



The Scottish Parliament
Pàrlamaid na h-Alba

EDUCATION AND SKILLS COMMITTEE

AGENDA

18th Meeting, 2019 (Session 5)

Wednesday 29 May 2019

The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Subordinate legislation:** The Committee will take evidence on the Head Teachers Education and Training Standards (Scotland) Regulations 2019 [draft] from—

John Swinney MSP, Cabinet Secretary for Education and Skills, David Roy, Head of Teacher Education and Leadership, and Claire Cullen, Legal Directorate, School Education Branch, Scottish Government.

2. **Subordinate legislation:** John Swinney MSP, Cabinet Secretary for Education and Skills to move—

S5M-17293—That the Education and Skills Committee recommends that the Head Teachers Education and Training Standards (Scotland) Regulations 2019 [draft] be approved.

3. **Subject Choices:** The Committee will take evidence from—

John Swinney MSP, Cabinet Secretary for Education and Skills, Andrew Bruce, Director in Learning, and Murray McVicar, Head of Senior Phase Unit, Scottish Government.

4. **Public petitions: PE01694** The Committee will consider the following petition-

PE01694 by Ralph Riddough, on Free Instrumental Music Services

5. **Public petitions: PE01692** The Committee will consider the following petition-

PE01692 by Lesley Scott on behalf of the Tymes Trust and Alison Preusson behalf of the Scotland Home Education Forum, on the inquiry into the human rights impact of GIRFEC policy and data processing.

- 6. Review of evidence (in private):** The Committee will consider the evidence it heard earlier.

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The papers for this meeting are as follows—

Agenda item 1

Paper from the clerk

ES/S5/19/18/1

Agenda item 3

SPICe briefing paper

ES/S5/19/18/2

Supplementary submissions pack

ES/S5/19/18/3

Agenda item 4

Paper from the clerk

ES/S5/19/18/4

Agenda item 5

Paper from the clerk

ES/S5/19/18/5

Agenda item 6

PRIVATE PAPER

ES/S5/19/18/6 (P)

Education and Skills Committee**18th Meeting, 2019 (Session 5), Wednesday 29 May 2019****Subordinate Legislation****Introduction**

1. The purpose of this paper is to brief Members on the following SSI:
[Head Teachers Education and Training Standards \(Scotland\) Regulations 2019](#)
2. The instrument is subject to the affirmative procedure which means that it cannot come into force without the approval of the Parliament. More information about the affirmative procedure is set out in the annexe to this paper.
3. The Committee must report on this instrument no later than 15 June 2019.
4. The Delegated Powers and Law Reform Committee [reported](#) on the instrument on 14 May 2019. That Committee raised no points in relation to the instrument.
5. According to the [Policy Note](#):

“The policy objective of these Regulations is to introduce a requirement that all teachers being appointed to their first permanent headteacher post in either an education authority or grant aided school from August 2020 must have been awarded the Standard for Headship by the General Teaching Council for Scotland (GTCS).”

Purpose of the Instrument

6. The Policy Note for the Regulations provides the following background to the purpose of the instrument:

“These Regulations provide that from 1 August 2020 only teachers who have been awarded the Standard for Headship can be appointed as a headteacher in an education authority or grant-aided school. They also provide two exemptions. The first applies to any permanent headteacher who has been appointed to a position in an education authority, grant-aided or independent school on or prior to 1 August 2020. For individuals within that category holding of the Standard for Headship is not a requirement. The second exemption enables education authorities or the managers of grant-aided schools to appoint a person to a headteacher post who has not attained the Standard for Headship on a temporary basis for a period not exceeding 30 months after 1 August 2020.”

7. The Policy Note also provides details of how the Standard for Headship is delivered:

“The Standard for Headship is part of a suite of Professional Standards that are developed by the GTCS. The Standard for Headship supports the self-evaluation and professional learning of those in, or aspiring to, formal leadership roles in schools. All teaching standards are underpinned by the themes of values,

sustainability and leadership and are integral to professional relationships and practices. The Standard for Headship is awarded by the GTCS on completion of the Into Headship programme, which is delivered by university providers and accredited by both the Scottish College for Educational Leadership, which is now incorporated into Education Scotland, and the GTCS.

Seven universities are delivering the Into Headship programme and since it was introduced in 2015, 255 teachers across all 32 local authorities have completed the programme.”

8. The Policy Note explains that, in 2015, the First Minister announced that the Scottish Government would make it a legal requirement that all new headteachers must hold the Standard for Headship. The Scottish Government document “Delivering Excellence and Equity in Scottish Education – A Delivery Plan for Scotland” stated that “We will make holding the Standard for Headship mandatory for all new headteachers by August 2019 and will consult by the end of 2016 on the legislation that will achieve this.”
9. The Policy Note also outlines the consequences for schools if this requirement is not met after its implementation date:

“If an education authority or the managers of a grant-aided school were to appoint a person to a permanent headteacher position who had not achieved the Standard for Headship on or after 1 August 2020, Scottish Ministers could consider action under section 70 of the Education (Scotland) Act 1980. Section 70 applies where Scottish Ministers are satisfied that a local authority, the managers of a grant-aided school or other persons have failed to discharge a duty imposed on them by or for the purposes of the 1980 Act or any other enactment relating to education.”

Consultations

10. A public consultation took place from December 2016 to March 2017 (<https://www.gov.scot/Resource/0051/00511400.pdf>) and received 42 responses. The Scottish Government response was published in April 2017 and can be viewed at <https://www.gov.scot/publications/consultation-draft-head-teacher-education-training-standards-scotland-regulations/>.
11. Two aspects of the Regulations were changed following this consultation, namely the implementation date (which was moved from August 2019 to August 2020) and the length of time for an exemption to apply to a temporary position (which was extended from 24 months to 30 months).

Impact Assessments

12. The Scottish Government conducted a [Business Regulatory Impact Assessment \(BRIA\)](#) for this SSI. The BRIA noted that:

“The costs of introducing this legislation will primarily fall upon the Scottish Government. The Into Headship programme is currently fully funded by the Scottish Government. The current cost to the Scottish Government is £3,066 per

participant in fees and administrative costs incurred by Education Scotland in the region of £95,000 per annum. It is not anticipated that the introduction of the Regulations would incur any additional expenditure beyond that already committed.”

13. This is reflected in the Policy Note, which states:

“The Into Headship programme has been available since 2015 with local authorities and possibly the managers of grant-aided schools already budgeting for participants which will include costs associated with participants requiring some release from class duties and the provision of mentors to support aspirant headteachers. Therefore, we would not anticipate any additional financial requirements on local authorities or grant-aided schools as a result of the introduction of the legislative requirements.”

14. The [Equality Impact Assessment](#) for the SSI also picks up on the issue of who would bear the costs of the Into Headship Programme, as well as the challenges associated with recruitment and retention of headteachers:

“Throughout the development of the regulations work has been ongoing to address the challenges associated with recruitment and retention of headteachers. On 1 November 2018 the Scottish Government published the report from the Headteacher Recruitment Working Group which was set up in 2016 to explore concerns relating to the recruitment and retention of headteachers. The report sets out a series of recommendations for employers, Scottish Government, Education Scotland and other bodies. These include

- o Scottish Government and Education Scotland should provide annual data packs for local authorities to support local and regional succession planning;

- o Local authorities should identify appropriate numbers of aspiring heads to take part in Into Headship programme and ensure a good supply to meet local needs; and

- o Local authorities should work with headteachers to test and evaluate improvements to local working practices to tackle bureaucracy.”

Conclusion

The Committee is invited to take evidence on the Regulations from the Cabinet Secretary. The Cabinet Secretary will then move a motion formally seeking the Committee’s recommendation that the Regulations be approved.

Annexe: Procedure for scrutiny of affirmative instruments

An affirmative instrument is scrutinised in a subject committee under two separate agenda items. The first item involves the relevant Minister speaking to the instrument to explain its purpose and then questions are invited from Committee members. The purpose of this item is to allow members to ask questions of clarification on the instrument. Government officials attend with the Minister and are able to contribute under this item.

The second agenda item is the formal debate on the instrument and it commences with the Minister moving a motion that states that the Committee should approve the instrument. Members are then invited to make contributions and the Minister responds to these questions/points.

The Convener then puts the question on the instrument which can be agreed with or without division.

A flow chart on how the Committee's scrutiny fits into the overall scrutiny process for affirmatives is available [here](#)

Education and Skills Committee Subject Choices Wednesday 29 May 2019

INTRODUCTION

The purpose of this paper is to brief the Committee on the seventh and final formal meeting of the Committee's inquiry into subject choices. The Committee took evidence from: Education Scotland and representatives from the further and higher education sectors on [3 April 2019](#); academics and the Royal Society of Edinburgh on [24 April 2019](#); parents' representatives on [1 May 2019](#); from teaching representatives on [8 May 2019](#); local authorities on [15 May 2019](#); and the SQA on [22 May 2019](#).

The Committee has also undertaken a number of strands of work outwith formal meetings and the call for written evidence, including focus groups and surveys. All of the submissions and details of the range of work the Committee has undertaken on this inquiry can be found on [the Committee's website](#).

This week, the Committee will hear from the Cabinet Secretary for Education.

As usual, the paper highlights possible themes Committee may wish to explore. These themes are reflective of the evidence the Committee has heard during the course of the inquiry. In addition, the Committee agreed to undertake budget scrutiny during every inquiry throughout the year; the final theme reflects this by focusing on accountability and measuring outcomes.

THEME 1: DEVELOPMENT AND INITIAL DELIVERY OF SENIOR PHASE AND NATIONAL QUALIFICATIONS

One of the themes of the Committee's work has been the rationale and process for the development of the structure of secondary education within the Curriculum for Excellence (CfE). Particularly the 3-3 structure and the introduction of new National Qualifications (NQs).

Professor Scott argued in a paper published in March 2018¹ that the change to the structure of secondary education was implemented without adequate consultation. He also argued that while the 3-15 curriculum was subject of a great deal of work during the development of CfE, the Senior Phase was left to the SQA which he pointed out is "a qualifications body rather than a curricular agency".(p4) In evidence to the Committee, Professor Scott suggested that the rationale for extending the early secondary from 2 years to 3 years has not been set out.² The Committee was told by Connect and the NPFS

¹ Scott J (2018) [Curriculum for Excellence and the Early / Middle Secondary Curriculum in Scotland: Lessons Learned or Forgotten](#)

² [Official Report, 24 April 2019](#), Col 36

on 1 May 2019 that there was little meaningful consultation with them about the structure of secondary education.³

Larry Flanagan told the Committee—

“All the professional associations in the consultation on the new qualifications advocated retaining, upgrading and refreshing standard grades, but that was not among the options, so we moved to a new qualifications system.”⁴

Mr Flanagan did not, however, advocate a return to Standard Grades.

The CfE Management Board, which monitored and took forward the development and implementation of CFE. Published minutes of the CfE Management Board indicate that there was early work undertaken to explain the new system, including aspects of its flexibility and developing links with colleges and other institutions.⁵ During one meeting on [21 January 2013](#), the minute says—

“The main risk was the nature of the new Senior Phase and Broad General Education Curricular models. Here the Implementation Board was keen to closely monitor models emerging and take direct action where needed, for example in Aberdeenshire. They [sic] also want to keep an eye on the variety of models emerging and want to share emerging examples and ideas.”

A theme of the evidence the Committee taken has been a desire to focus on individuals’ learner journeys leading to the best qualifications on leaving school, rather than repeating subjects over several levels. Education Scotland expressed concern that too many schools have “a focus on a one-year qualifications ladder and a drive to the next batch of national qualifications, highers and advanced highers”.⁶

Dr Britton argued that the implementation of Senior Phase came at a time when there has been an “evisceration of support at the local authority level”⁷ and the capacity for local authorities to interpret, cascade and feedback on national policy has “largely gone”⁸. Larry Flanagan argued that the new qualifications were introduced before schools were ready to embrace a change in approach. Consequently, the focus on delivery initially was to prevent harm to the first cohort of young people taking the new NQs. He said—

“Our whole system was geared towards pupils achieving qualifications. When we switched to a new system, we literally went from the new qualifications arriving in school post-Easter to implementation in August. No one spent any time discussing with schools what the change was, so the whole focus of schools was on how to minimise the required change in order to deliver the new qualifications and ensure that pupils were not disadvantaged by being the first cohort.”⁹

Marjorie Kerr, President of the Scottish Association of Geography Teachers, told the Committee that the way CfE was implemented caused issues. She said—

³ [Official Report 1 May 2019](#), Cols 1 & 2

⁴ [Official Report, 8 May 2019](#), Col 5

⁵ E.g. [Minute of 19 May 2011](#)

⁶ [Official Report 3 April 2019](#), Col 3

⁷ [Official Report, 24 April 2019](#), Col 24

⁸ [Official Report, 24 April 2019](#), Col 20

⁹ [Official Report, 8 May 2019](#), Col 20

“The whole thing about the BGE and senior phase is that they were done the wrong way round. People thought it was a good idea to start in S1 and change the curriculum up the way, but that meant that we were changing things for first, second and third year before we knew what the new qualifications were going to be, so people did not really know what was ahead.”¹⁰

There have been concerns raised that BGE is not dovetailing with Senior Phase. Dr Brown, the Chief Executive of the SQA, told the Committee that the SQA has undertaken research into this area and has seen evidence of improvement.¹¹ Gerry Lyons from ADES told the Committee on 15 May—

“There is an iterative element to the issue. Such a disconnect might have been in place three, four or five years ago, but I suggest that it has lessened as we have come to understand the senior phase better and schools have engaged with the learner journey more effectively. That is as it should be, because one of the design principles of curriculum for excellence was progression. We were charged with planning a progressive education for young people from the ages of three to 18.”¹²

Education Scotland agreed that there is still room for improvement in fulfilling the aims of CfE. Its supplementary submission stated—

“Curriculum for Excellence was designed to enable the education system, and the children and young people within it, to adapt to a rapidly changing world. Our inspection evidence, including the recent National Thematic Inspection of Empowerment for Curriculum Leadership, which we shared with the Committee in advance of our appearance, evidences both progress and the fact that there is still untapped potential in CfE to continue to adapt in meeting young people’s needs. There is still work to do in achieving the full aspirations of CfE for all our young people.”

