

Renfrewshire Joint Negotiating Committee for Teachers

To: Renfrewshire Joint Negotiating Committee for Teachers

On: 6 September 2016

**Report by
Acting Head of Service**

Named Person Scheme – Supreme Court Judgment

1. Background

- 1.1 The Children and Young People (Scotland) Act 2014 put into statute some key aspects of the GIRFEC approach. It set out a definition of 'wellbeing' (Part 18). It formalised the role of the Named Person (Part 4) and made provision for a statutory Child's Plan (Part 5) to coordinate support for those children who may require additional help. The Act also provided a framework for information sharing between professionals to support the functions of the Named Person (within Part 4).
- 1.2 The duty to provide a Named Person Service was placed on local authorities, health boards and a number of other agencies such as residential school providers. The Scottish Government published guidance on the qualification and experience of those members of staff who would operate as named person for individual children. The guidance noted that the Named Person for children and young people attending a local authority-managed school was required to be a registered teacher holding a promoted post in the school. In addition that named person was expected to have experience in providing educational and personal support to pupils.
- 1.3 Within Renfrewshire that meant that for most children and young people the Named Person would have been their head teacher or deputy head teacher in primary school and in the secondary sector could have included a principal teacher with a pastoral support remit.
- 1.4 Locally arrangements were in place to ensure that as an authority we were able to comply with the duties in the Act which were due to be effective from 31st August 2016. These arrangements included a local, interagency implementation plan to ensure the relevant policy, procedures, communications and training were in place for the planned commencement of the Act.

- 1.5 Four charities and three individual parents challenged aspects of the legislation in relation to the Named Person Scheme. The challenge focused on two main areas: the lawfulness of the named person sharing and retaining information in relation to individual children and their families and the compulsory appointment of a named person was a breach of the rights of the parents of children under article 8 of the European Convention on Human Rights (ECHR). Article 8 relates to the right to a private and family life and the restrictions on interference in this area by public authorities.
- 1.6 The initial challenge was rejected in the Court of Session and the appellants appealed to the Supreme Court. The Supreme Court announced its judgment on 28 July 2016. The Supreme Court has held that Part 4 of the Children and Young People (Scotland) Act 2014 is incompatible with Article 8 of the ECHR. The Supreme Court is proposing that an Order be made to allow the Scottish Government an opportunity to correct this and have given them 42 days to make written submissions on what the terms of this Order should be.
- 1.7 The Scottish Government has said that they are assessing what this means for the timescale of implementation and will continue to progress its preparations for implementation of the named person service and related provisions. However, as the Supreme Court found that the aspects of the Children and Young People (Scotland) Act 2014 are outwith the legislative competence of the Scottish Parliament, they cannot be brought into force in the meantime. .
- 1.8 Renfrewshire has suspended the preparation work on the Named Person scheme pending the outcome of the Scottish Government response to the Supreme Court.
- 1.9 In Renfrewshire, we remain committed to the aspirations of Getting it Right for Every Child approach and have well established pathways, processes and protocols to safeguard and support children and young people. In addition, every day within Renfrewshire professionals continue to share information in a thoughtful, respectful and proportionate manner. There will be no change to that ongoing professional practice. It remains business as usual and, to that end the well-established pathways will continue to operate.
- 1.10 The judgment does not relate to current practice in relation to information sharing and we must continue to share information appropriately and in accordance with the requirements of relevant legislation, such as the Data Protection Act and the Human Rights Act, when providing services to children and families. In line with current good practice we work in partnership with parents, carers and young people to provide the support they need when they need it.
- 1.11 Staff who have concerns about individual children should continue to share these with the appropriate agency to ensure the protection of children continue using current practice, procedure and guidance.

2. Recommendation

2.1 JNC.is asked to approve:

- [a] note, that as a consequence of the Supreme Court judgment the decision to suspend the implementation of the Named Person Service under the Children and Young People (Scotland) Act 2014.