

NSPCC Scotland

The wider context for the future of children's services: Beyond the Children & Young People Bill

Briefing Paper – March 2013

“The journey towards integration needs to start from a focus on service users and from different agencies agreeing a shared vision for the future, rather than from structures and organisational solutions.” (Petch, 2012, 10)¹

INTRODUCTION

A programme of legislative change, beyond the Children and Young People's Bill, is currently poised to reshape the landscape for children's services in Scotland. The Bill consultation document itself made few, if any, connections with other pieces of legislative change that will impact on children and young people and their families, a trend also evident in the Scottish Government's approach to recent legislation such as the Social Care (Self-directed Support) legislation. We believe this raises a number of concerns, particularly as it is anticipated that the Children and Young People's Bill may place a duty on Scottish Government Ministers to promote children's rights. Such a duty could require Scottish Government Ministers to take a more joined up approach to assessing how specific pieces of legislation will impact upon children and young people.

For NSPCC the point of departure is the needs of children, particularly those children at risk of or experiencing abuse and neglect. In partnership with peer organisations we are committed to developing a shared view about where we are going, and how we can intervene in the process of legislative change to champion children's interests, and to improve outcomes for children and young people. We also need to consider how best we can ensure that the voices of children and young people are heard, listened to and respected within this process.

The Christie Commission on the Future Delivery of Public Services recommended the following principles should underpin future public service delivery.

- Empower individuals and communities
- Integrate service provision
- Prevent negative outcomes
- Efficient public services

The Scottish Government accepted these principles and a number of pieces of legislation are being promoted ostensibly to deliver these; the Children and Young People Bill (CYP Bill) is just one of these.

While the Ministerial introduction to the CYP Bill consultation cited the Christie Commission as setting the context for the proposals, the consultation made no direct connections with other planned legislation that will impact on services for children and young people. Our concern is that the failure to take a joined up approach to the design and development of such legislation goes against the spirit (and possibly the letter) of the proposed CYP Bill.

¹ <http://www.iriss.org.uk/sites/default/files/iriss-insight-14.pdf>

Potentially these other pieces of legislation will have a far greater impact than the provisions likely to feature within the CYP Bill. The concern is that, contrary to Christie Principles, and the aims of the CYP Bill, we cannot guarantee that the rights and interests of children and families are core considerations for these changes.

The key questions which need to be asked are:

- (1) What are the implications of wider legislative changes for children's services, including the impact on levels of need/pressure on services and service provision?
- (2) How do we put children's interests at the centre of this far reaching change?
- (3) What mechanisms can be used to ensure that any change benefits, rather than detracts, from the rights and interests of children and families?

Overview of Recent Legislative Documents

Two concepts - early intervention and service integration - have been at the heart of policy thinking in recent years in Scotland and across the UK. These are currently being taken forward as part of the public service and public procurement reform agenda.

Some of the key pieces of proposed legislative change which fit within this framework are briefly discussed below.

Integration of Adult Health and Social Care Bill

Background

Efforts to integrate health and social care in Scotland began in the 1970s and have been reinvigorated since devolution:

- legislation in 2002 introduced a power to direct joint working, (The Community Care and Health (Scotland) Act).
- in 2004, the NHS Reform (Scotland) Act established Community Health Partnerships.

In the 2011 Scottish elections, health and social care integration was a priority in both major party manifestos. Scottish Labour advocated a National Care Service while the SNP preferred a lead commissioning model. The Christie Commission on the Future Delivery of Public Services (2011) also recommended further integration.²

The Adult Health & Social Care Bill consultation proposed that the existing Community Health Partnerships be replaced by **Health and Social Care Partnerships**. These will be jointly and equally the responsibility of NHS boards and local authorities and will work 'in close partnership' with the third and independent sectors. The new Partnerships will be required to integrate budgets for joint strategic commissioning and delivery of services to meet nationally agreed outcomes against which performance will be measured (Scottish Government, 2012, 17).

The Scottish Government defines health and social care integration as:

² <http://www.scotland.gov.uk/Publications/2011/06/27154527/0>

“... services that are planned and delivered seamlessly from the perspective of the patient, service user or carer, and systems for managing those services that actively support such seamlessness.” (Scottish Government, Consultation document May 2012, 6).

One of the main aims of integration is to achieve a shift in resources towards preventative spending and early intervention, including in the early years. With the Scottish block grant reducing by 10% in real terms by 2016, the key challenge for the Scottish Government is how to achieve the desired shift towards preventative spending at a time of fiscal contraction.

Detailed development work was undertaken at the **Integrated Resource Framework** pilot sites in The Highlands, Lothian, Tayside and Ayrshire & Arran. These attempted to map cost and activity data across health and social care so as to improve the evidence base for decision-making about services.

As part of the Highland IRF pilot community based children’s services were transferred from the Health Board to the local authority. Meanwhile local authority adult social care services were transferred to the Health Board, with accompanying wholesale transfer of budgets and staff.

