in terms of strengthening protocols around information-sharing and consistency of practice nationally; however, whether or not the Code of Practice achieves these aims depends greatly on its content and efficacy in supporting practitioners to make safe, appropriate and proportionate decisions about information sharing. Given that the success of the Bill therefore hinges on the drafting and substance of the Code of Practice, a purely illustrative draft is not sufficient to accompany the Bill; Women's Aid workers consulted felt that the current illustrative draft is overly legalistic and only adds greater confusion about information sharing. To be truly effective, the proposed Code of Practice would need to be more accessible and practice-focused (such as including specific case studies), and contain greater clarity for third sector organisations on their role with regard to information sharing under the Bill. We therefore suggest that the draft Code of Practice be completely rewritten since the version open for comment is not fit for purpose.

Views of the child

It is also of concern to us that consent and having regard to the views of the child when considering whether to share information is not included on the face of the Bill. As Together (the Scottish Alliance for Children's Rights) point out in their briefing on the Bill, relying on the current illustrative draft Code of Practice as the sole authority to ensure that children's views are heard is not acceptable.² Indeed, as an example, the illustrative Code of Practice is, in our opinion, overly dismissive of the views of younger children, stating that "*...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.*"³

¹[http://www.parliament.scot/Children%20and%20Young%20People%20\(Information%20Sharing\)%20\(Scotland\)%20Bill/SPBill17PMS052017.pdf](http://www.parliament.scot/Children%20and%20Young%20People%20(Information%20Sharing)%20(Scotland)%20Bill/SPBill17PMS052017.pdf)

² Together, 'Briefing on the Children and Young People (Information Sharing) (Scotland) Bill': <http://www.togetherscotland.org.uk/pdfs/Together%20Information%20Sharing%20briefing.pdf>

³ See para. 5 of illustrative draft Code of Practice: <http://www.gov.scot/Resource/0052/00521285.pdf>

Conjecturing that *"in many cases a child will be too young or immature to understand the full implications of information sharing"* completely fails to recognise that there are obligations placed on bodies to facilitate and explain information sharing. The Bill must be more proactive in this and in stating the mandatory statutory duties incumbent on authorities to support children and young people to access their rights.

Consent to information sharing

Including an explicit requirement for consent on the face of the Bill is particularly important in the context of domestic abuse. We know that one of the factors preventing women from reporting domestic abuse is the fear that her confidentiality will be breached and the organisation will pass on information about her help seeking to the abuser simply because he is a "parent". The current omission of a consent requirement from the face of the Bill both encourages bad practice and weakens accountability in this regard and we recommend that the Bill is amended accordingly.

Including consent on the face of the Bill should also be backed up and suitably caveated by explicitly stating in the Code of Practice that in cases of domestic abuse the child's right to safety must trump a domestically abusive parent's access to information.

In addition, given that the upcoming General Data Protection Regulation (GDPR) will make changes to the law around consent when processing personal data, there needs to be greater clarity and information about how these changes will impact on the Bill and Code of Practice.

Conclusion

SWA recognises the critical role of timely and appropriate information sharing; however, we remain concerned, as we have done so throughout the passage of the 2014 Act and consultation on draft statutory guidance, that the specific group that we work with – women, children and young people affected by domestic abuse – continue to be put at further risk by unsafe decisions and lack of accountability around information sharing. Of central importance to mitigating this risk will be the content of the Code of Practice and associated guidance, which must take into account the complexities and safety issues around domestic abuse. Appropriate implementation of the Code and any relevant guidance must be backed up by robust training which includes a focus on the dynamics of domestic abuse since incorrect assumptions that separation from a perpetrator equals safety for women and children continue to prevail, as do attitudes that women who do not leave a perpetrator are 'failing to protect' their children. Such assumptions can lead to unsafe information sharing. A full and in-depth understanding of domestic abuse is needed

in order for Named Persons and other professionals to make safe and appropriate decisions about information sharing, and this must be a primary consideration throughout the passage of the Bill.

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