The National 4 qualification has been subject of debate for some time and was considered by the Scottish Government’s Curriculum and Assessment Board. The Cabinet Secretary for Education and Skills wrote to the Committee on 31 October 2018. In this letter, he told the Committee of the decision to withdraw the Recognising Positive Achievement fall-back option between National 5 and National 4 and said—

“With no clear consensus on redesigning the National 4 qualification, I am clear that attention should instead be focussed on improving the perceptions and currency of National 4 among learners, teachers, parents and employers, and within the context of a wider range of pathways available to learners.”

The SQA told the Committee that research it had commissioned research into the credibility of the National 4 qualification. This found that 18% of young people who felt National 4 has low credibility, the figure for teachers was 37% and for employers it was 15%. The SQA also told the Committee that the reason National 3 and National 4 did not have an external exam is to ensure equity as “young people at that level often do not do particularly well in external exams”; the SQA also noted that other qualifications such as HNCs and HNDs do not require external exams.¹³

¹⁰ [Official Report, 8 May 2019](#), Col 12

¹¹ [Official report 22 May 2019](#), Col 13.

¹² [Official Report 15 May 2019](#), Col 7

¹³ [Official report 22 May 2019](#), Cols 31 and 32

The Committee may wish to explore with the Cabinet Secretary:

- **The rationale for a 3-3 structure and how well this was understood by local authorities, schools, teachers and parents at introduction. Is there a better understanding of the reasons for a 3-3 approach now?**
- **To what degree issues raised during this inquiry are due to a new system bedding in. Was there enough support to schools during implementation and what lessons have been learned in terms of implementing other wide-ranging education reforms.**
- **Whether the resulting annual presentation patterns in S4, S5 and S6 was anticipated.**
- **Whether the introduction of new National Qualifications reflected an expected change in pedagogical approach in schools. Has this taken place?**
- **What the Scottish Government has done to track how well learning and teaching in BGE supports transitions into Senior Phase. What is the Scottish Government doing to ensure that the transition is as smooth as possible.**
- **How the Scottish Government is improving the perceptions and currency of National 4 among learners, teachers, parents and employers.**

THEME 2: CURRICULUM STRUCTURE IN SENIOR PHASE

The early part of the Committee's inquiry focused on the number of subjects taken in S4. The Committee heard evidence that the number of options has reduced from around 8 over S3 and S4, prior to the introduction of the new NQs. Professor Scott provided the Committee details of his research which showed that this year around 50% of schools offered six choices (including Maths and English) in S4, around 40% offered seven choices and around 10% offered eight. William Hardie from the Royal Society of Edinburgh told the Committee—

“It is clear from the research and other work that has been carried out that the reduction in course choices in secondary 4 is an unintended consequence of fitting in the 160 hours of learning for national qualifications in a single year. A key issue is the point at which students can begin to prepare for qualifications—that is about the extent to which the broad general education phase can be used to prepare for qualifications. No policy intention to reduce subject choice is stated anywhere: it is an unintended consequence.”¹⁴

The pressure on timetables of allocating 160 notional hours of learning for each subject in a single year has been the main factor identified in reducing the number of subjects an individual can take in S4. Education Scotland stated that learning earlier in a young person's schooling could count towards these notional learning hours and appeared to argue that 160 hours includes self-directed learning.¹⁵ However, the SQA's submission stated that its calculation of 160 hours is the directed learning time of a course totalling 240 hours and that a learner should be able to cope with the level and demand of the

¹⁴ [Official Report, 24 April 2019](#), Col 1

¹⁵ [Official Report 3 April 2019](#), Col 5

qualification and Dr Brown said “there can be misinterpretations of what we are trying to do”¹⁶. In terms of a learner’s starting point to take a qualification, the SQA’s submission stated—

“Learners taking a National 4 or a National 5 course, should have achieved Curriculum level 3 or 4 respectively of the broad general education (BGE), at the end of S3. When and how a learner achieves these curriculum levels, is a matter for individual schools.”

The policy intention is that Senior Phase be considered as a three-year phase, with young people working towards building a “portfolio of qualifications”. The Scottish Government’s preferred measures are attainment at the point of leaving school and Education Scotland’s supplementary submission stated—

“It remains Education Scotland’s position that the number of subject choices taken at S4 needs to be considered in the wider context of the three-year senior phase offer from each school and its partners.”

Janet Brown argued that Senior Phase should not just be thought of as what happens at school, but rather the learning and training between 16 and 18, whether that be in a college or in-work training.¹⁷ Larry Flanagan told the Committee—

“At the point where subject choice is supposed to happen, there is supposed to be an S3 profile. That area was hugely contested when CFE was being developed; in fact, some people had never heard of it. However, it is supposed to set out a three-year pathway for a young person at age 15, whether or not that young person is leaving school; in other words, schools are responsible for having a pathway for young people up to the age of 18.”¹⁸

Some commentators nonetheless argue that number of subject choices at S4 remains important as there is a risk of narrowing learning too early. Furthermore, the choices at S4 can be a strong factor in the choice of courses in S5 and beyond; this choice can be particularly narrowed for those that take 6 choices or fewer and do not pass all of them. Around 10% of pupils leave after or during S4. Linda O’Neil from CELCIS told the committee that—

“Around 72 per cent of children who are looked after leave school at the statutory school-leaving age.”¹⁹

The proportion of young people staying at school past S4 is increasing. The attrition between S4 and S5 has halved in the last 10 years and now a little less than 90% of pupils stay on to S5. The attrition between S4 and S6 is higher but this too has reduced over the past decade, from over 55% to less than 40%; that is, over 60% of S4 pupils in 2016 started S6 in 2018.²⁰

One concern that has been raised is that the number of subject choices and the subjects available can be linked to the community the school serves. Another way to look at this is

¹⁶ [Official report 22 May 2019](#), Col 20

¹⁷ [Official report 22 May 2019](#), Col 23

¹⁸ [Official Report, 8 May 2019](#), Col 7

¹⁹ [Official Report 1 May 2019](#), Col 14

²⁰ Statistics based on Pupil Census. This takes a snapshot of pupil numbers in September.

that the curriculum offer reflects the needs of the community and this has been highlighted as a strength of the Senior Phase. Vincent Doherty from Aberdeenshire Council said—

“The attainment profile and the educational experience must fit their aspirations and the aspirations of their parents ... You will find pupils in Banchory and Aboyne in Aberdeenshire who do more qualifications in S4—which is perfectly correct; so they should—and who may be more suited to the approach [taken in East Renfrewshire where there are typically eight subject choices in S4], so there is that variety. My point is that that variety and flexibility can be better catered for in the senior phase and with the broad general education set-up that is set out in curriculum for excellence.”²¹

A number of the representatives of local government argued that schools should develop individual learner journeys through Senior Phase. Dr Brown, from the SQA, suggested that Senior Phase should be child-centred, albeit the SQA also conceded that in practice the individualised offer will be constrained by what the school can offer.

South Lanarkshire Council’s submission stated that “the range of choices in schools and the pathways available are developed as a balance between the needs of young people and availability of resources to deliver them.” It also highlighted the use of colleges and consortia arrangements as a way to enhance the offer by “pooling resources”. It continued—

“It is recognised that factors such as school size, location, demography and the local employment market can impact on the demand for particular courses/programmes and each school is able to offer a curriculum that reflects its own context. It is recognised that this can cause specific challenges for smaller schools and for rural schools, as has always been the case.”

Aberdeenshire Council also noted that school size can impact on the range of subjects offered and that rurality can make collaboration with colleges or other schools impractical. Aberdeenshire Council noted that some schools are sharing teaching staff, but nonetheless it said “staffing, to a large extent, influences what can or cannot be offered”. Education Scotland’s supplementary submission supports this; it said—

“We also found that schools, particularly in rural areas outside the central belt, continue to find it difficult to recruit teachers. Whilst we do see schools taking creative solutions to their position, very successfully, this situation does sometimes limit opportunities to lead extensive curriculum improvements, and in some instances provide a local curriculum which fully meets the needs of children and young people.”

The Committee has also received evidence that suggests that the levels of deprivation of the area a school serves is a factor in the subjects available at Higher level. A submission from Professor Catriona Paisey and Professor Georgios Panos, from University of Glasgow, focused on the uptake of business-related subjects. Their submission said—

“We were concerned to see that whilst schools in all areas tended to offer subjects at lower levels, by the time students had reached Higher level, there was evidence that Accounting and especially Economics were being delivered mainly in affluent areas (as measured by [SIMD]) and in the independent school sector.”

²¹ Official Report, 15 May 2019, Col 20

In its call for views, the Committee asked whether there had been a fall in uptake of any particular subjects. A number of subjects were highlighted by respondents, including Art, Drama, Music, Languages (including Gaelic and Gàidhlig), technical subjects and geography.

The SQA's submission showed that entries to Languages at SCQF level 5 have fallen 18% since 2014 (compared to a fall of 9% across all entries at level 5 in that time). The Scottish Council of Deans Modern Languages Subgroup argued in its submission that an unintended consequence of the reduction of subjects taken in S4 was that schools have made the study of languages "non-compulsory". Gerry Lyons from ADES argued that the reduction in modern languages has stemmed from it no longer being compulsory in schools. He said—

"It was inevitable that, when that became no longer compulsory, there would be a reduction in young people taking up a modern language ... However, the feedback from my modern languages colleagues was that we have most success when we can develop a passion for languages and a curriculum for young people that allows them to see the relevance and meaning of studying a language and what it can do for them."²²

The Committee may wish to explore with the Cabinet Secretary:

- **The Scottish Government's view on around half of Scotland's schools offering six choices in S4.**
- **Should there be a minimum number of subject choices offered in S4 and core subjects that are available to all?**
- **The impact of having six choices in S4 on young people who leave in S4 and future choices of those that stay on in school.**
- **How, in practice, a school plans a three-year Senior Phase with young people and parents which may include moving to college or into an apprenticeship.**
- **Whether there is a balance between offering a curriculum which reflects the needs and aspirations of the community the school serves and consistency of opportunities for all young people.**
- **How rurality, size of school, location and demography affect a school's offer in Senior Phase and opportunities to collaborate with other schools and colleges. What implications does this have for policy and resourcing at a national level?**
- **The Cabinet Secretary's views on the decline in uptake of certain subjects. Whether the Scottish Government has a role in supporting uptake in those subjects and, if so, what steps it is taking.**
- **How issues with teacher recruitment can impact on subject choices. The Committee may wish to seek an update on the work Scottish Government undertaking to address this.**

²² [Official Report 15 May 2019](#), Col 8

THEME 3: CURRENT PRACTICE AND ACHIEVING THE AIMS OF CURRICULUM FOR EXCELLENCE

One of the issues the Committee has explored is the change in approach to upper secondary and the purpose of Senior Phase. [Building the Curriculum 3](#) set out the aims for Senior Phase within a 3-3 structure. It said—

“All young people in Scotland have an entitlement to a senior phase of education which:

- provides specialisation, depth and rigour
- prepares them well for achieving qualifications to the highest level of which they are capable
- continues to develop skills for learning, skills for life and skills for work
- continues to provide a range of activities which develop the four capacities
- supports them to achieve a positive and sustained destination.”

Larry Flannagan from the EIS identified three aims of CfE and the Senior Phase as being: maintaining breadth of learning; depth of learning; and parity of esteem between vocational and academic learning.²³ Local authority representatives told the Committee on 15 May that the Senior Phase is within the 3-18 curriculum and provides opportunities for individuals to specialise and gain accreditation for their learning. A particular focus was placed on the Developing Scotland’s Young Workforce and helping the young person to reach their own positive destination through an individualised learner journey. Gerry Lyons, representing ADES, told the Committee that while there had previously been issues with communication around the Senior Phase, there is now greater clarity which has been reached through experience and collaborative efforts across the system.²⁴

Larry Flanagan told the Committee that one of the aims of Senior Phase was to move away from a narrow focus on simply passing exams.²⁵ However, he suggested that this has not happened in practice; he said—

“If an N5 class is doing a course in one year, then you have the two-term dash to N5 that we used to criticise around higher. Getting through the course content in a single year is a significant challenge for teachers and pupils. Teachers start not teaching to the test, but they do focus on the assessment, because if those kids spend a year in your class and none of them pass their N5, somebody will chap your door and ask what is going on.”

The Committee undertook a survey of secondary schools in Scotland and asked about breadth and depth.²⁶ Overall respondents were positive about the impact of Senior Phase on pupils’ depth of learning. 66% said that the impact was either positive or somewhat

²³ [Official report 8 May 2019](#), Col 4

²⁴ [Official Report 15 May 2019](#), Cols 24-25

²⁵ [Official report 8 May 2019](#), Col 14

²⁶ Breadth and depth were defined in this question as follows: depth as being the highest qualification gained and breadth being the number of subjects.

positive, while only 8% responded that the impact was either negative or somewhat negative. 22% thought Senior Phase had not impacted on depth.

There was a mixed response to the question on breadth, with 34% answering that the impact of Senior Phase had been negative or somewhat negative, 27% said there had been no impact, and 38% had said there had been a somewhat positive or positive impact. Comments of those who said that breadth had been negatively or somewhat negatively impacted tended to focus on the narrowing of choice in S4. The comments of those that said that breadth had been impacted positively or somewhat positively tended to: highlight the full 3-year experience; say that the range of courses is greater (e.g. more vocational options); and say that there are greater opportunities for partnership with colleges, other schools and HEIs.