The proposed Adult Health and Social Care Bill raises a number of challenging issues:

- The Government acknowledges that the proposed structural change will have an impact, particularly on children’s community health services. In addition, the consultation makes clear that local partners will have discretion to include services for children, and other existing Community Health Partnership functions, in these plans (Scottish Government, 2012, 25).
- In spite of this, structural integration is still being driven by an agenda around adult services and there are many unknowns about the new integrated arrangements, not least around the accountability of pooled or integrated budgets.
- It is unclear how the impact on other services – including children’s services – will be managed;
- There could potentially be a negative impact on ‘whole family’ approaches; with better ‘integration’ between adult services, but *disintegration* between adult and children’s services (as well as between different types of adult services).
- We do not know whether the new health and social care partnerships will inherit the local authorities’ responsibility to promote social welfare (or wellbeing, if amended as is currently proposed, by the CYP Bill).
- The Scottish Government has said that it considers the principles of the IRF and the Change Fund could be applied ‘to create greater collaborative working and pooling of budgets in early years policy’. However it remains unclear exactly how the proposed Health and Social Care Partnerships will relate to initiatives like the **Early Years Collaborative** which is bringing together Community Planning Partnerships to drive improvements in early years provision.³

It is also worth noting that the evidence base around the Integrated Resource Framework is not overwhelmingly positive. The evidence review the Scottish Government commissioned to inform the pilots concluded there was little evidence internationally demonstrating that IRF were effective.

³ <http://www.scotland.gov.uk/Topics/People/Young-People/Early-Years-and-Family/early-years-collaborative>

There was weak evidence that IRF led to savings through efficiencies, however it also noted that during the implementation period costs usually increased and staff morale fell. Where health impact was assessed there was no evidence of better outcomes (Weatherly et al, 2010). The evaluation of the IRF pilot sites did not find evidence, within the timescale of the evaluation, that integrated work led to the release of resources or significant changes to fixed costs (Ferguson et al, 2012:1).⁴ Question marks remain over the larger issue of whether the government's chosen course will deliver the expected results.

The wider picture here also includes the **Review of Community Planning**⁵ & the planned **new guidance on Single Outcome Agreements**.⁶

The Scottish Government is encouraging more outcome-based approaches to budgets and resource alignment, and is funding **the Improvement Service** to do work on this with Community Planning Partnerships.⁷ It is encouraging the concept of preventative spending to be embedded in Community Planning Partnerships by giving local authority figures encouragement to 'disrespect boundaries' and to challenge established spending patterns (p10).

The Social Care (Self-directed Support) (Scotland) Act

The Social Care (Self-directed support) (Scotland) legislation was introduced in the Scottish Parliament in February 2012.

Significantly, the legislation will extend Self-Directed Support ("SDS") to children and families where services are to be provided on the basis that the child or young person is considered 'in need' under the Children (Scotland) Act 1995. While the principles behind SDS are universally supported:

- concerns exist about the implementation, particularly given the adequacy of funding for social care, exacerbated by cuts in local government budgets. In these circumstances there is evidence that it has led to the reduction in the level of support individuals receive.
- there are outstanding issues surrounding its applicability to areas where there are child protection concerns, and the interface with PVG.
- there also remains concerns where there is an element of compulsion in service provision and therefore where it may be inappropriate to offer a direct payment. Another potentially negative indirect effect of SDS is its potential to undermine the viability of collective forms of provision for vulnerable individuals by local authorities which some individuals may wish to be retained.⁸

A Scottish Government working group was established to examine issues around the criteria for determining eligibility for SDS, as well as common thresholds, to try to ensure consistency across Scotland.

⁴ <http://www.scotland.gov.uk/Resource/0039/00396974.pdf>

⁵ <http://www.scotland.gov.uk/Topics/Government/local-government/CP/communityplanningreview>

⁶ <http://www.scotland.gov.uk/Resource/0039/00397999.pdf>

⁷ See Government response to the Finance Committee Preventative Spend Inquiry, 9.

⁸ <http://www.scotland.gov.uk/Topics/Health/care/sdsbill>, <http://www.ccpscotland.org/providers-and-personalisation/policy/Working-Groups>

The Reform of Public Procurement

This was initiated in 2006 by the previous Labour-led administration. New audit and scrutiny regimes have been introduced and a new agency, Scotland Excel created to encourage the collaborative commissioning of larger „units’ of provision, with services being contracted for longer time periods.

- This has implications for future voluntary sector provision of services for vulnerable children and young people.
- It is positive in terms of tackling the insecurity implicit in short or fixed term funding.
- It also has the potential to favour large national or UK organisations over smaller local ones (the majority of third sector organisations). It will also provide the conditions for market entry by some of the larger private sector social care providers.

The second phase of reform beginning in 2010, aimed to accelerate and embed changes already made. After a period of public consultation it is expected that the Public Procurement Reform Bill will be introduced to the Scottish Parliament by the end of June 2013.

Community Empowerment & Renewal Bill

- The consultation considered how to enable community organisations to deliver public services on behalf of the public sector and empower communities to design services around their own needs.
- It also sought views about introducing a community „right to challenge’ public service provision, as introduced in the Localism Act 2011 in England and Wales. This would enable communities to stage bids to take on the contract to run services currently delivered by statutory agencies.
- These all potentially have application in children’s services. Under the proposals being consulted on around „Community directed spending’, community organisations could be given a right to request responsibility for a defined amount of spending in one or more specific areas where Community Planning partners have powers and duties. As with other bills, it is the detail which will be important, such as the definition of „communities’ and „community organisations’ and the interface with the existing statutory duties under the Local Government in Scotland Act 2003 to consult and co-operate with young people, and organisations working on their behalf, in the Community Planning process.

CONCLUSION

The impression gained from the consultations on the Adult Health and Social Care Bill, and the Self Directed Support legislation, in particular, is that the full implications of these for children’s services have not been considered. In common with the CYP Bill there is a notable lack of detail.

The disconnects and potential tensions and contradictions between these pieces of legislation need to be recognised and addressed. The concern is that the legislative process itself does not enable this „bigger picture’ to be considered.

By highlighting these issues we hope this paper helps to promote a debate about how, in practice, the rights and needs of children and young people can be at the heart of service development