



# **A Scotland for Children: A Consultation on the Children and Young People Bill**

**UNISON Scotland's Submission to the Scottish Government on their  
Consultation on the Children and Young People Bill  
September 2012**

## **Introduction**

UNISON is Scotland's largest trade union representing over 160,000 members working in the public sector. We represent social workers, social care staff, health and education staff who are part of the workforce for children and young people, many of whom will be affected by the Scottish Government's proposals.

UNISON Scotland welcomes the opportunity to respond to the Scottish Government on their consultation on the Children and Young People Bill, using the views of our members, with whom we have consulted widely.

## **General Comments**

UNISON Scotland has supported the principles of *Getting it Right for Every Child* (GIRFEC) since its inception and we believe that many of the measures contained in the proposed Bill can only strengthen the policies contained within it.

However, there are several areas which we believe merit further consideration prior to the Bill being passed and other issues which we feel will need to be addressed to enable it to bring about the improvement it aims to introduce.

The most important of these is, we believe, the need for adequate resources to be guaranteed to ensure the improvements can be implemented. While training, cultures and 'silo' thinking may be obstacles to delivering the full ethos of 'Getting it Right', the biggest block comes from staff being unable to deliver due to workloads and resource pressures. The Government needs to recognise this if it is to turn the aims of the Bill into a reality for children in Scotland.

We also believe that early intervention is the key to successful outcomes for children, as we have stated in our responses to many consultations over the years. Particularly, as we outlined in our response to the Scottish Parliament Education and Culture's recent Inquiry into decision-making on whether children should be taken into care, it is dangerous to read too much into health and educational factors when measuring outcomes for children leaving care because of the unknown influence of the factors that caused the children to come into care in the first place. However, it is clear that outcomes are poor and early intervention – before damage is almost irreversible – is essential.

[http://www.unison-scotland.org.uk/response/LookedAfterChildren\\_Response\\_to\\_ScotParl\\_Education+Culture\\_Cttee\\_Aug2012.pdf](http://www.unison-scotland.org.uk/response/LookedAfterChildren_Response_to_ScotParl_Education+Culture_Cttee_Aug2012.pdf)

We have consistently supported measures that will lead to early intervention to improve outcomes for children and young people. It is well researched that early neglect leads to physical damage (including brain development) as well as emotional and behavioural difficulties for children. The later the problems are addressed, the more difficult it is to reverse the damage.

However, care needs to be taken that community responses to early intervention do not merely support the neglect in situ. We welcome the

concept that early intervention should be “as enabling as it is preventative” and where it is not achieving change quick enough to avoid damage to children, action needs to be taken. The Government and society therefore need to be prepared for the possibility that early intervention may lead to more children coming into care in at least the short term.

We also noted in the response that:

*“One of the critical, and often unforeseen, effects of the GIRFEC approach and more focus on early intervention is that higher threshold problems are identified at an earlier stage and children who might have gone under the radar are being accommodated. As such the expected outcome of less children becoming accommodated is not being realised and there is a real possibility of a considerable increase at least in the short term.*

*“Another factor with the potential to lead to more children becoming accommodated is where staffing at practice team level has improved to the extent that staff can make early thorough assessments, again identifying children who may otherwise have gone under the radar. Society’s expectations and thresholds regarding chronic neglect have changed significantly in recent years and some of our members report that this has led to children being accommodated (correctly) who might previously not have been. Anecdotally, it appears that courts and hearings are more willing to take action in terms of evidence of neglect but difficulty remains in evidencing and convincing systems of the presence of – and the extremely damaging effects – of emotional abuse.*

*“One of the major barriers to best practice and positive outcomes is the inability in most circumstances to have a positive choice of placement to best match the child’s needs. All too often children are accommodated in the only resource available at the time, whether that is a foster carer or a unit. In 1999, the Edinburgh Inquiry recommended that residential units should operate consistently below capacity so that there could be a genuine choice of placement for a child. We are not aware of this ever being enacted in any local authority.”*

Resources, therefore, are an obvious issue in residential care but they are also critical in early intervention. Most social work staff will attest that they are primarily involved at the response end in child protection etc, rather than with the protective side. When resources are tight, the highest priority has to be the child at risk now rather than the one who faces being at risk tomorrow or the day after.

A further inhibition is that the Government rarely measures performance in early intervention but has a host of measures and KPIs when it comes to child protection, children’s reviews and reports for children’s hearings.

There are also some issues to be raised which would assist with improving services.