Broadening the offer beyond traditional subjects and utilising college partnerships has been a theme of evidence the Committee has received. Mark Ratter from East Renfrewshire told the Committee—

“One key change that we can see is the focus on developing the young workforce. In the senior phase, the partnerships with our colleges, universities and employers give a far greater choice. In our high schools, our fifth and sixth years have a choice of more than 130 courses that they can take. Some of those will take place in the school—traditional highers, advanced highers and national 5s—but alongside that is a huge range of courses from level 1 to level 8 of the Scottish credit and qualifications framework, which they can access in partnership with the colleges. That provides the opportunity to make sure that we are meeting all the learners’ needs.”²⁷

In order to facilitate collaboration some areas and schools have introduced travel columns²⁸ and Angus Council’s submission said—

“All 8 secondary schools use a similar curriculum structure and this has been negotiated and agreed with Dundee and Angus College to ensure alignment to courses offered in partnership with further education.”

The Scottish Government’s November 2018 letter of guidance to the SFC on outcome agreements covers the collaboration between colleges and education authorities in the context of Developing the Young Workforce and vocational learning. It says—

“I look to the SFC to actively engage with Directors of Education, the new Regional Improvement Collaboratives and the DYW Regional Employer Groups to support the continued expansion of planned vocational pathways from school through college, universities and employment”²⁹

Colleges can offer more traditional subject courses.³⁰ Colleges involvement in supporting these courses has not been explored by the Committee.

The Committee has heard that one way to protect an 8-column approach is to offer two-year courses, either commencing learning in S3 and typically leading to a National 4 or 5 at

²⁷ [Official Report 15 May 2019](#), Col 4

²⁸ Eg City of Edinburgh Council.

²⁹ Letter from Richard Lochhead MSP, Minister for Further Education, Higher Education and Science to the SFC, 14 November 2018.

³⁰ E.g. See the NQs offered by [NESCOL](#)

the end of S4 or starting in S4 and typically leading to a Higher or National 5 at the end of S5. It appeared that schools in East Renfrewshire tended to take the former approach (S3 and S4) and the Committee has heard that some schools in Glasgow have the option of 2-year courses in S4 and S5.

The Committee has also heard that multi-level teaching has become more prevalent than in the past. This may also be a result of teachers and schools providing choices for young people where there are too few pupils choosing a subject at a single level to be able to sustainably run the course. Dr Janet Brown told the Committee that it is likely that an increasing prevalence of multi-level teaching was not foreseen and possible was a result of the “environment in which curriculum for excellence was introduced.”³¹

Multi-level teaching can present pedagogical challenges. Tony McDaid from South Lanarkshire Council told the Committee on 15 May that where courses are very content- or knowledge-driven it can be more challenging to teach multi-level groups, especially if the content between course levels is different.³² The Royal Society of Edinburgh argued that multi-level teaching is problematic in the sciences; William Hardie from the RSE said—

“Although courses might have similar titles, the National 4 course in physics, for example, will be very different from the National 5 course, but they will often be taught together. It can affect the quality of the teaching if a teacher has to teach quite different classes together, and that can be exacerbated by having national 4, national 5 and higher pupils in the same classes.”³³

Education Scotland, the SQA and the EIS all expressed an aspiration that pupils should not, as a rule, take qualifications in the same subject at different levels. For example, this could be achieved through two-year Highers or by presenting a very able pupil for a Higher in S4. Tony McDaid set out some of the challenges to this approach—

“We have not really cracked the issue of a pupil bypassing the national 5 qualification, which has been part of the committee’s conversations, but there can be merit in doing so. At the moment, parents are understandably reluctant about it and we have not convinced them that taking away that assessment burden would be in pupils’ best interests. Therefore, we have to be quite robust in how we monitor and track the situation. For some young people, if we double the amount of time, we would halve their pace of learning, so there are pros and cons. For some pupils, we need to have the flexibility of the one-year activity, but for other young people it would be completely appropriate to take away the national 5 assessment, because we can see that they are higher candidates. We need to be as flexible as possible, but we have probably not cracked that yet.”³⁴

The Committee may wish to explore with the Cabinet Secretary:

- **Whether there is a clear understanding of the purpose of Senior Phase across the system.**

³¹ [Official Report 22 May 2019](#), Col 32

³² [Official Report 15 May 2019](#), Col 27

³³ [Official report 24 April 2019](#), Col 10

³⁴ [Official Report 15 May 2019](#), Col 20

- **Whether the Senior Phase has delivered on the aspirations set out in Building the Curriculum 3, particularly in terms of delivering a broad and deep education and parity of esteem between vocational and academic learning.**
- **How the Scottish Government is supporting schools to offer diverse learner journeys in Senior Phase, particularly how to support schools in rural areas with less access to consortia arrangements and collaboration with colleges.**
- **Whether there is scope for colleges to fill gaps in provision of more traditional courses, for example where up-take is low in individual schools or at Advanced Higher level.**
- **The Scottish Government’s view on multi-level teaching and if there are some subjects in which multi-level teaching should be discouraged.**
- **Whether the Scottish Government tracks and assesses the outcomes of young people who take 2-year courses.**

THEME 4: PARENTS AND CHOOSING SUBJECTS

The Committee has taken evidence on parents’ role in shaping the Senior Phase offer and their understanding of the current school system.

Joanna Murphy from NPFS told the Committee that—

“Across the board, parents are not involved enough in subject choices or the overall curricular development of the school, and they are not involved enough in their own children’s choices.”³⁵

Larry Flanagan noted that, in his experience at Hillhead, he would need to explain innovative two-year pathways to parents to ensure buy-in. Joanna Murphy told the Committee that it can be “difficult for parents to understand the differences [from their own experience of school] and see the benefits”.³⁶ Ms Murphy also stated that parents are not informed about the changing approach to school education. She said—

“Across the curriculum, parents’ experience is that they do not know what is happening, so they do not understand how it works. They do not know whether it is good or bad—they just do not know about it at all.”³⁷

On 24 April 2019, Professor Scott told the Committee that there is little evidence of Parent Councils being involved in decisions to do with the curriculum. Professor Scott also said that the courses available at different stages as well as the achievement attained was difficult to find at a school level, meaning that parents and prospective parents may be left with insufficient information to influence the school’s approach or indeed choose which school would be best suited to their child’s needs.³⁸

Pauline Stephen from Angus Council told the Committee that—

³⁵ [Official Report 1 May 2019](#), Col 18

³⁶ [Official Report 1 May 2019](#), Col 3

³⁷ [Official Report 1 May 2019](#), Col 2

³⁸ [Official Report 24 April 2019](#), Col 17 & 18

“One of our biggest challenges is communicating with parents about all the options that are available to our young people and enabling our young people to explain to their parents what their choices are, what the implications of those choices might be and where they might lead next. We could perhaps work together nationally to look at how to make that clearer and more accessible, so that families understand the range of choices for youngsters. That would benefit from a closer look.”³⁹

Gerry Lyons suggested that parents should be encouraged “to come into schools and have conversations not about the generality, but about the child and how we can best meet their aspirations and hopes”.⁴⁰ He also suggested that using young people’s experiences of different routes through Senior Phase could powerfully illustrate the options available to parents.⁴¹

Both Connect and NPFS raised concerns of parents on the use of column choices, which create clashes and may prevent a young person from choosing two subjects that are listed in the same timetable column. Connect’s submission stated—

“The traditional ‘column’ approach to subject choices has always caused issues for young people. At Connect we have long argued for a more creative and flexible approach – one which matches the promise of Curriculum for Excellence. There are examples of different approaches which work, such as Preston Lodge High School in East Lothian which has moved away from the column structure and instead pupils are free to select their choices and rate them by preference. Subject teaching is then matched to demand and a flexible approach adopted to class and year structures so that different levels may be taught together, with young people from different year groups.”

The Committee’s survey of parents, which received 375 responses, also found that the timetabling of subjects, in particular use of the columns system, was the most frequently cited cause of a child not being able to take all the subjects they wished to study. Gerry Lyons from ADES told the Committee—

“More schools are looking at different timetabling models. Using columns is inevitable in order to get everyone into a timetable. However, more schools are starting the process with a free-choice exercise, in which young people are asked to pick their best subjects on the basis of their tracking. I always asked young people to start with their destination, pick the subjects that they need for it, then the subjects that they are best at, then the subjects that they enjoy. That is a positive starting point for the discussion, and the columns are constructed on that basis. Starting with everyone having to fit into the columns leads to empty-column syndrome.”⁴²

The “empty-column syndrome” which Mr Lyons referred to is where a student has to take a subject she does not wish to do to fill a column choice. This is an issue that was raised by a number of respondents and was highlighted in the Committee’s surveys. Analysis of the survey of parents found that the study of a subject their children were not interested in was associated by some respondents with a subsequent lack motivation, or unwillingness attend school.

³⁹ [Official Report 15 May 2019](#), Cols 4 & 5

⁴⁰ [Official Report 15 May 2019](#), Col 14

⁴¹ [Official Report 15 May 2019](#), Col 21

⁴² [Official Report 15 May 2019](#), Cols 15-16

The Committee may wish to explore with the Cabinet Secretary:

- **How the Scottish Government ensures that parents and Parent Councils are fully involved in decisions on the curriculum offer in secondary schools.**
- **The Scottish Government approach to ensuring that parents understand the changing landscape of options during Senior Phase.**
- **How the Scottish Government is supporting freedom of choice for young people taking subjects. To what degree choice in Senior Phase should be constrained, for example by a focus on core skills or the administration of time-tables.**

THEME 5: ACCOUNTABILITY, SUPPORT AND DATA

In some areas, the number of options available in S4 is mandated by local authorities while in others, it is the school that decides. However, in most cases there appears to be some local autonomy or variation at a school level of what is offered to pupils. For Example, Aberdeenshire Council's submission stated—

“Schools have the freedom to design the curriculum to suit the needs of their pupils. Authority guidelines were produced and agreed by Head Teachers, but within these there is flexibility to tailor the offer to the community the school serves.”

While schools have autonomy, the extent to which this is constrained by local authority agreements may differ. For example, this could be in terms of the numbers of subjects offered in S4, or common timetables to support collaboration with colleges and others. A recent '[Think Piece](#)' published by ADES reflecting on education reforms argued that the education system should seek to develop “collective responsibility” rather than “individual accountability”, in other words there should be a shared responsibility for decisions which are made collectively which, it is argued, will promote a culture of improvement. Dr Britton told the Committee on 24 April—

“There has always been a tension between autonomy and central control. The quite profound backdrop to everything that has been happening is that we are still unclear about who owns the curriculum and, therefore, about who owns responsibility for the outcomes.”⁴³

In his submission, Professor Scott questioned whether there is sufficient expertise at a school level to support decision making on curricular design. He said—

“Those whose role is to provide each individual learner with appropriate learning experiences (e.g. schools, colleges, universities), must therefore be cognisant of the hierarchy of needs [of the learner, their family, and wider society] and must find means of incorporating this in their curricular structures, qualifications presentation policies and support mechanisms. This is not a simple task. It is further complicated by the fact that not all headteachers or other school curricular managers have the same background or expertise in the development of curricular structures, or of the theoretical and practical factors which influence such structures.”

⁴³ [Official Report 24 April 2019](#), Col 6

Dr Britton commented on the evidence and information available to schools in making these decisions. He said—

“We have very little research evidence about the impact of the different models. Schools have been left to try things out, almost certainly based on sound local judgment, but there is very little evidence. We need to have all those things in place to arrive at a solution.”⁴⁴

Witnesses told the Committee on 24 April 2019 that there was a lack of exemplification and guidance from Education Scotland during the introduction of Senior Phase. Gerry Lyons conceded that “some things were not as clear as they could have been” although the picture has improved.⁴⁵ Gayle Gorman, the Chief Executive of Education Scotland, set out the role of her organisation, she said—

“We work with Scotland’s educators, for Scotland’s young people. We are there to develop good practice, evaluate impact on the system, share evidence-based research and ensure that we are creating a network that establishes a professional learning community across Scotland. Especially in a changing, evolving and empowered system, it is critical that that role is about facilitation, celebration of best practice and identifying the challenge where we see ineffective practice and ensuring that our system addresses it.”⁴⁶

During this inquiry the Committee has taken drawn on a number of sources of data. The SQA’s submission provides a useful overview of attainment and entries over time. The SQA’s data is shared with the Scottish Government⁴⁷ however it covers only SQA courses. Both the SQA and the SCQF noted that the Scottish Government’s Insight tool will have information on a broader set of qualifications. Dr Stewart from the SQA told the Committee that—

“The insight tool provides a broader set of measures for schools to look at, such as the positive destination measure for school leavers; measures on literacy and numeracy, which have improved; and measures on the highest SCQF level achieved, which relate not just to SQA qualifications but to other qualifications, such as those from ASDAN, the Duke of Edinburgh’s Award and the Prince’s Trust. The Scottish Government has all that data at the national level, and schools have it locally. Schools can try different approaches for different groups of young people to see what their impact is. Schools must look at what works for young people.”⁴⁸

In the context of whether the SQA’s data could be used to support analysis of outcomes of different curricular models, Dr Brown told the Committee—

“We have data on the attainment based on an entry at a particular time. We know the age and stage of the individual but we do not know the curriculum model that they have undertaken. Our data can be used by local authorities and individual schools that know what their curriculum model is. They can see whether a change in their curriculum model has had a positive or negative impact on their students’

⁴⁴ [Official Report 24 April 2019](#), Col 10

⁴⁵ [Official Report 15 May 2019](#), Col 26

⁴⁶ [Official report 3 April 2019](#), Cols 7 and 8

⁴⁷ Personal communication with the SQA.

