

The Named Person: Commissioner's statement

The Named Person provisions in the Children and Young People (Scotland) Act 2014 continue to generate heated debate in the media. Some of the debate around this issue is both unhelpful and unnecessary, doing little to further sensible discussion and causing great anxiety for parents.

The office of the Children and Young People's Commissioner is politically neutral and independent of both Parliament and Government. As such, we are able to be critical where we feel criticism is warranted and supportive where we feel that policy is working towards furthering the best interests and wellbeing of the child.

Our establishing legislation requires us to promote and safeguard children's rights. This is a key tenet of everything we do and guides the work we undertake not just with policy makers and professionals, but also – and most importantly – with children and young people. These rights are enshrined in the United Nations Convention on the Rights of the Child and include rights such as the right to protection (article 19), the right to privacy (article 16) and article 3 which requires public or private social welfare institutions, courts of law, administrative authorities or legislative bodies to make the best interests of the child a primary consideration in all actions concerning children. Therefore, we would be opposed to provisions which sought to infringe or undermine these provisions.

We supported the Children and Young People (Scotland) Bill (now Act) as it was going through Parliament and continue to support the provisions that place the Named Person service in statute, a policy which had been previously introduced on a non-statutory basis in several areas in Scotland. We also raised concerns where and when we felt they needed raising, one result being that the Scottish Government has tightened the provision around information— although we continue to have concerns in this area.

It is worth noting that the Children and Young People (Scotland) Act 2014 passed with the support of all parties in the Scottish Parliament and the Named Person provisions were supported by all but the Conservative party. We welcomed the Scottish Government's much needed shift to responsive, early intervention and saw the universal approach to services and the focus on supporting families at an early stage as both welcome and desirable.

GIRFEC

The Named Person is a key element of what professionals refer to as 'GIRFEC', the acronym for 'Getting it Right for Every Child'. This national and universal approach focuses on improving outcomes and supporting the wellbeing of our children and

young people by aiming to offer the right help at the right time from the right people. All too often, we hear reports about services failing to work together, information not being shared, or a small piece of the jigsaw being missed at an early stage which then led to crisis intervention. It is then that we hear the cry of 'why didn't someone do something? 'Why didn't the authorities react earlier?'

The focus is now firmly on early intervention rather than crisis management and of course the State has an important role to play here. If we want a universal system of child protection, it has to protect every child. Most children and young people get all the help and support they need from their parent/s or their wider family (or indeed community), but at some point in their life, perhaps as a result of a bereavement or a short illness, they may need some extra support— even if it is for a short period. The Named Person would then be responsible for (where appropriate) reaching out to the services that can help and ensuring that a difficulty does not turn into a crisis. The definition of well-being is also very broad, so the scheme is designed to help with all types of problems, not just for times where a child or young person is at risk of significant harm.

Undermining the role of parents?

The charge that the Named Person would undermine the role of parents or carers or trample on parents' rights was addressed in the Opinion of the Inner House, Court of Session, (2015) which noted that:

[68] *'The mere creation of a Named Person, available to assist a child or parent, no more confuses or diminishes the legal role, duties and responsibilities of parents in relation to their children than the provision of social services or education generally. It has no effect whatsoever on the legal, moral or social relationships within the family. The assertion to the contrary, without any supporting basis, has the appearance of hyperbole.'*

It is perhaps useful to reflect on the Named Person service a little more. In short, the service has been set up to make an identified individual person available to parents to:

- advise, inform or support the child or young person, or a parent of the child or young person,
- help the child or young person, or a parent of the child or young person, to access a service or support, or
- discuss or raise a matter about the child or young person with a service provider or relevant authority.

What is the Named Person scheme?

Lord Carloway clarified what the Named Person service was in the Inner House Judgement cited earlier:

(9) *'In terms of section 19 of the 2014 Act, "Named Person service" means "the service of making available, in relation to a child or young person, an identified individual who is to exercise the functions. A Named Person is, therefore, not assigned to a child or young person as such, but "made available, in relation to" him*

or her. Hence, the Named Person may carry out functions directed to assist not only the child or young person but also his or her parents and any relevant service providers and authorities...'