The consultation draws attention to the delayed interventions in meeting the needs of vulnerable children who are not on the Child Protection register. This underlines our comments above about the pressure on resources and the fact that staff priorities are diverted to the higher end of need, especially when that becomes subject to measurable performance as defined by inspections. Once a child is in the 'system', all of the measurements, duties and KPIs kick in irrespective of whether they are a higher or lower priority than children who do not yet have the CP or looked after label.

Delays in other circumstances also need addressing. All of the evidence available to us tells us that, when children cannot go home, the sooner they move on to permanent placements, the more chance there is of mitigating or reversing damage. The Government needs to look at the role of the courts in many of the delays encountered. We are aware of permanency cases being in court for years. We are also aware of Sheriffs' reticence to allow children to move to long term placements during the court processes. This causes unnecessary damage to children in terms of attachment and recovery from emotional and indeed physical damage.

Delays and obstructions in a non-child friendly court system should not be allowed to create a situation where the system is avoided and children end up placed permanently but have to return yearly or more frequently to a children's hearing where, for them, their whole security in permanence is up for debate. This negates the security and predictability of permanence that allows children to recover and repair.

We welcome proposals to improve reporting on outcomes but do not believe that Single Outcome Agreements are at this stage the best way to achieve that. Much more academic research work needs to be done to provide professionals in the field with good evidence of what brings better outcomes and how to measure those outcomes.

Data protection is also an area which needs to be addressed. There needs to be much more clarity about the threshold for sharing personal information and the public need to be aware that information they currently believe will lie with only one agency, may well be shared with others. This has major implications as to how that information is stored in agencies not used to managing such information, whether it then shared on with other agencies, whether it is then used for purposes other than originally intended (e.g. eviction proceedings etc) and how people can exercise their right to a data subject access request across these agencies.

Our members are concerned that the blanket pressure, arising from inquiries and the GIRFEC agenda, to ensure information exchange is leading to information being shared at thresholds far below child care or protection cases and in circumstances that could leave agencies open to data protection breaches. Families with vulnerable children often have to share information

with a number of agencies and either lose their awareness of the right to confidentiality or are unaware how information is shared and what they can do about it. This is not the case with the wider population who may have serious concerns about how and when information is shared across universal services. Our members need greater clarification on the circumstances in which information exchange is appropriate.

## **QUESTIONS**

### **Chapter 1: *A Scotland for every child***

#### **1. Do you feel that the legislative proposals will provide for improved transparency and scrutiny of the steps being taken by Scottish Ministers and relevant public bodies to ensure the progressive realisation of children's rights?**

UNISON Scotland recognises the patchy investment in GIFREC across the country and welcomes the proposal to put many of the laudable objectives into legislation. We hope that the result of this will be a bigger investment from universal services in Getting it Right for Every Child principles.

We fully welcome the accent on the rights of children in line with the UNCRC and the duties to be placed on ministers to take steps to further the rights of children and promote awareness of the UNCRC.

#### **2. On which public bodies should a duty to report on implementing children's rights be applied?**

We note the duty of local authorities and other agencies to 'report' on what they are doing to promote children's rights but would have preferred a similar duty as that on ministers to have been placed upon them. We remain concerned from our experience in the first draft of the Children's Hearings Scotland Bill and in the recent drafts of Children's Hearings Rules that the concept of human rights applying equally to children as they do to adults is not always fully understood.

Our members report concerns that the courts and sometimes children's hearings lean more towards parental or adult rights than they do to the rights of children. Putting the UNCRC concept at the centre of the proposed legislation is therefore welcome.

We would support the duty being applied to local authorities, health services, the community and voluntary sector, organisations providing procured services on behalf of or in partnership with public bodies, the police and the court system.

Training for staff, children's panel members and sheriffs, among others, will be critical to ensuring an understanding of UNCRC issues and ensuring their implementation.

**3. Do you agree that the extension of the Children's Commissioner's role will result in more effective support for those children and young people who wish to address violations of their rights?**

We welcome the suggestion to extend the Commissioner's power to undertake investigations on behalf of individual children and young people.

**4. Do you agree with the definition of the wellbeing of a child- or young person-based on the SHANARRI Wellbeing Indicators, as set out in the consultation document?**

We welcome the approach that puts the concept of wellbeing at the heart of design and delivery of services and the attempts to create an understanding of the concept.

**5. Do you agree that a wider understanding of a child or young person's wellbeing should underpin our proposals?**

Yes.