⁴⁸ [Official Report 22 May 2019](#), Col 27

attainment. We do not have that curriculum model information, so we cannot do that analysis.”⁴⁹

The SQA publishes data at a local authority level. Each centre (school, college etc) has a unique code and the SQA data can also be used to track individuals over time. It would therefore appear possible that SQA or Insight data could be used alongside the data of schools’ curriculum models to research the outcomes for young people under different curricular models.

The Scottish Government’s preferred measures of attainment in upper secondary are school leaver statistics (and participation). In terms of measuring the attainment gap, the indicators used in the National Improvement Framework are the percentage of young people leaving school with at least one qualification at SCQF levels 4, 5 and 6⁵⁰.

Previous briefing papers set out national trends of leavers’ attainment which, on several measures, show improvement over time.⁵¹ One exception noted in the paper is the percentage of leavers attaining 5 passes or more at SCQF Level 3 or better; this has fallen from a recent high of 94.3% in 2012/13 to 89.0% in 2017/18. The percentage of leavers not achieving at least one qualification at level 3 increased between 2012-13 and 2014-15 from 1.5% to 2.1% and the most recent figure for 2017-18 is 2.2%.⁵²

Professor Scott argued that attainment in S4 should be routinely published. He argued that data on attainment of at least 5 qualifications at levels 3, 4 and 5 would support better understanding of: learners’ journeys and attainment patterns; schools’ attainment patterns; and the impact of local authorities’ mandated curricular structures. He suggested that these should be in addition to leavers’ statistics.⁵³

As noted above, Janet Brown argued that Senior Phase is more than only the results in school and should include qualification gained in this period of a young person’s life in whatever setting they are learning (e.g. college or apprenticeship). Currently it is not possible to track a single S4 cohort’s progress to 18, as around 40% do not start S6. The comparable measure for an individual who has left school before the end of S6 would be the attainment achieved three years after starting S4.

The Committee may wish to explore with the Cabinet Secretary:

- **Whether there is a tension between schools having a flexible approach to Senior Phase and local authorities taking a common approach to curricular structures.**
- **How local communities can hold schools and local authorities accountable for curricular models where there is culture of “collective responsibility”.**
- **How Education Scotland is evaluating the different approaches to curricular design in Senior Phase and providing advice on the strengths and weaknesses of different approaches.**

⁴⁹ [Official Report 22 May 2019](#), Col 27

⁵⁰ The Scottish Government’s [School leaver attainment and initial destinations: statistics](#) focus on national qualifications and Skills for Work qualifications.

⁵¹ [Meeting papers on 1 May 2019](#), (pdf page 12 &13)

⁵² [School leaver attainment and initial destinations: statistics](#) (p13 of pdf)

⁵³ Official Report, 24 May 2019 and personal communication.

- **Whether the Scottish Government will undertake or commission research on outcomes and qualifications achieved by young people in different curriculum structures.**
- **Whether the Scottish Government should or could publish data on total attainment of individuals three years after starting S4, regardless of whether they have stayed in school to the end of S6 or not. Would this information better reflect the outcomes of Senior Phase than school leavers' data?**

Ned Sharratt
SPICe Research
23 May 2019

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

Education and Skills Committee**16th Meeting, 2019 (Session 5), Wednesday, 15th May 2019****Subject choices inquiry****Supplementary submissions****Royal Society of Edinburgh**

The Committee has received a supplementary submission from the Royal Society of Edinburgh on multi-level teaching. It consists of an article reflecting a survey from the Royal Society of Chemistry and minutes of discussions on the impact of multi-course teaching with the Scottish Government and Education Scotland in 2016.

- [Article from the Royal Society of Chemistry](#)
- [Scottish Government minutes of meeting on multi-level classes](#)

Education Scotland

The Committee sought additional information from Education Scotland following its evidence on 3 April. The Committee also offered Education Scotland opportunity to comment on the evidence to the Committee at its meeting on 24 April.

- [Additional information from Education Scotland](#)

Royal Society of Edinburgh

MULTI-LEVEL TEACHING

Scottish Government note of Meeting of 4 March 2016, Victoria Quay

[names removed by Committee clerks]

Attendees:

Education Consultant, Royal Society of Chemistry
Scottish Qualifications Authority
Institute of Physics
Institute of Physics Scotland
Scottish Qualifications Authority
Scottish Branch of the Royal Society of Biology
Three officials from Education Scotland
Two officials from Scottish Schools Education Research Centre (SSERC)
Two officials from Scottish Government, Learning Directorate

The discussion was informed by two papers: a draft “issues” paper from Education Scotland, “Multi-Level Teaching - Starter Paper” and a paper summarising the RSC survey of “Chemistry in the Senior Phase: the composition of classes in Scottish schools”.

Education Scotland

A representative from Education Scotland noted the Education Scotland paper provided a synthesis of some of the approaches taken by schools in relation to multi-level teaching. ES are encountering a wide variety of curriculum frameworks in schools, and the evidence confirms the importance of ensuring a seamless transition from the Broad General Education (BGE) into the Senior Phase. There is considerable variation in the number of periods (and of differing lengths of time) schools are allocating to the sciences. The meeting heard that it was important schools have robust and rigorous assessment in place to inform on-going monitoring and tracking, without an over-reliance on an end of topic tests. These factors would help ensure that the young peoples’ learning experiences are not fragmented.

Royal Society of Chemistry

An Education Consultant from the Royal Society of Chemistry noted the RSC Survey was triggered by traffic on the Strontium Network from teachers who expressed increasing concerns over the multi-level issue. The RSC therefore sought data on the situation at a national level. The survey had produced a good response: 259 teachers from local authority and independent schools from across Scotland participated. There was no significant evidence of any differences between rural and urban schools. The survey asked how well

Higher students' learning can be supported in the combined National 5/Higher grouping. 99.5% of teachers responded, "Not at all" or "Not very well".

Discussion

In the discussion, the following points were made:

- Intelligence from Education Scotland suggests that teachers of the science subjects have expressed concerns on the challenges associated with multi-level teaching more than in other curricular areas.
- There is a high-degree of content within the sciences qualifications compared to other subject areas. Some issues have also been identified relating to the progression of the content between different national qualification levels.
- It is understood that some teachers are already successfully delivering science courses at multi-levels. It may also be a factor that those teachers who are doing so have not highlighted the most positive aspects through the vehicle of the Learned Society forums.
- Meeting the needs of young people working towards qualifications at different levels is proving challenging for teachers. Differentiation of expected learning outcomes on courses leading to the new qualifications is not seen as similar to that in the Standard Grade courses.
- SQA is continuing to review the new qualifications, based on evidence from the first three years of implementation. This confirms the importance of effective learning within the Broad General Education.
- There is a need for a broader conversation about the BGE, the consideration of evidence-based changes to national courses and to explore general questions about the role of assessment and how it can contribute to learning and teaching from 3-18.
- SQA will continue to work with teachers to seek feedback on their experiences of delivering new National Qualifications.

The meeting heard that the Working Group on Assessment and National Courses was established in January 2016, chaired by the Minister for Learning. It consists of key education stakeholders, academics and other experts. Based on emerging evidence and experience of the operation of the new National Qualifications, it will consider and make recommendations to Ministers and Management Board on the policy framework (including design principles) within which qualifications are developed and operate; and on assessment policy and practice from age 3 to 18, and on the best means of supporting improvements.

- While Health and Safety issues are not and should not prove an impediment to multi-level teaching, they do need to be reviewed.
- Science teaching should be practically based and practical work should be encouraged and the practical skills of scientific enquiry and investigation developed.
- There are circumstances in which combining N4/5 classes in the sciences is beneficial for some pupils, peer learning can be a very positive and powerful driver.
- Schools need to be confident that they are presenting candidates for the correct level of qualification. This requires effective assessment to inform robust tracking and monitoring. It was said that multi-level teaching was being raised at parent evenings.
- Some science teachers believe they face a disproportionate assessment burden when compared with other disciplines. The Reflections Group recognised in 2014, that over-assessment across the curriculum was a challenge and that action was required to address this.
- SQA is putting in place some short-term measures that they believe will positively impact on multi-level teaching. They recognise that some longer-term work is also necessary.
- It is important that secondary teachers understand the science learning that young people have undertaken in their primary school to inform the early secondary experience and ensure that learning builds on prior attainment. This also enables them to build on the positive aspects of learning, teaching and assessment at the primary stages.
- Newly qualified teachers need support with delivery of multi-level courses and there is an on-going need for professional update.

Actions

1. Headteachers need to be made aware of the particular challenges being faced by schools in relation to multi-level teaching. School Leaders Scotland, ADES and the Scottish Council of Independent Schools are best placed to take the necessary action. Learning Directorate to engage with these bodies around this.

Education Scotland

17 May 2019

Dear Clare

Subject Choices Inquiry

Thank you for your letters of 24 and 30 April, requesting additional information and offering the opportunity to comment on the inquiry.

Curriculum for Excellence was designed to enable the education system, and the children and young people within it, to adapt to a rapidly changing world. Our inspection evidence, including the recent [National Thematic Inspection of Empowerment for Curriculum Leadership](#), which we shared with the Committee in advance of our appearance, evidences both progress and the fact that there is still untapped potential in CfE to continue to adapt in meeting young people's needs. There is still work to do in achieving the full aspirations of CfE for all our young people.

As highlighted during the Committee's sessions, we are still seeing some schools where the focus is on a one-year qualifications ladder, with a drive to the next batch of Nat 4, 5, Higher or Advanced Highers, and too often in the traditional subjects that were studied by those of previous generations but may not always be the best fit now within a 21st century skillset. Young people, preparing for a very different world of work than their parents or teachers, are telling us that there is still too much focus being placed on traditional qualifications at the expense of more innovative pathways through their final years at school, the years which are important preparation for transition into the world of work and future lives.

There is no doubt that we need to help parents, employers and many others to understand these changes and opportunities. As I said during our session, we all have a role collectively in shifting the mind-set of the education system.

Change is already happening for the better and we should acknowledge this. Our Thematic Inspection of Empowerment for Curriculum Leadership revealed that almost all headteachers and schools feel empowered to make decisions about their curriculum. Almost all are now revisiting the broad general education (BGE) to plan better aligned learning pathways between this stage of learning and the senior phase. In secondary schools, we found that teachers are concerned about the number and timing of changes to the SQA's courses over the past few sessions, which has impacted on planning for progression.

We also found that schools, particularly in rural areas outside the central belt, continue to find it difficult to recruit teachers. Whilst we do see schools taking

creative solutions to their position, very successfully, this situation does sometimes limit opportunities to lead extensive curriculum improvements, and in some instances provide a local curriculum which fully meets the needs of children and young people.

The provision of education and therefore the responsibility of employing teachers rests with local authorities. The Scottish Government and COSLA are committed to maintaining teacher numbers as set out in the local government settlement. Local authorities submit data on teacher numbers to the Scottish Government through the annual teacher and pupil census and Education Scotland accesses this data when needed as part of its ongoing work. Education Scotland does not hold data on teacher numbers and their location, or the numbers and location of bi- and tri-level classes. Neither does it have a locus in directing local authorities on the allocation of their core education funding between the schools in their areas. That is the duty of the local authority.

It remains Education Scotland's position that the number of subject choices taken at S4 needs to be considered in the wider context of the three-year senior phase offer from each school and its partners. We would refer the Committee to the points made by Mr Armstrong during the evidence session regarding how appropriate the offer is to the young people in each school with regard to the full range of subjects, qualifications and awards available. These points have also been made in evidence from members of other witness panels from which the Committee has heard since we attended on 3 April.

Looking only at the average numbers of qualifications on offer to learners over one year in any school is taking account of just one dimension of the learners' experiences. It misses the critical factor of how relevant the senior phase offer is to the young people and their needs in that school at that time, wherever that school is located. Within the design of a three-year senior phase, we would expect a school to offer the range and levels of qualifications and awards appropriate to the needs of their young people, and that may change from year to year as new groups enter the senior phase. So, in addition to the average number of qualifications on offer you also have to look at how well that offer takes account of the range of learners' needs in that school and the range of pathways available based on those needs. A school's own quality assurance arrangements should consider these aspects and of course that would include the views of learners and their parents. The local authority also has a role in supporting and quality-assuring the provision for learning in their schools.

Support and advice for quality assurance is provided through the quality indicators found in the national quality improvement framework [How Good Is Our School \(fourth edition\)](#). Quality Indicator 2.2 focuses on curriculum and describes very good provision. It highlights the importance of placing the needs of learners at the centre of curriculum design and development, and the need for the structure and delivery of the curriculum to take good account of local and national circumstances. It emphasises that the curriculum is the totality of learning experiences across the four contexts of learning, as

delivered by the school and its partners. An effective curriculum results in strong outcomes for all learners.

As part of secondary school inspections, HM Inspectors explore how the school promotes equity of achievements for all children and young people. This includes the extent to which the curriculum provides flexible learning pathways and meets the needs and aspirations of learners. Mr Armstrong referred to the evidence in reports produced by Education Scotland and also to a study being commissioned by the Scottish Government on the senior phase.

During our appearance, we discussed the creative solutions being used by schools to develop their curricula within their local contexts. Consortia arrangements are one such option. Every consortium is unique and, referring to the response that we gave at the time, members of the Committee with concerns may wish to direct specific queries to the relevant local authority which should consider equality issues when setting up its consortia arrangements. It is not Education Scotland's role to carry an equality impact assessment on a local authority decision.

