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James Dornan MSP  
Convener, Education and Skills Committee  
The Scottish Parliament  
Edinburgh EH00 1SP

28 November 2017

Dear Mr Dornan

Further to our 'Postcards from the Fringe' event on 15 November 2017, which heard evidence in relation to the Children and Young People (Information Sharing) (Scotland) Bill, we trust committee members have had an opportunity to peruse the written submissions from families and to consider our briefing report.

You will have noted that families are calling not just for the current bill to be abandoned, but also for a public inquiry into how unlawful data sharing came to be embedded in public policy and practice from 2013. We would now wish to invite the committee's response as to the potential for such an inquiry.

It is a matter of record that the GIRFEC team 'cascaded' new advice (essentially a unilateral re-interpretation of the reserved UK Data Protection Act 1998) via community planning partnerships a year before the Children and Young People (Scotland) Act was passed, and more than three years before its information sharing provisions were due to come into force. In striking down the pertinent provisions of the 2014 Act, the Supreme Court upheld the arguments made by numerous lawyers, grass-roots groups and families during its passage, namely that lowering the threshold for non-consensual processing of personal and third party data from 'risk of significant harm' to risk to (an undefined, subjective notion of) wellbeing was not in accordance with overarching human rights and data protection laws. The court ruling simultaneously rendered the prematurely-issued 2013 guidance unlawful as it clearly constituted an interference with Article 8 rights, but the government has failed to issue revised advice to stop the data misuse on which its GIRFEC policy and named person scheme relies.

Records obtained via subject access requests have proved that parents, children, young people and associated third parties have had their privacy rights routinely infringed by service providers over several years and that the problems are ongoing. Children and adults alike have experienced distress, fear, humiliation and harm as a direct result of data misuse, yet no one has been held to account and there has been no effective access to justice for those who have been adversely affected.



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As outlined in our briefing, there has been a complete breakdown in trust, leading families to disengage from conventional services and rely predominantly on peer support. The fact that privacy-breaching 'anticipatory' guidance has been the basis for training service providers for the past three years - and continues to be referenced and applied by councils, NHS boards and myriad other agencies - is considered by families to be nothing short of a national scandal.

The road to unlawful 'wellbeing' data collection and sharing is documented in GIRFEC board minutes and other records obtained by parents under the FOI (Scotland) Act, yet there has been no action to get information governance right. The damage to families and problems are ongoing and the current bill is causing even more confusion as the Scottish Parliament lacks the power to legislate a lower consent threshold for data processing. The promotion of wellbeing, however laudable and legitimate its aim, is not one of the exemptions set out in Article 8(2) of the ECHR which are concerned with protecting vital interests.

We believe the public interest demands a thorough investigation of the circumstances which led to a covertly-orchestrated infringement of citizens' human rights and would welcome a response from the education and skills committee to the call from families in Scotland for a public inquiry.

Yours sincerely

Alison Preuss (Scottish Home Education Forum)  
Lesley Scott (Tymes Trust)

on behalf of Families from the Fringe