**6. Do you agree that a duty be placed on public bodies to work together to jointly design, plan and deliver their policies and services to ensure that they are focused on improving children's wellbeing?**

We welcome the duty of public services to work together to plan and deliver services but we caution against top down mergers or 'integration' which change management and funding structures but make very little difference to children at service delivery level.

We caution against adopting too many lessons from the Highland experience for example and question whether that is necessarily transferable to different communities and especially deprived inner city or central belt communities.

However, we question the practicability of this ability of this aim to be realised, in the era of budget restrictions in which all public bodies are operating.

**7. Which bodies should be covered by the duties on joint design, planning and delivery of services for children and young people?**

Local authorities, health services and the community and voluntary sector where they provide children's services. The key to successful services and joint planning is consistency and the ability to plan strategically, as such any commissioning must ensure commitment to the joint plan and must be subject to the same duties as public bodies, including the UNCRC duties and Freedom of Information.

**8. How might such a duty relate to the broader Community Planning framework within which key service providers are expected to work together?**

See our response to the Scottish Government consultation on Community Planning.

[http://www.unison-scotland.org.uk/response/CommunityEmpowerment&RenewalBill\\_response\\_Sep2012.pdf](http://www.unison-scotland.org.uk/response/CommunityEmpowerment&RenewalBill_response_Sep2012.pdf)

**9. Do you agree that we should put in place reporting arrangements making a direct link for the public between local services and outcomes for children and young people?**

Yes, but not only local services. Health services and other nationally co-ordinated services need to be included.

**10. Do you think that these reporting arrangements should be based on the SHANARRI Wellbeing Indicators as set out in this consultation paper?**

The SHANARRI indicators are widely used but they need to be constantly reviewed and updated. They need to extend beyond health and care into economic planning, employment, training and broad social welfare provision.

**11. On what public bodies should the duty for reporting on outcomes be placed?**

See Question 7 above.

**Chapter 2: A Scotland for each child**

**12. Do you agree that the Scottish Government should increase the number of hours of funded early learning and childcare?**

Yes. We welcome the increase in minimum annual provision for pre-school education, the increase in flexibility to make this service 'seamless' and the additional provision for vulnerable children. Despite the perception that education and care are separate, we would reiterate that there is no split between care and education in early years' provision. We need an integrated service disposing of the illusion that those who provide education for early years children don't care, and those who care don't educate. This is a fallacy. It is impossible to do one without the other.

We would also emphasize that nursery nurses are the early years' professionals. Their qualifications cover working with children from nought to eight years. They study theory and principles of children as active learners and child development (physical, emotional and social). Those who wish to take on more responsibilities can embark on further qualifications. Achieving the BA in Childhood Practice or the SVQ Level 4 qualifies staff to manage early years' establishments. All are involved in continuing professional development. All facilities should be led by someone with that level of qualification, not necessarily a teacher.

However, we have concerns how the proposals to increase the number of hours funded will be implemented. Currently the Government funds 475 hours of preschool education for every three and four year old. This is usually accessed from the term after the child's third birthday until they start school. The way some councils utilise this is by providing 12.5 hours per week for 38 weeks of the year, usually 2.5 hours per day. This can then be topped up with a payment for full time provision which would also include lunches if the child was not entitled to free meals. The amount of this top up varies from council to council. The consequences of this are that, mostly in nursery schools, parents take up a part time place either in the morning or afternoon which

means that key workers can have the responsibility of approximately 24 children. Where parents in extended provision have a full time place using the top up key workers would be responsible for eight children. This staffing ratio comes from the guidelines of the former Care Commission which states that for 3 to 4 year olds attending nursery for over 4 hours then the ratio should be 8 children to 1 member of staff. It is 1 to 3 for under twos and 1 to 5 for 2 year olds just for your information.

The proposed 600 hours is to be welcomed especially as the proposals do now not restrict the expansion to early years' education but expand the definition to early learning and childcare. However, the examples given as to how these hours could be utilised causes concerns e.g. 600 hours cannot be divided into an equal part time, part year place even if there was an increase in the hours to 3 per day, 15 per week for 38 weeks which would amount to 570 hours. Therefore more weeks would have to be offered leading to a change of contract for staff, which would cost more money. If more than 3 hours per day was offered as an alternative, contracts would still need to be altered as most nursery nurses work a 32.5 or 35 hour week which could not accommodate two part time places of 3.5 hours as planning, organisation, setting and clearing up time is included in this. Other patterns suggested in the consultation could lead to split weeks which could have the effect of doubling the amount of children attending the nursery which would again lead to workload issues as described above.