Bi- and tri-level classes are another option. Education Scotland does not hold data on the numbers and location of bi- and tri-level classes in Scotland. I would refer the Committee to my comments during our appearance that 'we do not have a substantial body of evidence from our inspection of secondary schools that shows that learning in a bi-level or tri-level class is either a hindrance or a success. We inspect schools and we have a back catalogue of inspections. If such teaching came up repeatedly as a significant issue, we would of course report on that and raise it as an issue with a variety of partners and stakeholders, including policy makers.'

As stated at the Committee, parents want to listen to the voice of the local school. Parental engagement is about the local school. I know that a lot of leadership development work is happening on community links but more needs to be done. In our inspections, we have picked up on the need for some schools across Scotland to work more closely, and at an earlier stage, with parents in particular on curriculum design. We are carrying out a Thematic Review into this area, to be published in June.

We know from working with schools that, where headteachers and staff engage closely with learners, parents and the community in discussing and agreeing the rationale for their senior phase curriculum offer, there is better understanding and appreciation of the advantages of the choices available for pupils' learner pathways. Schools are best placed to engage with their community, for example to ensure that learners and their parents new to a school's senior phase offer are supported in understanding all the options and opportunities from S4 to S6.

Headteachers take responsibility for leading their schools and working with partners to develop their curriculum offer, in line with the CfE framework. Expectations for the BGE and for the senior phase are clearly articulated in [Building the Curriculum 3](#). The Committee will be aware of the OECD's advice in 2015 to revisit the advice set out in the Building the Curriculum documents in order to refresh and remind us all of the narrative and direction

of travel. That work is well underway and will be a timely and welcome focal point in the coming session for supporting further curriculum development and innovation.

The recently-published draft Headteachers' Charter for School Empowerment sets out clearly the role of headteachers, and states: 'As senior officers of the local authority, responsible for the leadership and management of the service provided to children, young people and their families, headteachers are accountable to both their employer and to their learning community for the leadership and management of education within their setting.'

It advises that in an empowered system, headteachers should lead learning communities to determine the most appropriate approach in key areas. In relation to leading learning and teaching, headteachers are advised to:

- Lead collaborative work to co-design and develop the curriculum and learner pathways, including transitions, which best meet the needs of all children and young people. This should take account of the national framework for Scotland's curriculum along with the needs of local context, as agreed between schools and the local authority.
- Lead change and improvement, making decisions in partnership with their learning community about the improvement priorities and plan for their school, reflecting and informing the local improvement plan and the National Improvement Framework.

The full version of the Headteachers' Charter can be found here:

<https://education.gov.scot/improvement/Documents/HeadteachersCharterFinal.pdf>

Education Scotland is looking forward to engaging with thousands of teachers later this year on improvement topics, with innovative curriculum design being a key aspect. Education Scotland's leadership role includes promoting and supporting collaboration and seeking and sharing good practice and innovative thinking in curriculum design and in subjects and curriculum areas. We continue the phased implementation of our re-structuring at Education Scotland, with the current focus on building our regional teams which will work alongside each Regional Improvement Collaborative, local authorities and schools in supporting improvement in education. Our mission is to work collaboratively with all stakeholders involved in Scottish education to secure sustained improvement in achievement and attainment for all learners, closing the poverty-related attainment gap and securing positive and sustained destinations for all learners regardless of their age and where the learning takes place.

Our Corporate Plan 2019-2022, Strategic Priority 1 demonstrates our commitment to a strong focus on learning, teaching and leadership. Key actions include the following.

- Develop an enhanced professional learning and leadership package to strengthen the capacity for leaders and practitioners to lead and deliver national education priorities, regardless of where the learning takes place.

- Provide practical advice and support to help leaders, practitioners, parents, carers and learners design and develop the curriculum which takes account of the needs of learners at all stages and develops their skills in learning, life and work.
- Support leaders and practitioners to develop their skills in delivering professional learning for others which is focused on the curriculum, leadership for, and of, learning, teaching and assessment within and across curriculum areas, subjects and sectors.

Central to Education Scotland's professional learning strategy is the new [national model of professional learning](#) which provides guidance on what high quality, effective professional learning looks like for education professionals. It identifies the key principles and features of professional learning and offers strategic guidance on how to support, structure and plan professional learning. The model offers a shared language and aspiration, acting as a guide for providers to help inform the nature and purpose of the professional learning offered.

With regard to inspections, HM Inspectors of Education carry out a range of scrutiny activities, including school inspections and national thematic inspections which focus on key priorities. The new enhanced role and remit of Education Scotland announced in June 2017 as part of the Governance Review - Next Steps included a strengthened inspection function. Part of the delivery of this enhanced remit has been to increase our national thematic inspections. As set out in our annual programme of inspection published in June 2018, HM Inspectors of Education are carrying out four national thematic inspections this academic year, including three national thematic inspections which focus on the following themes related to school empowerment: readiness for empowerment; curriculum leadership; parent and pupil participation. The findings of our national thematic inspection on Empowerment for Curriculum Leadership was published in March 2019.

We have a robust and rigorous recruitment process in place for all staff. Staff who are appointed as HM Inspectors of Education have significant leadership experience in education and a strong understanding of developments across all aspects of Scottish education. Having chosen to further their career by becoming HM Inspectors of Education, they make a positive contribution to improving outcomes for children and young people in schools across Scotland.

Thank you for the opportunity to expand on some of the points made during this inquiry. I will continue to follow it with interest.

Yours sincerely

Gayle Gorman
HM Chief Inspector of Education

Education and Skills Committee
18th Meeting, 2019 (Session 5), Wednesday 29 May 2019
Petition on Free Instrumental Music Services

Introduction

1. This paper invites the Committee to consider an open petition:
 - [PE01694: Free Instrumental Music Services](#)
2. The paper sets out the terms of the petition, as well as the background to its consideration and how this petition intersects with inquiry work by the Committee.

Options available to Committees considering petitions

3. Once a petition has been referred to a subject Committee it is for the Committee to decide how, or if, it wishes to take the petition forward. Among options open to the Committee are to:
 - Keep the petition open and write to the Scottish Government or other stakeholders seeking their views on what the petition is calling for, or views on further information to have emerged over the course of considering the petition;
 - Keep the petition open and take oral evidence from the petitioner, from relevant stakeholders or from the Scottish Government;
 - Keep the petition open and await the outcome of a specific piece of work, such as a consultation or piece of legislation before deciding what to do next;
 - Close the petition on the grounds that the Scottish Government has made its position clear, or that the Scottish Government has made some or all of the changes requested by the petition, or that the Committee, after due consideration, has decided it does not support the petition;
 - Close the petition on the grounds that a current consultation, call for evidence or inquiry gives the petitioner the opportunity to contribute to the policy process.
4. When closing a petition, the Committee should write to the petitioner notifying the decision and setting out its grounds for closure. Closing a petition does not preclude the Committee taking forward matters relevant or partly relevant to the petition in another way.

PE1694: Free Instrumental Music Services*Terms of the petition*

PE1694 (lodged 19 June 2018): Calling on the Scottish Parliament to urge the Scottish Government to change the law to ensure that musical instrument tuition is available as of right to all children attending state schools in Scotland who wish it, free of charge.

5. The Public Petitions Committee took evidence from the petitioner and supporters of the petition at its meeting on 13 September 2018, and agreed to write to the Scottish Government, the Musicians' Union, local authorities, COSLA and the EIS for their views, which can be read on the petition [webpage](#) along with the [SPICe briefing](#) on the petition.

Current consideration

6. This petition was referred by the Public Petitions Committee to this Committee on 22 November 2018 for consideration as part of this Committee's inquiry into music tuition in schools.
7. The petitioner [wrote](#) to the Public Petitions Committee to support referral, describing it as a "sensible way forward", and provided a [written submission](#) at the start of the Committee's inquiry which referenced his petition. The Committee also took evidence from the Scottish Government, COSLA and others to ascertain their position on instrumental music tuition.
8. This Committee's inquiry into instrumental music tuition has now concluded, and its report on instrumental music tuition in schools was [published](#) on Tuesday 22 January 2019. The Committee received responses from the [Scottish Government](#) and [COSLA](#) in respect of its recommendations, and held a [Chamber debate](#) on its report on Tuesday 30 April 2019.
9. The Committee's report recommendations included a recommendation which reflects the contents of the petition:

"The Committee respects the democratic right of local authorities to take decisions about local expenditure and acknowledge the financial choices they face. However, the Committee believes in principle that music tuition should be provided free of charge in every local authority."
10. Since the Committee last considered the petition on 23 January 2019, the petitioner has launched a [crowdfunding campaign](#) for legal action to challenge the lawfulness of charging for instrumental music tuition in schools. The campaign reached its target and has commenced legal work.
11. It would therefore be possible to close the petition given the parliamentary work which has been undertaken on the topic, the responses given by the Scottish Government and COSLA, and the legal work underway on the topic of the petition. Should the Committee choose to do so, it may wish to consider inviting the clerks to monitor the progress of the legal challenge and provide the Committee with updates whenever helpful.
- 12. The Committee is asked to consider closing its consideration of the petition on the basis that it intends to monitor the progress of the legal challenge on charging for instrumental music tuition and reserves the right to revisit this issue in its future work programme.**

Education and Skills Committee

18th Meeting, 2019 (Session 5), Wednesday 29 May 2019

PE 1692 - Inquiry into the human rights impact of GIRFEC policy and data processing

Introduction

1. PE1692 from Alison Preuss, on behalf of the Scottish Home Education Forum, and Lesley Scott, on behalf of Tymes Trust, is “Calling on the Scottish Parliament to urge the Scottish Government to initiate an independent public inquiry into the impact on human rights of the routine gathering and sharing of citizens’ personal information on which its Getting It Right For Every Child (GIRFEC) policy relies.” The petition was lodged on 13 June 2018 and considered by the Public Petitions Committee (PPC) in June and November 2018.

Background

2. The petitioners [appeared before the Public Petitions Committee](#) and made two supplementary written submissions to that Committee (see [submission 1](#) and [submission 2](#)). This, in addition to the [background summary](#) on the intention of the petition and a [SPICe paper](#) provides context for this Committee’s consideration.
3. The PPC also wrote to the Scottish Government and the Information Commissioner (ICO) on issues raised by the petitioner. Having considered the responses, the Committee agreed to refer the petition to this Committee for further consideration.
4. The central issues raised by the petitioners relate to current policy and practice under GIRFEC as opposed to the proposed legislative provisions within the Children and Young People (Information Sharing) (Scotland) Bill. During the consideration of the Bill at Stage 1 in 2017 the petitioners sought a view from this Committee on the need for a public inquiry and the Committee responded stating that current information sharing practice had not been the prime focus of the Committee’s scrutiny, it had been more focused on the proposed legislative provisions in the Bill.
5. The PPC, in referring the petition to this Committee, also suggested to the petitioners that it would be “most appropriate for the petitioners to raise some of the suggestions they have offered with the Children’s Commissioner, the Equality and Human Rights Commission and the Scottish Human Rights Commission, rather than for this committee to call for the Government to set up an independent review”.
6. The petitioners have now provided two further submissions to this Committee to inform consideration, both in Annexe A. One submission provides case studies which the petitioner suggests demonstrates poor data collection and sharing practices and its impact on families and offers a private meeting with parents. The other submission sets out the contact by the petitioners with the organisations suggested by the PPC. The petitioners reflect that there has not been progress with any one particular body that considers it is in a position to scrutinise the issues raised.
7. The submission also repeats an issue raised in oral and written evidence to the PPC: the use of advice issued by the ICO in 2013 on information sharing practice under DPA

1998. The petitioners are of the view that: “Although formerly withdrawn in September 2016, [the 2013 advice] is still routinely cited in current training modules, organisational guidelines and correspondence (even from the SPSO)”.

8. The petitioner cites instances where they consider that complaints made to local authorities, including on practices relying on the 2013 advice, are not acknowledged or acted upon. The submission from the ICO to the PPC did not specifically respond on the point about 2013 advice and its effective replacement with the 2016 advice (full response from the ICO is in [Annexe B](#)).
9. In a previous submission to the PPC the petitioners cited a letter from the ICO to the petitioners’ representative on this issue. It states: “You have provided to us instances of our earlier [2013] Letter of Advice being available on a number of websites. When the Commissioner issues any relevant guidance, it is not our practice to instruct organisations to remove previous versions from documents published on their websites. That would prove to be a highly resource intensive and ongoing activity...With regard to the other organisations which have yet to update their website content, your clients should raise the matter with them directly.”
10. The Scottish Government’s submission to the PPC states that: “Ultimately, it is for each organisation to justify its reliance on any given legal basis and if young people/parents/guardians believe that such reliance is erroneous, provided they have exhausted organisation’s complaint process, they can raise the matter with the ICO.” (see [Annexe C](#))

Children and Young People (Information Sharing)(Scotland) Bill

11. This Committee agreed, by majority, to halt consideration of the Bill at Stage 1 until the Scottish Government provided a draft code of practice for named persons and other practitioners to accompany the Bill. The Cabinet Secretary has written to the Committee to keep it updated on progress of the GIRFEC Practice Development Panel, which was tasked with producing a draft code.
12. The Committee wrote to the Chair of the Panel seeking information on the consultation processes being followed by the Panel and also seeking indicative timescales for the completion of its work. This request was specifically to enable the Committee to decide when to timetable scrutiny of the petition. The response from the Chair, Professor Ian Welsh OBE, dated 27 February 2019, stated that “We aim to draft a report which factors in our work so far, the stakeholders’ feedback and the current legal climate, which we hope to present to the Deputy First Minister shortly.”
13. Although the petition relates to existing information sharing practice, any work by the Scottish Government generated from the Bill is relevant as it is likely, in general, to set out advice on how new GDPR provisions will impact upon data sharing practices in Scotland.