(10) 'There is no single, state-operated Named Person service. Rather, health boards, local authorities, schools and the respondents are each to provide Named Person services, as appropriate.'

Local authorities and health boards are the main bodies charged with ensuring a Named Person is available to children and young people in their area. This will normally be the health board for a pre-school child and a head-teacher, guidance teacher or other promoted member of staff for a school age child. Other organisations – such as independent or grant-aided schools, secure accommodation and the Scottish Prison Service – also have a duty to ensure that a Named Person is available to children and young people in their care.

The duties of the Named Person will be integrated into the professional's role, formalising them as a central contact for children, parents and those working with them. Importantly, the "Named Person" will be known to the child. He or she will not be some strange outsider. Moreover, while every child and young person will have a Named Person, this does not mean that the Named Person will be actively involved in the child or young person's life. Some children may never need the support of their Named Person, while others may require substantial support. The scheme should be flexible enough to accommodate that.

Furthermore, there is no obligation to accept advice or support from a Named Person. The Scottish Government has always been clear about this. Parents have often called for a single point of contact and the Named Person should be seen as someone who can provide help for the child, young person or their parents, address their concerns early and in some cases avoid problems from developing.

Suggesting that the Named Person scheme is about a 'state guardian for every child' or that it is an 'unacceptable intrusion on liberty' that 'could actually harm the state's ability to track genuinely at risk children' fails to understand the key role of universal services and what preventative work means in practice.

Duty to help the Named Person

The duty to help the Named Person is an important part of the Act. This will take place where it becomes apparent that another service provider could help in the exercise of any of the Named Person functions for a child or young person. This is essential to ensuring effective co-ordination and getting the right person to help at the right time.

Sharing information about the child

The information sharing part of the Children and Young People Scotland Act (2014) caused us most concern, not least because we felt that not enough time had been afforded for considered reflection. We also felt that more time could have been given to listening to the views of children and young people.

To ensure that GIRFEC works in practice, sharing relevant information about children with the Named Person is essential. This will ensure that he or she has the information needed to properly assess the wellbeing of a child and identify early concerns. This must be done appropriately and with respect for the rights of the child. Information that is passed on must be done only if it is in the best interests of the child and to ensure his or her wellbeing.

A further concern is around the threshold for sharing information. At the moment, the threshold amongst professionals is 'risk of significant harm'. The Children and Young People (Scotland) Act 2014 lowers this threshold to concern for a child's 'wellbeing'. A potential risk of this is that the Named Person and other adults may therefore choose to share information about the child that violates their right to privacy and we must guard against this.

We must also ensure that the practice works to support children and young people and their parent/s/ carers, guard against poor practice and challenge that practice if it happens. The legislation is clear that where personal information is shared about a child or a young person, it must be proportionate, appropriate and relevant, complying with the principles of the Data Protection Act (1998). We need children and young people to feel comfortable about accessing confidential services without fear that what they tell professionals will not be kept private. Otherwise, what we may find will happen is that they will not look for the help they need. This is the opposite to what is intended. It is crucial that the right balance is struck between the need to share information to protect and promote the child's wellbeing and the child's right to privacy. Our office will be monitoring this aspect very closely and we will raise concerns if we feel that these provisions have not been adhered to, or if we are informed of poor practice.

With regard to the sharing of information, opponents of this part of the Act have raised concerns around 'personal information, such as political or religious views of family members, being shared by or with Named Persons. However, the Opinion of the Inner House is that 'the sharing of information is not permitted or required where disclosure is otherwise prohibited or restricted, other than in relation to a duty of confidentiality (s 26(11)).'

The Named Person provision is now awaiting the Supreme Court's decision and we will consider very carefully what the judgment states about this aspect of the Act.

Children's Services Planning

The Named Person provision cannot and should not be seen in isolation from the rest of the Children and Young People (Scotland) Act 2014, particularly the provisions relating to children's services planning. Our view is that these complement the approach laid out under the Named Person service, namely focusing on early intervention and co-ordination and providing support where needed. The Act requires children's services to be provided in a way which best safeguards, supports and promotes the wellbeing of children in the area. Any action to meet needs should be taken at the earliest appropriate time and – where appropriate – action should be taken to prevent needs arising. The Named Person is crucial to ensuring that this works in practice.