In addition, current staff to children ratios include the heads or managers of units and are provided very often at a minimum. We have some experience of 'wrap-around' care involving several changes of worker for children in the course of a day. This provision cannot be successfully provided without investment in the workforce.

**13. Do you agree that the Scottish Government should increase the flexibility of delivery of early learning and childcare?**

Yes. More flexibility would be required with an increased amount of extended provision but this will probably lead to a change of contract for the staff involved. The Scottish Government and employers need to be reminded that this is predominately a female workforce, who have their own childcare needs which term time working arrangements fulfil.

The other area not mentioned in the document is the inclusion agenda, specifically the area around additional support for learning. The additional resources which are clearly needed to provide this support, including staffing ratios, need to reflect this as well as the identification of the range of professionals required to provide this support e.g. Health professionals, speech therapists, psychologists etc.

**14. Do you think local authorities should all be required to offer the same range of options? What do you think those options should be?**

UNISON believes that we need a mixture of high quality care and education for all children from birth to school age, childcare provided by trained and valued staff; in a way that suits the working lives and pockets of parents.

Local authorities should be given a framework to work within that ensures basic standards but allows for innovation and local solutions to local needs.

**15. How do you think the issue of cross-boundary placements should be managed, including whether this might be through primary or secondary legislation or guidance?**

Clarity in funding arrangements and responsibilities would help remove some of the barriers to cross-boundary working.

**16. Do you agree with the additional priority for 2-year olds who are 'looked after'? What might need to be delivered differently to meet the needs of those children?**

We welcome the increase in minimum annual provision for pre-school education, the increase in flexibility to make this service 'seamless' and the additional provision for vulnerable children.

However, workforce implications as outlined in question 12 have to be taken into consideration and this provision cannot be successfully provided without investment.

**17. Do you agree with the proposal to provide a point of contact for children, young people and families through a universal approach to the Named Person role?**

We welcome the focus on the role of universal services in ensuring children get the help they need when they need it and that is done in a co-ordinated way.

However, there is anxiety among universal service staff that the role will be one of a quasi-social worker when we are clear that this is not what is intended. Guidance and clarity on the role for those expected to undertake it will be needed. This should be in the form of an overall educative programme that allows staff to buy into the plan and identify with its principles, rather than the narrow concept of a 'job description'.

**18. Are the responsibilities of the Named Person the right ones? Are there any additional responsibilities that should be placed on the Named Person?**

The responsibilities are appropriate and should be maintained at a level that ensures that it does not require significant extra duties and responsibilities over and above the Named Person's core role. As they stand, the responsibilities will require additional front-line time and administrative support and it is unlikely that agencies will be able to easily allocate those resources. The responsibilities should be kept at a level that are manageable and do not require additional skills and knowledge to that required for the key role of the person concerned, i.e., there should be no expectation that the Named Person is a 'lead professional'.

**19. Do you agree with the proposed allocation of responsibilities for ensuring that there is a Named Person for a child at different stages in their lives set out in the consultation paper?**

The allocation to the universal service most closely related to the child seems the best way forward but again resources and staff time are critical to this.

**20. Do you think that the arrangements for certain groups of school-aged children as set out in the consultation paper are the right ones? What, if any, other arrangements should be made? Have any groups been missed out?**

The arrangements appear to be adequate and we cannot at present think of any others or groups that need to be included.

**21. Do you think a single planning approach as described in the consultation paper will help improve outcomes for children?**

There needs to be more clarity about the Single Child's Plan. The term sounds so simple but there is a danger that it becomes so reduced to the lowest common denominator that it becomes useless. There needs to be a recognition that more detailed education, social work, medical and other plans will need to lie behind this. There is a major resource issue in terms of time and support for named persons and lead professionals to effectively pull together these plans.

The last thing our members need is more forms.

**22. How do you think that children, young people and their families could be effectively involved in the development of the Child's Plan?**

There needs to be a universal assumption that young people and their families will be involved in all meetings, that they have control over their own information and that they play an integral part in the plan.

**23. Do you agree that care-leavers should be able to request assistance from their local authority up to and including the age of 25 (instead of 21 as now)?**

We welcome the raising of the age of young people leaving care having a right to ask for help from a local authority from 21 to 25. However, we caution that this might not be the right time when local authorities have to cut rather than invest. Giving the right must be accompanied by the resources to make that right a reality.