Options for initial action

14. It is suggested that the substantive consideration of this petition should take place once any further policy developments by the Scottish Government, based on the Panel’s

work, have been announced. At this stage, it is suggested that the Committee could consider undertaking some preliminary information gathering as useful context for further consideration of this petition. Options include:

- A) The Committee could write to the Scottish Government seeking its perspective as to how the framework for the functioning of independent bodies operates where multiple remits are engaged on a particular issue. For example, the petitioners raise cases that cover human rights considerations, including rights of the child, the processes of local authorities, the processes of NHS Boards and also on the appropriate sharing and processing of data.
- B) The Committee could write to the ICO seeking an update on its work following the introduction of GDPR including any issuing of updated advice and other work with organisations to ensure the shift in data sharing practices from those adopted under the Data Protection Act (including moving away from practices based on 2013 ICO advice and 2016 advice).

Roz Thomson
Clerk to the Committee
21 May 2019

Annexe A – Submissions from petitioners

Submission 1

In November 2017, a briefing paper and dossier of ‘postcards’ from families who had been affected by services’ over-reach and unlawful GIRFEC data processing was circulated to members of the Education & Skills Committee following a ‘fringe’ event to give voice to those who had been excluded from the formal parliamentary process. Respondents were unequivocal in their call for a public inquiry into how an unlawful threshold for interference with Article 8 of the ECHR came to be embedded in public policy well before the 2014 Act was passed and has continued to be cited as justification for *ultra vires* practice nearly three years after the 2016 Supreme Court ruling.

As co-petitioners representing families who already experience disproportionate prejudice and discrimination, it is frustrating to have to ‘police’ professionals who have limited knowledge or experience in the specialist areas in which we work, and who are acting beyond their areas of professional expertise. There is now such a lack of trust in health visitors (the subject of current research by the Scottish Home Education Forum) that many parents, especially those whose children have ASNs, are fearful of accessing support from public and third sector services. Policies and training *still* do not reflect the 2016 court ruling or acknowledge the forced withdrawal of the 2013 ICO statement that had endorsed arbitrary interference with families’ human rights.

The following advocate’s summary and case studies serve to illustrate the problems families continue to face in seeking to exercise lawful choices and secure their rights under GDPR, ECHR and UNCRC. They have been anonymised, but the parents are willing to speak in confidence to members on request. Indeed, a private meeting with parents would be welcomed.

Advocate’s summary

Parents were victims of crime and moved to a new area on police advice. Their infant child was duly re-registered with GP and health visiting services and developmental delays were identified. Parents requested referral to SaLT, but this was not actioned by the HV until a complaint was made. After the 2016 Supreme Court ruling, parents wrote to the HV, stating that they wished to continue using the service but did not consent to routine data sharing below the legal threshold (a lawful request made by many other families concerned about data misuse). The HV immediately referred the family to social work, claiming the child’s developmental delays were due to parental neglect and they were ‘hiding’ him from health services, but a multi-agency meeting decided there was no cause for concern. Parents had meanwhile reported anti-social behaviour by a neighbour to Police Scotland, who made several ‘vulnerable persons’ reports and referred them to SW. A multidisciplinary meeting was called where parental mental health was discussed (records had been provided by NHS without consent), and SW wrote to SCRA requesting a hearing and recommending a CSO. The reporter declined both, but recommended a voluntary support arrangement for as long as the parents felt it would be useful. Parents agreed to a child’s plan, and a lead professional from SW was appointed. The child had meanwhile been diagnosed as profoundly autistic and the LP pushed for a home visit, despite having been asked to first develop a relationship with the child who had meltdowns when strangers came into his home. The LP nevertheless visited when they were out (and the child was at playgroup),

then claimed they had missed an appointment that had never been made. Parents made a formal complaint to the LA, which was not upheld despite the LP being unable to provide any record of a meeting being arranged. Parents withdrew from the voluntary child's plan on the basis of a breakdown in trust. The LP then wrote to SCRA requesting a hearing and a CSO, stating that withdrawal from a voluntary arrangement was grounds for a compulsory order (which conflicts with independent legal advice) and that parents were seeking to 'hide' the child from services, prejudicially recording 'home education' as an 'ACE' on their 'resilience matrix' despite him not having attained compulsory education age and despite him continuing to see SaLT and OT services regularly, GP services as necessary, and the parents accessing local autism services, home education peer support and advocacy. There has been an ongoing failure by the LP to accept home education as having equal legal status and validity to schooling and a lack of engagement with experts in this field. This family's experience of GIRFEC, both before and after the 2016 judgment, demonstrates the prevalence of poor practice by professionals in relation to data collection and sharing, and an embedded culture of disempowering parents and coercing compliance with services below the legal threshold for intervention.

Case study 1

We have awful ongoing experiences with Social Work regarding our children, all stemming from their inability to attend school and total lack of support. Both children have autism and have had very negative experiences of mainstream schooling from nursery. Our older son, who has Aspergers with an ongoing sleep disorder and severe social anxiety, was referred to the Children's Reporter on the grounds of 'non-compliance of parents to get child to attend school'. It was absolute hell, with our then 13-year-old having to attend the sheriff court before the case was dismissed as 'misuse of the Reporter's service'. More recently we have had a serious situation with our 11yr old son, who had become unable to attend school due to his difficulties and lack of support. We tried everything to get him to school including my being there with him. Eventually we couldn't get him to leave the house, but our council actively discourages home education and it would have meant losing our autism outreach worker. When a social worker was brought into multi-agency meeting at school, ostensibly to discuss a co-ordinated support plan, she insisted on referring him to the Reporter as 'outwith parental control, with a view to removing him to a secure place for treatment for anxiety'. All we ever asked for is support and assistance in getting our children the education that they can cope with and we have tried to assist and comply, but continue to be intimidated and bullied. The system is utterly broken and corrupt. The more I speak to other parents, carers and even professionals, the more I realise our experience is the GIRFEC 'norm'.

Case study 2

My daughter is 5, with ASNs, and would be due to start school in August but is being home educated. Her health visitor is demanding a meeting with me, my daughter, consultant and the local school and is calling me daily to say it is in my child's best interests and if I don't comply I will be classed as neglectful and she will have to inform social work. She has described home education as a welfare concern as my daughter would be an 'unseen child' and no one could check on her. No one has had concerns up until now, and because they can't guarantee she can get the necessary support from school, it is the only logical (and completely legal) choice. I have two other children in school and they are not a concern, just my youngest. I take her to all her hospital appointments with her consultant and community

paediatrician, so how can she be 'unseen'? I am furious at the unwanted interference and undermining of my parental responsibility when I am protecting my child's interests.

Case study 3

My daughter could not attend school because of severe anxiety. The school involved social work as they didn't know what else to do and CAMHS had refused a referral because she wasn't suicidal - so they decided to blame 'poor parenting' (i.e. my attempts to access specialist support and uphold her human rights). We were referred to the Reporter for non-attendance as anxiety/mental health is not deemed a 'reasonable excuse' for absence (and GPs do not issue medical certificates). She was placed on a CSO and threatened with foster care to help her 'focus on getting back to school', which was in my view abusive. I eventually had the order lifted and formally removed her from school for home education. She is now accessing education and recovering after a period of private therapy. From subject access requests, I have found the referral was based on the opinion of non-mental health professionals who dismissed her anxiety as bad behaviour to push for damaging intervention that left her even more terrified of school and at risk of self-harm.

Case study 4

Nine months after moving areas a health visitor appeared on our doorstep completely unannounced. She said it was for my youngest girl (about to turn five), but when I asked why she didn't let me know in advance she started to make excuses and said she just decided to pop in while in the area. We were heading out to the library but she persisted in asking me home educating the siblings and immunisations. A few days later she reappeared asking for the other children's names and dates of birth. When I asked her the purpose of her visit, her behaviour started to escalate and she said she would be sending social services as I was failing to co-operate. I have nothing to hide and let our previous council know we had moved, and my children all go to the GP when required. Because I'm originally from a different country, I'm not as familiar with the system as I would like, but I felt this health visitor was over-stepping her role. I asked her to put the questions in writing, which upset her, and she said 'by law' I had to comply. My children (and myself) were left really unsettled by her hostile and unprofessional behaviour.

[This situation was finally resolved after the parent took advice from the home education forum and complained to the health visitor's manager. Although an apology was received, this is only one example of several from the same area, so the problem has not been properly addressed.]

Case study 5

I noticed my health visitor had ticked boxes in my child's red book saying that data could be shared but I was never asked for consent. We attended a consultant for my daughter and the information was shared between them and our GP which I thought acceptable. However, I had an appointment for my own health and letters were copied to my child's health visitor 'because of GIRFEC' so I am wondering how much of my own private health information has been shared and who with. I am very upset as I had already asked for 'no sharing data' to be attached to all our notes and want all my medical information sent to the HV to be erased as there was no legal basis for overriding my wishes. I now have to submit multiple SARs to find out who saw fit to presume consent on my behalf after I made my instructions explicitly

clear, and I am saddened I can no longer trust the NHS to maintain confidentiality of my health data.

Case study 6

Following the assault of our son by a school staff member, our entire family was added to the Police iVPD without our knowledge. It took a 16-month battle to have our names removed as police opinions were found to be 'unsubstantiated, disproportionate and irrelevant'. After receiving SAR evidence of staff admitting to the assault (15 months after the event), I approached PIRC who had upheld some complaints and advised returning to Police with evidence of obstruction of justice. Police again closed it down as 'no new evidence'. I contacted the Crown Office who advised returning to Police. Police again closed it despite submitting documents and giving a statement. Crown Office then advised CAAPD (54 months after the assault occurred and multi-agency collusion ensued). Former GP practice have been advised by their Defence Union not to communicate with us (due to questions over unlawful data processing) and pertinent health records have been locked down, leaving some notes inaccessible to our new GP. New paediatrician can access previous paediatrician's 'concerns' but refuses to remove his opinion 'just in case - as a signpost for the future', although no diagnosis or treatment has ever been offered due to concerns being baseless. ICO stated that they did not have the resources to investigate (evidenced) unlawful data sharing by myriad individuals and organisations. SPSO initially said the Council had thoroughly investigated my complaints but did not have resources to investigate all of them. SPSO later upheld our complaints against the council, stating it was difficult to establish who made the initial referral to Children's Reporter that led to a traumatising investigation and recording of inaccurate data across multiple agencies that has since proved impossible to erase. All involved told conflicting stories of who made the referral. SPSO initially refused to investigate the SCRA unlawful referral and investigation stating there was a 'legal obligation' to investigate low-level GIRFEC concerns (contradicting the SC judgment). SCRA appear to have made the referral themselves, pretending it was a Police referral. SCRA has refused to amend or delete inaccurate information about my children, despite having documentary evidence of fabrication/collusion by 'professionals' as this would 'breach GDPR'. The Children's Commissioner refused to investigate breaches of Article 16 UNCRC as it would 'duplicate' investigation by ICO and SPSO. ICO stated they investigate information rights breaches, SPSO investigate maladministration, neither has a human rights remit. I returned to the Children's Commissioner to be told they will not investigate due to 'lack of resources' and they closed down correspondence leaving my children without redress or representation by UNCRC 'defenders'. Families are being sent in circles and treated with contempt by services and regulators alike as a result of data gathering and sharing practices that are based on subjective 'wellbeing concerns' and do not meet the legal threshold. GIRFEC policy has spiralled out of control and is continuing to cause incalculable damage to our family and others.

Case study 7

My health visitor seemed alright, not particularly helpful but I never had a problem with her. Then I started talking about home educating my four-year-old and she told me it was illegal, and I'd need to write applications, have regular home visits and follow the school curriculum. I explained that she was wrong, thanked her for her concern and said we no longer felt the need to see her. Due to us declining her services (which are optional) and making a fully informed, legal educational choice, she referred us to social work who are now coming over

for a 'chat'. Aside from 'learned ignorance' of the law among GIRFEC professionals, this sort of harassment of law-abiding parents is a scandalous waste of resources.

Case study 8

My daughter is on 12-month supervision order. Although she is under the care of the Royal Hospital for Sick Children for chronic pain syndrome, hypermobility, scoliosis and severe panic and anxiety, this is not considered a reasonable excuse for absence and my request to withdraw her to home educate is not being progressed.

Case study 9

My daughter has chronic pain, ME, EDS and other health issues. The council tried to prevent us home educating (despite the school supplying zero education). They spoke to our daughter's paediatrician (without our permission) and a hard-fought-for appointment at GOSH is the only thing that saved us from being referred to social services as GIRFEC multi-agency professionals were circling. Although my daughter has now been home educated for three years, we still feel under constant threat due to the appalling attitude of professionals towards home educators, in particular to families whose children have additional needs that schools cannot begin to meet.

Case study 10

My family has been referred to social work by health visitors so often it feels like a campaign of harassment. My SARs included a record of me being admitted to a psychiatric hospital several years ago, which is either a case of mistaken identity or completely fabricated but no one can explain it. When I declined the health visiting service last year (for the umpteenth time) because I choose to access health care through my GP surgery after previous issues, she called education (who had sent a letter expressing no concerns about my children's education provision just two months before) to discuss how to get me to 'comply'. She also got my housing association to send an officer to report on me and my children on the pretence of discussing my application for rehousing. The child protection conference they called included professionals I had never met and had nothing to say, but my own recently diagnosed medical condition had been shared with all of them, including non-medical professionals, without my knowledge or consent, and used to undermine my parenting capabilities. Despite a joint concerted effort by the health visitor and education, my children were *not* placed on the child protection register and I still do not accept health visitor interference, but I feel discriminated against because I live in a poor area and home educate my children.