Both the Children's Services Plan and the Child's Plan sit under the broader framework of children's services; the first under universal services, the latter supporting children with additional support needs or those who fall within child protection services. Effective coordination between bodies is key. The Act places an important duty on all public bodies to work together to produce a local joint Children's Services Plan. Local authorities and health boards must prepare three year children's services plans and keep these under review.

The Child's Plan rather focuses on those children and young people who require extra support. Delivery of this will sit with a health board, local authority or independent school (the 'managing authority'). The Lead Professional, on behalf of the managing authority, will ensure that the Child's Plan is managed properly.

Implementation

As we move to implementation, we need to consider what needs to happen to ensure the Named Person service works effectively and with the best interests of the child at its core. One person's poor professional practice does not mean that all should be tarred with the same brush, but we must continually reflect on how the service is working in practice and challenge poor practice where it occurs. Training will therefore be essential to ensure that confident professionals take this forward in the way it is intended.

To suggest that the Named Person provisions will divert services away from where they need it most has not been borne out by the Highland experience. The recent evaluation on the Highland Practice model (HPM) references the Care Inspectorate report, which noted that the implementation of GIRFEC in Highland has resulted in effective, and improving, early intervention for vulnerable children.

They highlighted that this was contributing to the fall in the number of children becoming Looked After. The effect of early intervention can also be viewed through a reduction in offending by young people and the decrease in number of referrals to the Reporter. The Reporter's Office notes that referrals are now more appropriate and, although fewer, more complex.

The report goes on:

'There is a strong view amongst professionals that the Highland Practice Model (HPM) is assisting in earlier identification and intervention to support children and their families. This is supported through the survey of professionals undertaken by the Care Inspectorate which found that 70% of respondents agreed or strongly agreed that GIRFEC has made it easier to help children, young people and families at an earlier stage.'

'Professionals report that early intervention is being supported through key elements of the HPM including the Child Concern Form Process and the link through this to the Named Person. Staff have indicated that through the earlier identification of issues or concerns and the shared planning for that child as a result, families are better supported and this leads to preventing the escalation of issues. Inspectors agreed with this and reported that staff working well together and knowing their roles is helping to identify situations quickly.'

The Highland Children's Forum (HCF) report also highlighted that 80% of parents reported issues being recognised early and a plan being developed as a result'.

With specific regard to the Named Person, it is significant that many professionals reported that being the Named Person has not, in essence, changed their role:

'they remain the key link person for the child and their family— whether that is the midwife, health visitor or head teacher. A number of Named Persons did report, however, that formalising this remit had assisted them in clarifying their role and responsibilities, and empowering them to address issues on behalf of the family. It provides a focus for professionals. "I think being a Named Person has helped clarify my role and means that I understand my responsibilities," [said one] health visitor.'

Concluding comments

GIRFEC, and the Named Person provision in particular, are about gaining a full picture of the child. No-one would argue against the view that a preventative approach is important in children's services, but what is often missed is a joined up approach to ensuring the wellbeing of all our children. The warning signs may be there, but no one has put all the component parts together. Important information can be missed when agencies fail to work together. Information seen in isolation may not mean very much, but when it completes a full picture it may prove very significant indeed.

It is also important that a member of staff of a universal service already in contact with the child is responsible for collating information. If we want a system that responds as early as possible when things start to go wrong and supports parents and children when issues first arise, the GIRFEC approach and the introduction of the Named Person provision is a positive way forward.

The Named Person is not about 'nationalising parenthood.' Nor is it about undermining families. Rather, it seeks to help them in the important and essential role they play in bringing up their children. The Scottish Government's attempts to integrate services more effectively, to make universal services a reality for children in Scotland and to focus on prevention rather than crisis management must be welcomed as an important step towards ensuring that Scotland truly becomes the best place for children to grow up.

The Supreme Court's ruling is imminent and, as a result of this, clarity may be needed around the guidance. The fact that some parents are still concerned about these provisions does, however, indicate that the Scottish Government needs to spend much more time on reassuring parents about their concerns. The prevailing perception of the Named Person scheme is somewhat removed from the actual policy, but these perceptions must be addressed and anxieties allayed.

Children and Young People's Commissioner Scotland

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