PE1692/F Petitioners' submission of 13 September 2022

The letter from the Cabinet Secretary, Shirley-Anne Somerville references "The refreshed materials, including the statutory guidance for the Assessment of Wellbeing...". It should be remembered that the purpose of petition 'PE1692: Inquiry into the human rights impact of GIRFEC policy and data processing' is to examine the effects of the GIRFEC policy over the, now, nearly ten years it has been practised across Scotland, not to address possible future harm through any "refreshed material". The submission from the Cabinet Secretary is irrelevant to the purpose of the petition.

The judgment of the Supreme Court on 28th July 2016 in The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland) highlighted the risk of SHANARRI wellbeing indicators leading to the named person functions being exercised in an ECHR incompatible manner.

Paragraph 1 of the judgment stated one of the underpinning issues with the SHANARRI wellbeing indicators in that they were "…a shift away from intervention by public authorities after a risk to children's and young people's welfare has been identified, to an emphasis on early intervention to promote their wellbeing…". This was to be achieved by altering "…the existing law in relation to the sharing of information about children and young people, so as to enable information about concerns about their wellbeing, held by individual bodies, to be pooled in the hands of named persons and shared with other bodies, with the ultimate aim of promoting their wellbeing."

Paragraph 16 of the judgment:

" "Wellbeing" is not defined. The only guidance as to its meaning is provided by section 96(2), which lists eight factors to which regard is to be had when assessing wellbeing. The factors, which are known under the acronym SHANARRI, are that the child or young person is or would be: "safe, healthy, achieving, nurtured, active, respected, responsible, and included". These factors are not themselves defined, and in some cases are notably vague: for example, that the child or young person is "achieving" and "included"."

Paragraph 95 of the judgment expands on this:

"…the very wide scope of the concept of "wellbeing" and the SHANARRI factors…"

Paragraph 106 of the Supreme Court judgment found "…that the information-sharing provisions of Part 4 of the Act (a) do not relate to reserved matters, namely the subject matter of the DPA and the Directive, (b) are incompatible with the rights of children, young persons and parents under article 8 of the ECHR because they are not "in accordance with the law" as that article requires, (c) may in practice result in a disproportionate interference with the article 8 rights of many children, young persons and their parents, through the sharing of private information…"

The Supreme Court found that the information sharing provision of the Children and Young People (Scotland) Act 2014 was incompatible under article 8 of the ECHR and it is this that forms the basis of petition 'PE1692: Inquiry into the human rights impact of GIRFEC policy and data processing'. GIRFEC, SHANARRI and the Named Person provisions had, by the time of the judgment of the Supreme Court in July 2016, already been rolled out and had been in force for a number of years. The impact of this unlawful legislation on the children, young people and families of Scotland and the damage it has caused has never been assessed or addressed. This is why an inquiry is essential.

That families have been seeking erasure of unlawfully processed personal data for many years and are being met with brick walls from the ICO, whose office failed to advise in accordance with the law in the first instance and issued unlawful guidance, and CYPCS whose role does not appear to extend to protecting children's UNCRC Article 16 rights despite being asked by young people to intervene, remains a matter of keen public interest.

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Research by the Scottish Home Education Forum in 2020 found unlawful data processing had become embedded across services, and the committee is asked to affirm that guidance which does not comply with overarching human rights and data protection legislation, is not lawful, including the de facto imposition of a named person claiming information sharing powers as is currently the practice in Highland. Without hearing from families themselves, there is little likelihood of any improvement in practice and every likelihood of increasing self-exclusion from services by fearful families. Denial of this petition would send a clear message that the lives of children and families do not matter to the government.

Furthermore, the nature of the Cabinet Secretary’s submission, specifically its attempt to suggest all will be well whilst ignoring the significant issues raised, is all too similar to the flawed process that led to unlawful legislation being passed in the first place; a culture involving acquiescence with authority, group think and secrecy meant that important questions were never asked and significant shortcomings, risks and errors were never acknowledged. In light of this, the Cabinet Secretary’s response, which ignores the questions and issues raised by this petition, seems to indicate that no lessons have been learned. We urge the Committee to act in the defence of families by endorsing this petition.