Submission 2

Alison Preuss, on behalf of the Scottish Home Education Forum, and Lesley Scott, on behalf of Tymes Trust, submit the following additional information in relation to Petition PE1692, Inquiry into the human rights impact of GIRFEC policy and data processing. This petition was referred to the Education and Skills committee by the Public Petitions Committee at its meeting of 8th November 2018. The Public Petitions Committee members also thought it "most appropriate for the petitioners to raise some of the suggestions they have offered with the children's commissioner, the Equality and Human Rights Commission and the Scottish

Human Rights Commission, rather than for this committee to call for the Government to set up an independent review.”

We had already written to the Scottish Human Rights Commission immediately following the UK Supreme Court ruling of July 2016 asking if they had made any public comment regarding the GIRFEC/Named Person situation. We received a response stating that they had “not made any statement with regards to the recent ruling by the UK Supreme Court.” A further email from the Scottish Human Rights Commission shortly after stated:

“Given the clarity provided by the Supreme Court’s judgment, and the Scottish Government’s commitment to bring the matter back to the Scottish Parliament the Commission has not felt the need to comment on the issues to date.”

Following the meeting of the Public Petitions Committee of 8th November 2018, we wrote again to the Scottish Human Rights Commission and to the Equality and Human Rights Commission on the 23rd November 2018, explaining the situation regarding the petition and setting out our concerns and asked for a meeting. We did not receive any response from the Scottish Human Rights Commission and a response from the Equality and Human Rights Commission was not received until the 24th December 2018 which stated:

“As you may be aware we share our human rights remit in Scotland with the Scottish Human Rights Commissions. The SHRC has focus on devolved issues of human rights, the EHRC has a focus on reserved human rights.

As education and children’s welfare is a devolved responsibility can I suggest you that contact the SHRC on hello@scottishhumanrights.com”

We informed the Equality and Human Rights Commission that we had already tried to engage with the Scottish Human Rights Commission as detailed above and asked if they would they assist in getting the SHRC to respond to our most recent communications. The Equality and Human Rights Commission replied:

“As I explained below the SHRC has responsibility for Human Rights in devolved areas of policy in Scotland and the EHRC for reserved issues of Human Rights policy. This split remit is set out in legislation and is not something that we can change. So in this case we have to defer to the SHRC as the lead agency as this is clearly within their remit.

I can only suggest that you raise this with them again by writing to their Commissioner.”

On 23rd January 2019 we again wrote to the Scottish Human Rights Commission, explaining our correspondence with the Equality and Human Rights Commission and asking for a response to our email of 23rd November 2018. On the 25th February 2019, three months after our initial email, the Scottish Human Rights Commission replied stating:

“The legislation which created the Scottish Human Rights Commission prohibits us from duplicating work undertaken by other enacted bodies. We have considered your email carefully, and are of the view that the content falls within the remit of the [Children and Young People’s Commissioner for Scotland](#) (CYPCS). You can find further information, including their position in relation to some of the issues you refer to [here](#). You may wish to contact CYPCS directly to discuss.”

We had in fact already contacted the Children's Commissioner at the same time as the Scottish Human Rights Commission and the Equality and Human Rights Commission, on the 23rd November 2018. They replied to us on 11th January 2019 offering us a meeting to speak about our concerns. This meeting was arranged for the 7th February 2019. The outcome of this meeting was that the Children's Commissioner's Office stated they were "constrained by legislation", meaning that if the issue concerned something that sits within the investigatory remit of another body that would "constrain any exercise of their powers". In this case it is their view that whilst they "agree there are children's rights issues engaged here" it is actually the remit of the SPSO and the ICO to address any breaching of human rights in respect of children and their families under GIRFEC. They also indicated that they had an agreed work programme, apparently following consultation with children and young people, although none of our young members has ever been approached for their views. They regretted that they did not have the resources to support children whose Article 16 rights have been, and are still being, blatantly undermined and infringed.

The day-to-day reality for families in Scotland therefore is that of an on-going imbalance of power that leaves them open to the continued abuses of a GIRFEC approach that was ruled unlawful nearly three years ago, yet has operated ceaselessly throughout that time. Families have been left with no true recourse to justice; although some victims' complaints have been upheld by the SPSO, others have failed or only been partially successful due to the Ombudsman's acceptance of the wrong threshold for interference with Article 8/16 rights. The wrong and unlawful threshold of undefined, subjectively interpreted 'wellbeing' remains rooted in the policies of all LAs, NHS boards, police and third sector bodies. This includes the 2014 national child protection guidance which references the now notorious ICO memo of March 2013. Although formerly withdrawn in September 2016, it is still routinely cited in current training modules, organisational guidelines and correspondence (even from the SPSO).

Meanwhile, victims have no affordable means of redress and are finding it well-nigh impossible to have unlawfully generated and shared records (including subjective opinions of non-specialist professionals) deleted or rectified. To add insult to injury, many complainants are now time-barred from taking legal action (even if they could afford to do so) due to having had their complaints wrongly dismissed by the ICO who had failed to interpret the data protection legislation to comply with human rights, as underlined by the Supreme Court in 2016.

In Scotland, it would appear that no-one is in fact responsible for the human rights of children and their families when it comes to GIRFEC/Named Person and the breaches that have occurred throughout its near decade of operation:

The Equality and Human Rights Commission say it is the responsibility of the Scottish Human Rights Commission;

the Scottish Human Rights Commission refer it to the Children's Commissioner;

the Children's Commissioner's Office pass it on to the SPSO and the ICO;

the SPSO is limited to looking at individual cases and undertakes investigations based on the wrong threshold for interference with Article 8/16 rights;

the ICO did not see anything wrong with the legislation that was ruled unlawful by the UK Supreme Court with the Lead Communications Officer stating immediately after the 2016 ruling from the UK Supreme Court “We’re disappointed with the judgement because we offered advice and they had addressed our concerns...Ken has been speaking to the Scottish Government this morning and we are working on a line..”

The 2013 letter of advice to practitioners from the ICO was based on extensive discussions with, and reference to, a report authored by the Scottish Government. The ICO took the unusual step of requesting that the Scottish Government take down its 2013 advice when it released its 2016 statement, but that withdrawal was not ‘cascaded’ directly or via community planning partnerships to other agencies, who have continued to cite the earlier statement to justify unlawful information sharing.

Families do not and cannot have faith and trust in the ICO when it continues to support and enable the GIRFEC approach to operate. It has done nothing to uphold the human rights of children against this authoritarian push to undermine families, but rather has been at the forefront of its development and its on-going modification.

As we have stated before, the people of Scotland deserve to know the truth about how a Scottish Government national flagship policy that breached Article 8 of the ECHR and was ruled unlawful found its way on to the statute books. They deserve the opportunity to have their experiences heard and at least a semblance of justice delivered in regard to the early and ongoing implementation of that unlawful practice across Scotland.

ICO submission to the Public Petitions Committee

PE1692/C

The Information Commissioner's Office submission of 31 July 2018

Thank you for your letter of 3 July, inviting the Information Commissioner's Officer (ICO) to provide its views on the action called for in the above petition.

Unfortunately, the petitioners' proposed action calls for an Inquiry into the human rights impact of Getting it Right for Every Child (GIRFEC) and the Information Commissioner's Office (ICO) has no locus in respect of this legislation. As such, I am afraid that I am unable to comment on the merits or otherwise of the action itself. However, having read the Official Report of the Committee meeting of 28 June and the background information on the Petition itself, I note that the discussion is much wider than human rights and also brings in issues of data protection. As the Regulator of the data protection regime in the UK, I am happy to provide input to the Committee's deliberations from that perspective.

Fundamentally, the issue under question is the sharing of personal information between organisations for the purposes of the Scottish Government's GIRFEC initiative. GIRFEC introduced the concept of wellbeing into children's services and it is the petitioners' view that personal information shared without consent for wellbeing purposes is inappropriate at best and perhaps unlawful in some cases. I think it might be helpful for the Committee to understand how data protection legislation is relevant to the sharing of personal information.

The law in place at the time of GIRFEC's introduction was the Data Protection Act 1998 (DPA 1998). In May 2018, the vast majority of this Act was repealed and replaced by the General Data Protection Regulation 2016 (GDPR) and the Data Protection Act 2018 (DPA 2018). Under both the old and the new regimes, the preamble to the EU legislation from which they are derived, provides for *the protection of individuals/natural persons with regard to the processing of personal data and the free movement of such data* (Directive 95/46/EC & Regulation (EU) 2016/679). They essentially provide a framework for the use, including sharing, of personal information.

The first Data Protection Principle in both regimes is broadly similar in that:

Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject [the individual to whom the data relate] (GDPR Art5:1(a))

In terms of lawful processing, this has two aspects that must be met. First, for the processing to be lawful it must rely on specified legal bases as set out in the data protection legislation. Second, it must not contravene any other legislative requirement. As the latter is self-evident, I shall confine my comments to the former.

Schedules 1 and 2 of the DPA 1998, set out the legal bases for the processing of personal and sensitive personal data respectively, the first of which in both cases is consent (explicit consent for sensitive personal data). The rest of the legal bases provide for situations where it would be unreasonable or inappropriate to rely on consent because the processing is considered to be *necessary* for one of the specified lawful purposes, such as *to protect the vital interests of the data subject*. This legal basis could be relied on, for example, to share information where there is potential for significant harm, i.e., a child protection issue. If

personal information is to be shared without consent at a level below the vital interests/significant harm bar, the organisation in question must be able to rely on one of the other legal bases such as it being *necessary for the exercise of any other functions of a public nature exercised in the public interest*. For this to be lawful, the organisation must be able to identify the public function in question, usually, but not exclusively, set out in statute, and the sharing must relate to that function.

It is important to note that all legal bases carry equal weighting with none more or less valid than any other. Consent, therefore, is not the only legal basis for the lawful sharing of personal information between organisations. However, where consent is not being relied on, the organisation must be prepared to justify its position clearly.

Under the new data protection regime, the same requirements apply and organisations engaged in the sharing of personal data since 25 May 2018, must be able to rely on one of the legal bases set out in GDPR/DPA 2018. The matter of consent, however, is more problematic for public authorities under the new regime. The GDPR provides for a more robust consensual process, the focus of which is that it must be meaningful and individuals must have real choice in the matter so that, should they wish, they can withhold or withdraw that consent with no real detriment. For public authorities, this is especially difficult because of the inherent nature of the relationship between it and its constituents. As Recital 43 of GDPR articulates:

In order to ensure that consent is freely given, consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller, **in particular where the controller is a public authority and it is therefore unlikely that consent was freely given in all the circumstances of that specific situation.** (added emphasis)

Given the nature of the relationship between public authorities and children, young people and their parents/guardians, the potential for an imbalance is exceedingly high. Indeed, the potential for such was implied at paragraph 95 of the Supreme Court Judgment where it states that:

...there must be a risk that, in an individual case, parents will be given the impression that they must accept the advice or services which they are offered...and further, that their failure to co-operate...will be taken to be evidence of a risk of harm. ([2016] UKSC 51¹)

The GDPR's more robust regime around reliance on consent substantiates fully the consistent position the ICO has taken on the matter in that consent should only be relied on when individuals have real, meaningful choice. If sharing is deemed necessary regardless of consent, one of the other legal bases must be used and organisations must be prepared to justify their position.

It would be remiss of me not to mention that the DPA 2018 now provides a specific legal basis for the necessary processing of special category (sensitive personal) information for the Safeguarding of children and of individuals at risk (Schedule 1:18). However, caveats ensure that this is not used for wholesale sharing but only that which meet the specific circumstances outlined in the provision.

The second part of the first Data Protection Principle is the concept of fairness and transparency and this permeates every aspect of data protection compliance. This is about ensuring that individuals are fully informed about how their personal information is to be used. Again, the new regime is much more robust in this requirement and introduces a fundamental right to be informed and requires that more detailed information is provided, including where the information was obtained – if not from the individual themselves - and with whom information will be shared. As I said, this is fundamentally important because even if the sharing is deemed necessary and consent is not being relied on, the processing will be unlawful if individuals have not been fully informed about how their information is to be used. Of course, there are exceptions to this but the overriding imperative of data protection is transparency, so they should only be used when absolutely necessary. For example, it would be wrong to inform an individual about any specific processing where to do so would be prejudicial to the purposes. However, this notwithstanding, it is vital that public authorities get this right because it is an important part of mitigating that imbalance.

Regardless of whether the legal basis for sharing is consensual or necessary, it is very definitely about proportionality: sharing only that which is absolutely necessary with the relevant person at the appropriate time. This speaks to the third Data Protection Principle and, again, the ICO has been consistent in saying that the sharing of personal information must be adequate, relevant and limited to what is necessary for the purposes.

Ultimately, it is for each organisation to justify its reliance on any given legal basis and if young people/parents/guardians believe that such reliance is erroneous, provided they have exhausted organisation's complaint process, they can raise the matter with the ICO.

I trust that the Committee find this helpful in its deliberations.

¹ The Christian Institute and others v The Lord Advocate (Scotland) 28 July 2016

Scottish Government submission to the PPC

PE1692/B

Scottish Government submission of 30 July 2018

1. The Scottish Government welcomes the opportunity to contribute to the Public Petition's Committee's consideration of PE1692 on an inquiry into the human rights impact of the getting it right for every child policy and data processing.
2. The Scottish Government notes the submissions made by the petitioners Lesley Scott and Alison Preuss given on behalf of Tymes Trust and the Scottish Home Education Forum at the meeting of the Committee on 28 June. It is further noted that the petitioners '*call on the Scottish Parliament to urge the Scottish Government to initiate an independent public inquiry into the impact on human rights of the routine gathering and sharing of citizens' personal information on which its Getting It Right For Every Child (GIRFEC) policy relies*'.
3. The Scottish Government does not share the view of the petitioners that an independent public inquiry is necessary.