This is a key issue for young people leaving care. They are asked to prepare for independence at a far younger age, often at 16 or earlier, than the rest of the population – as much as 10 years earlier according to some figures. The primary reason for this is pressure on resources. Foster care payments stop at 18. Young People's units are not designed to allow young people to stay on and move when they are ready. Often there is not a seamless transition from children's to adult services.

Most of all, the resources are not there to allow young people leaving care to make the same mistakes as the rest of the population, then come back home, regroup and try again.

**24. Do you agree that it would be helpful to define corporate parenting, and to clarify the public bodies to which this definition applies? If not, why not?**

We welcome the plan for a clear definition of 'corporate parenting' and its extension to the range of agencies that have a role with young people. However, this in itself will not bring improvements and it needs to be rolled out with a plan to build a change in culture across and within agencies. For example, in local government, it is not unusual for the responsibility for 'corporate parenting' to lie solely with social work services with less responsibility taken by key services like education, housing and employment services. Politicians also need to be educated in their role as 'corporate parents' and we welcome some initiatives where local authorities are seeking to give job opportunities to young people who are, or were, looked after.

**25. We believe that a definition of corporate parenting should refer to the collective responsibility of all public bodies to provide the best possible care and protection for looked-after children and to act in the same way as a birth parent would. Do you agree with this definition?**

Yes

**26. Do you agree that a new order for kinship carers is a helpful additional option to provide children with a long-term, stable care environment without having to become looked after?**

In terms of the proposed kinship care order, we would need more detail before giving a definitive response. We would caution against some of the unintended consequences of the current kinship carer payment scheme. Because a child has to be looked after in order for kinship carers to receive payments, we believe that some children are being referred to children's' hearings and becoming formally looked after entirely to qualify for the payments. In many cases these children would otherwise have not come into the system.

We support the current assessment scheme for kinship carers but stress that it needs to realistically recognise family relationships and the relative success of kinship placements and avoid setting the assessment bar too high.

There are many positives in the kinship care system but we are aware that the payments, if made at all, vary widely across local authorities as does the level of non-financial support available.

In the initial stages of the scheme, those who needed the support were not getting it because benefits were deducted in light of the payments. Where middle to high earners would receive kinship care payments on top of their salaries, many on benefits found that they were no better off because of the

deductions. All that was happening was that central government financial responsibility was being passed to Local Authorities. The system still remains unclear.

We would welcome a system that genuinely supports kinship carers and also provides financial support where it is needed in a fair and transparent way.

**27. Can you think of ways to enhance the order, or anything that might prevent it from working effectively?**

UNISON has no comments on this at present.

**28. Do you agree that local authorities should be required to match adoptive children and families through Scotland's Adoption Register?**

UNISON has no comments on this at present.

**29. Do you agree that fixing maximum limits for fostering placements would result in better care for children in foster care? Why?**

Guidance would be more appropriate than setting a defined limit. It is of course important to ensure carers are not overloaded or misused when resources are tight and that children are not placed in a quasi-residential unit environment. However case by case decisions would be more appropriate depending on the accommodation, children's needs etc.

**30. Do you agree foster carers should be required to attain minimum qualifications in care?**

There should be some form of national standard and expectation of review and refresher training. There is a wide variance in the skills and experience of foster carers and in an ideal world they would be matched on every occasion with the needs of a particular child. In reality, resource restrictions mean placement very often depends on who is available at the time. Standards should ensure carers are versed in the reasons for children's plans and the evidence that underpins them but expectations should not be at a level that over-professionalises the role.

**31. Would a foster care register, as described, help improve the matching by a local authority (or foster agency)? Could it be used for other purposes to enhance foster care?**

UNISON has no specific policy on this. We believe that the primary focus should be on recruitment and support of carers with realistic remuneration. A situation must not be allowed to develop that sees local authority carers becoming the poor relatives of agency carers. The market for agency carers is largely created by the lack of local authority carers and reasons for that need to be examined.

**32. Do you think minimum fostering allowances should be determined and set by the Scottish Government? What is the best way to determine what rate to pay foster carers for their role - for example, qualifications of the carer, the type of 'service' they provide, the age of child?**

Allowances and fees need to reflect the importance of the job carers do and

we would not be opposed to differential rates depending on the specialist nature of the service offered by specific carers. However any minimum rate would need to be backed by the finance to allow local authorities to afford it. The current issue about payments is not one of 'will' by local authorities but ability to pay. This, however, is often a false economy in that local authorities end up having to pay more expensive agency costs.

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