

ANGUS COUNCIL

CHILDREN AND LEARNING COMMITTEE – 20TH SEPTEMBER 2016

NAMED PERSON SERVICE

1. BACKGROUND

1.1 The Children and Young People (Scotland) Act 2014 ('the 2014 Act') makes provision for a Named Person Service in relation to children and young people in Scotland. Part 4 of the 2014 Act provides that Named Persons will undertake certain functions in relation to children and young people. These include;

- (a) advising, informing or supporting them or their parents
- (b) helping them or their parents access a service or support
- (c) discussing or raising a matter about them with a service

1.2 Part 4 also sets out powers and duties relating to information sharing, including when information must be shared following a change in Named Person Service, and between service providers or relevant authorities.

1.3 Part 4 of the 2014 Act was challenged by way of judicial review on the basis that it is outside the legislative competence of the Scottish Parliament under the Scotland Act 1998 because: (a) it relates to matters which are reserved under the Scotland Act to the UK Parliament; (b) it is incompatible with rights under the European Convention on Human Rights and/or (c) it is incompatible with EU law. These challenges were dismissed in both the Outer House and the Inner House of the Court of Session prior to being taken to the UK Supreme Court on 7th and 8th March 2016.

2. CURRENT POSITION

2.1 On the 28th July 2016 the UK Supreme Court Judgement:

- ruled that the principle of providing a Named Person for every child and young person does not breach a child or family's human rights, nor is it incompatible with EU law;
- rejected the petitioners' argument that the legislation relates to reserved matters and therefore the Scottish Parliament is within its prerogative to introduce the Named Person Service;
- ruled that the information-sharing provisions of the 2014 Act are incompatible with Article 8 of the European Convention on Human Rights and that changes are needed to make those provisions compatible with Article 8 (which provides a right to respect for your private and family life, home and correspondence).

2.2 The court's ruling means that the Scottish Government must provide greater clarity about the basis on which health visitors, teachers and other professionals supporting families will share and receive information in their Named Person role. Given the time required for Parliamentary and legal processes to achieve the required changes to the 2014 Act, the Scottish Government did not commence any provisions within Part 4 (Provision of Named Persons) and Part 5 (Child's Plan) of the 2014 Act on 31 August 2016. In addition, the draft statutory guidance on these Parts of the 2014 Act will be revised. The service will be implemented nationally at the earliest possible date.

2.3 The Scottish Government has also made it clear that:

- The judgment on information sharing relates to the information sharing provisions that were intended to come into force under the 2014 Act, not to current practice under GIRFEC policy.

- any sharing of personal information that takes place now or in the future must be done in accordance with the Data Protection Act and the Human Rights Act.
 - where there is a “named person” in place, it continues to be appropriate for any person or organisation to share information with the “named person” where the conditions set out in the Data Protection Act are met.
 - a local authority or health board can (start or continue to) nominate a person as the “named person” for a particular child, and to arrange for that person to be responsible within the organisation for the provision or coordination of services to that child, and to be a single point of contact in relation to that child.
 - local authorities should be clear with parents the voluntary nature of any advice, information, support or help offered by the Named Person.
- 2.4 Within Angus, the Named Person was introduced in 2012 as part of the Council’s response to the national GIRFEC agenda. Reference is made to reports numbers 201/10, 300/11 and 118/12.
- 2.5 In Angus, the role of the Named Person is undertaken by the Health Visitor for children pre-school, the Head Teacher for children at primary school and the Pupil Care and Support Teacher for young people at secondary school.
- 2.6 In Angus, the Named Person:
- Is the first point of contact for the child and his or her parents/carers seeking information or advice, and for any practitioners wishing to discuss a worry about the child.
 - Makes sure that the views of children and families are sought and recorded at every stage.
 - Makes sure children and families are fully involved in decisions that affect them.
 - Makes sure that when information needs to be shared, that children and families know why this information should be shared, and that consent has been given and recorded, unless, in exceptional circumstances, there is good reason not to.
 - Records any concerns that children, families, or practitioners in their own or other agencies bring to them about a child’s well-being.
 - Considers any concerns in the light of the child’s history and current circumstances and assesses if anything needs to be done and if any extra help needs to be provided.
 - Prepares a single agency plan for a child or young person who requires extra help, based on appropriate and proportionate information.
 - Is aware, from observation or information received, of risks and needs and identifies concerns that suggest a child or young person may be at risk of significant harm and if so escalates these through our child protection processes.
- 2.7 Current information sharing arrangements in Angus are designed so that they meet the conditions as set out in the Data Protection Act, namely that “when information needs to be shared, that children and families know why this information should be shared, and that consent has been given and recorded, unless, in exceptional circumstances, there is good reason not to.” Information is only shared with the consent of parents or carers or where there are significant concerns for the safety or wellbeing of an individual child.
- 2.8 Specific details as to how GIRFEC, including Named Person, operates can be found at: <https://archive.angus.gov.uk/girfec/practice-tools-resources.html>
- 2.9 In line with Scottish Government advice that where there is a “named person” in place, it continues to be appropriate for any person or organisation to share information with the “named person” where the conditions set out in the Data Protection Act are met, we will continue to operate Getting it Right for Every Child in Angus in accordance with the current systems and processes.
- 2.10 To assist the Named Person in undertaking their role, we have also issued guidance to further clarify when it is appropriate or not to share information.

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