Specific points from the submissions made by the Petitioners

4. Before turning to the substantive issues raised in the Petition regarding GIRFEC, human rights and information sharing, two specific matters raised by the Petitioners are dealt with below.
5. In their submissions to the Committee, the petitioners make reference to the experience of children and families in individual cases and wider evidence which the No2NP Campaign have gathered, particularly in relation to Highland Council. Whilst the Scottish Government has responsibility for the setting and promotion of national policy, the provision of services in individual circumstances is a matter for Local Authorities, Health Boards and partners. The Scottish Government cannot therefore advise on these matters.
6. The Petitioner, Alison Preuss also refers to a request to meet with the Scottish Government. The Scottish Government has spoken with the Petitioner Alison Preuss on a number of occasions. Officials from the Learning Directorate and Children and Families Directorate are due to meet with her on 8th August 2018.

GIRFEC, Human Rights and Information Sharing

GIRFEC

7. Getting it right for every child (GIRFEC) is the national approach in Scotland to improving outcomes and supporting the wellbeing of our children and young people by offering the right help at the right time from the right people. The GIRFEC approach has developed and evolved for over a decade through extensive partnership working and consultation with children, young people and their families, including through the "*Highland Pathfinder*"¹, and then through the adoption and

¹ An evaluation report of the development and early implementation phases of Getting it right for every child in Highland 2006 – 2009 <http://www.gov.scot/Publications/2009/11/20094407/0>

roll out of the GIRFEC approach across local authorities and health boards throughout Scotland.

8. The Scottish Government is committed to embedding the GIRFEC approach across Scotland, supporting better outcomes for children and young people and ensuring that every child has access to the support and services they need to meet their wellbeing needs.
9. Full and effective implementation of the Children and Young People (Scotland) Act 2014 ('the 2014 Act') continues to be an important part of the Scottish Government's strategy to deliver the GIRFEC approach consistently across Scotland. Part 4 of the 2014 Act will ensure that a Named Person, a key element of the GIRFEC approach, is available to all children, young people and their families as an entitlement. In making a Named Person available, the legislation will ensure that there is an identified individual who will be there when families want information, advice, support and help to access services. However, there will be no obligation to accept the offer of advice or support from a Named Person.
Further information about the 2014 Act is provided below.

Human Rights and GIRFEC

10. The GIRFEC approach is fundamentally based upon and promotes respect for the rights of children and young people and their families, including rights under the European Convention on Human Rights and the United Nations Convention on the Rights of the Child².
11. In line with international best practice in the delivery of children and families services, it is an approach that puts the rights and needs of children and young people at the centre, promoting early intervention and partnership working to ensure that public services work for every child and young person and their families by offering the right help at the right time from the right people. It seeks to do this by providing a framework for all services and agencies working with children and families to deliver a co-ordinated approach which is appropriate, proportionate and timely.
12. Human rights is at the heart of GIRFEC; requiring a whole child approach, building on strengths and promoting resilience, alongside encouraging opportunities and valuing diversity. The UNCRC is further reflected in GIRFEC values and principles which stress the promotion of children's wellbeing by keeping them safe, promoting their development and respecting their views.

Information sharing and GIRFEC

13. Appropriate and lawful sharing of relevant and proportionate information is a vital part of making the right support available to families at the earliest opportunity, which is at the heart of GIRFEC. Sharing the right information at the right time

² For more information about how GIRFEC is based upon and supports human rights see 'UNCRC: The foundation of Getting it right for every child' <https://www.gov.scot/Resource/0041/00417256.pdf>

improves outcomes for children, young people and their families and can help prevent concerns or issues growing into bigger problems.

14. The GIRFEC approach supports a common understanding of 'wellbeing' through the use of wellbeing indicators, those being how Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included a child or young person is. There is no threshold of wellbeing which must be achieved by a child or young person. These indicators provide a common language for professionals and families when considering the individual needs of children and young people
15. The GIRFEC approach does not create new thresholds for information sharing, rather it provides a clear and consistent framework for families to engage with services when they wish to obtain information, advice, support and help that promotes, supports and safeguards the wellbeing of children and young people.

Where the sharing of information is considered to be in the best interests of supporting a child's wellbeing, in the manner described above, this may only be done where there is an appropriate legal basis. Information can only be shared where it is proportionate to do so under Article 8 ECHR. It is for relevant authorities, usually Local Authorities and Health Boards, in line with their existing duties, to ensure that services (including the sharing of information) are provided in accordance with law including human rights, data protection law (both historically under the 1998 Data Protection Act and going forward under the new data protection regime as of May 2018 that includes the General Data Protection Regulation and the Data Protection Act 2018) and the law of confidentiality. Crucially, the GIRFEC approach does not alter child protection thresholds or legislation that supports the protection of children and it is for relevant authorities to ensure that their practice and procedures comply with all legislation.

16. In the petition, it is suggested that the GIRFEC team cascaded a "unilateral re-interpretation of the reserved UK Data Protection Act 1998 via community planning partnerships a year before the 2014 Act". The Information Commissioner's Office (ICO), rather than the Scottish Government, chose to issue an independent statement to local authorities, health boards and Police Scotland on 28 March 2013, titled "[Information Sharing Between Services in Respect of Children and Young People](#)". To be clear, this advice was not authorised by the Scottish Government.
17. During their evidence, the petitioners refer to minutes of a meeting where they suggest that "it was a series of backroom deals that caused the threshold to be dropped to the subjective notion of "wellbeing" from "significant harm" in 2013". We believe this refers to the GIRFEC Programme Board meeting of 12 February 2013³. This minute noted in relation to information sharing that "a joint statement has been agreed with the Information Commissioner's Office which should help clarify situations where a child was on a pathway to risk to wellbeing as well as significant risk of harm". A joint statement was not issued by the Scottish

³ Minutes of GIRFEC Programme Board meeting of 12 February 2013
<http://www.gov.scot/Resource/0043/00430422.pdf>

Government and the ICO. As highlighted above, [this independent statement](#) was issued by the ICO to stakeholders.

18. The petitioners also highlighted their concerns that SG was not explicit about the named person service being implemented ahead of commencement of Part 4 of the 2014 Act, and that the information sharing involved was, “ all contrary to the law as confirmed by the highest UK court”. This was not the case. A number of local authorities and health boards chose to operate a named person service on a non-statutory basis in a number of communities before of development of the Children and Young People Act (2014). It is important to note that where named persons services have been provided in the past, or are being provided for at present, these are provided by organisations on a policy basis. As noted for above, it is the responsibility of organisations, in line with their existing duties, to ensure that such services are provided in accordance with law.
19. The petitioner have also suggested that the Scottish Government failed to issue revised advice to stop the data misuse on which its GIRFEC policy and named person scheme is founded after the Supreme Court judgment. As outlined, the Scottish Government was not the author of the advice on information sharing. In fact, the ICO chose to issue a statement on the implications of the judgment on 15 September 2016⁴ to local authorities, health boards and Police Scotland. This statement was made publicly available online on the Scottish Government website.

The Children and Young People (Scotland) Act 2014 and the Christian Institute Case

20. Whilst the current petition relates to implementation of the GIRFEC approach historically, the petitioners have made submissions which relate to the impact of the Children and Young People (Scotland) Act 2014 (‘the 2014 Act’) and the interpretation of the Supreme Court’s decision in the case of *The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland)* [2016] UKSC 51 (‘the Christian Institute case’) on current practice. Some information about the 2014 Act, the Christian Institute case and the Children and Young People (Information Sharing) Bill, which is currently before the Education and Skills Committee, is therefore provided below.
21. The 2014 Act reflects in domestic law the role of the United Nations Convention on the Rights of the Child (UNCRC) in influencing the design and delivery of policies and services by placing duties on the Scottish Ministers and the wider public sector. Amongst other things, the 2014 Act places key aspects of the GIRFEC approach on a statutory footing, improving the way services work to support children, young people and families by ensuring there is a single planning approach for children who need additional support from services; creating a clear point of contact for children, young people and parents ; ensuring coordinated planning and delivery of services with a focus on outcomes, and providing a holistic and shared understanding of a child’s or young person’s wellbeing. In

⁴ICO statement on the implications of the Supreme Court judgment on 15 September 2016
<http://www.gov.scot/Resource/0050/00507298.pdf>

particular, Parts 4 and 5 of the 2014 Act place the provision of named persons and child's plans on a statutory basis for the first time. Section 96 of the 2014 Act also places the assessment of wellbeing on a statutory basis for the first time.

22. In the Christian Institute case, the Supreme Court was asked to consider the lawfulness of Part 4 (provision of named persons) of the 2014 Act. Their consideration therefore relates to the future provision of named person services to be operated under Part 4 of the 2014 Act.
23. The Supreme Court found the policy objective to provide for a universal named person service to be "legitimate and benign". It went on to find, however, that the information sharing provisions of that Part were incompatible with article 8 ECHR (right to respect for one's private and family life), on the basis that they were not in accordance with law. The reasons for this are summarised in paragraphs 83 to 85 of the judgment. In brief, the provisions were not in accordance with the law because of the very serious difficulties in accessing the relevant legal rules and the lack of safeguards which would enable the proportionality of an interference with article 8 rights to be examined. The serious difficulties referred to related in particular to the relationship between Part 4 of the 2014 Act which contained a duty to share information and the Data Protection Act 1998 with which relevant authorities would also have to comply with for information sharing to be lawful.
24. Whilst the Supreme Court decision related to Part 4 of the 2014 Act information sharing provisions are contained within Part 5 of the Act and as such, commencement of Parts 4 and 5 of the 2014 Act was postponed by the Scottish Government to allow for the matters raised by the Supreme Court to be addressed.

The Children and Young People (Information Sharing) (Scotland) Bill

25. Following a period of intensive stakeholder engagement from September to December 2016⁵, the Scottish Government introduced the Children and Young People (Information Sharing) Scotland Bill in June 2017 to make changes to the information sharing provisions in Parts 4 and 5 of the 2014 Act.
26. The Bill fully responds to the Supreme Court's findings and will ensure that information sharing under parts 4 and 5 of the 2014 Act is lawful and proportionate and puts in place appropriate safeguards.

What the Bill does

27. The Bill responds to the Supreme Court's findings regarding the difficulties in accessing the relevant legal rules and the lack of safeguards by:

⁵ More information about the intensive stakeholder engagement process held by the Scottish Government can be found in the Policy Memorandum to the Children and Young People (Information Sharing) Scotland Bill here [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)

- replacing the previous duty to share information under the 2014 Act with a new duty to consider sharing information;
 - creating a new power to share information (where a proper legal basis exists);
 - providing that information may only be shared where this would support, promote or safeguard the wellbeing needs of the child; and
 - requiring Ministers to issue a binding Code of Practice, providing clear safeguards and supporting lawful and proportionate sharing of information.
28. The new duty to consider sharing information is broken down into the following parts:
- a duty to consider sharing information where this would support, promote or safeguard the wellbeing needs to the child;
 - a duty to consider whether the information can be shared lawfully, including in accordance with human rights law, data protection law and the law of confidentiality;
 - where the above steps can be complied with, the Bill then provides for a power to share information.
29. Importantly the Bill only provides for a power to share information where this can be done so lawfully, including in accordance with human rights law, data protection law and the law of confidentiality. In addition to responding to the Supreme Court's findings regarding accessibility and safeguards, moving from a 'duty' to share to a 'power' is also intended to better support partnership working which is at the very heart of GIRFEC, allowing for dialogue and professional discretion.
30. It is important to note that where named persons services have been provided in the past, or are being provided for at present, these are provided by organisations on a policy basis. As provided for above, it is the responsibility of organisations, in line with their existing duties, to ensure that such services are provided in accordance with law.
31. The provisions contained within the Bill will ensure that information sharing in relation to the provision of named person services and child's plans, under the framework provided for in Parts 4 and 5 of the 2014 Act, is lawful and proportionate and fully respects the rights of children and families.
32. The Supreme Court judgment has provided an opportunity to revisit the information sharing provisions in the 2014 Act in a way that will not only secure the protection of those rights but will improve the named person service and reassure parents and practitioners and the wider public that this service will work with and for families.

Code of practice on information sharing

33. The Scottish Government notes the questions asked by members of the Committee about the Code of Practice on Information Sharing provided for under the Bill.

34. The Bill places a duty on Scottish Ministers to publish a binding Code of Practice about the provision of information (including the consideration of the provision of information) under Parts 4 and 5 of the 2014 Act. This Code will make the applicable legal rules clear and accessible and provide safeguards in relation to the sharing of information. The Bill requires that before Scottish Ministers make such a code, they must consult any person to which the Code of Practice relates and other persons as they consider appropriate. The Bill also provides for scrutiny by the Scottish Parliament.
35. An Illustrative Draft Code of Practice was published alongside the Bill to assist the Parliament and members of the public understand how the power to issue a Code of Practice in the Bill could be used. Regrettably, during Stage 1 evidence, it became clear that this illustrative draft had caused confusion amongst some stakeholders. The Education and Skills Committee asked the Scottish Government to provide a further draft Code of Practice to aid their consideration of the Bill.
36. The Deputy First Minister made clear his intention to establish the Getting it right for every child Practice Development Panel in November 2017. The Panel is independently chaired by Professor Ian Welsh, OBE, Chief Executive of the Scottish Health and Social Care Alliance and will report, providing an authoritative draft Code of Practice and any recommendations, to the Deputy First Minister later this year. An authoritative draft Code of Practice will then be provided to the Scottish Parliament's Education and Skills Committee and will be publically available, enabling the Committee to resume Stage One of the the Children and Young People (Information Sharing) (Scotland) Bill. .
37. We trust that the above information is of assistance to the Committee. The Scottish Government would be happy to provide any further assistance to the Committee in their consideration of this matter.