

Early and Effective Intervention and the Named Person Service

Donna McEwan
January 2018

Abstract

The [Whole System Approach](#) (WSA) Implementation Group recognises the critical importance of Early and Effective Intervention (EEI) in seeking to divert children and young people who become involved in offending behaviour at the earliest possible stage. In response to practitioner concerns regarding the impact of the Supreme Court judgement on EEI practice, the WSA Implementation Group felt a practice note highlighting the key messages supporting EEI would be beneficial at this time.

Contents

| | |
|---|----------|
| Abstract | 1 |
| Contents | 2 |
| EI Practice | 3 |
| Key Messages | 3 |
| Named Person Service | 4 |
| Some Considerations as to what this means for EI practice..... | 5 |

EEI Practice

Early and Effective Intervention (EEI) seeks to provide appropriate, proportionate and timely support to children aged 8-17 years at risk of, or involved in, offending behaviour and to understand this behaviour within the holistic context of that child or young person's world and respond proportionately.

Following the [Supreme Court judgement](#) which resulted in the postponement of the full implementation of Parts 4, 5, and 18 (section 96) (Provision of Named Persons, Child's Plan & Assessment of Wellbeing) of the [Children and Young People \(Scotland\) Act 2014 \(CYP SA 2014\)](#), the implications for EEI were unclear. Information sharing by partner agencies is integral to the meaningful application of the EEI process and it is important that these partner agencies have confidence in existing information sharing practices in accordance with current legislation.

One of the **key drivers** of EEI is to divert children and young people, who do not require compulsory measures of supervision under the Children's Hearing System (CHS), from unnecessary referral to the Scottish Children's Reporter Administration (SCRA). The number of children and young people referred to SCRA on offence grounds reduced by 83% from 16,229 between 2006 and 2007 to 2,761 between 2015 and 2016. This compares to a 69% reduction in non-offence grounds for the same period. Whilst these figures are not wholly attributable to EEI, it is noted that EEI has contributed significantly to SCRA referral reductions from its inception in 2011. Caution is necessary however, as SCRA data over the first three quarters of the 2016/2017 period reflects an increase in offence referrals to SCRA. In order to ascertain the reasons underlying this increase, further research is required. Such research would also assess the full impact of EEI across all associated systems and outcomes for children and young people.

The following documents provide an overview of the research underpinning the need for EEI, in addition to guidance surrounding EEI in practice:

- [A guide to Youth Justice in Scotland: policy, practice and legislation Section 4 - Early and Effective Intervention & Diversion from Prosecution, CYCJ](#)
- [Information Sheet 35 - Early and Effective Intervention: A Framework of Core Elements, CYCJ](#)
- [EEI Framework of Core Elements, Scottish Government](#) (January 2015 – due to be updated)

Key Messages

Whilst recognising that research into the effectiveness of EEI is limited, [Papadodimitraki \(2016\)](#) highlights key messages **supporting the successful implementation of EEI** from research based on empirical evidence:

1. **Multi-agency collaboration** and partnership-working is crucial to success, particularly the active involvement of **health and education colleagues**.

2. Clear and concise **communication** is a fundamental principle across agencies for successful outcomes for children, young people, and their families.
3. Appropriate, proportionate and timely **information sharing** in enabling children and young people to access appropriate interventions at the earliest stage without requiring concerns to escalate before support is available.
4. The **right people involved** in EEI should have the appropriate skill-set to identify when intervention is required, what that should look like, whom should offer it and just as importantly **when no intervention is required**.
5. **Key agencies within the EEI structure** are Police Scotland, Crown Office and Procurator Fiscal Service (COPFS), education and health.
6. **All agencies and organisations** must be fully informed of EEI and contribute to a common vision and strategic direction.

Named Person Service

The Supreme Court judgement found that the information sharing provisions within the CYP SA 2014 Part 4, relating to the Named Person Service, are out with the legislative competence of the Scottish Parliament. The Court found that further clarity was required in relation to how CYP SA 2014 relates to [Article 8](#) of the European Convention on Human Rights (HRA) which protects children and families from unjustified interference by the state and the [Data Protection Act](#) (DPA) which sets out when consent should be sought and when people should be told that information is being shared.

The Supreme Court judgement did not contest existing EEI schemes or non-statutory Named Person Services (NPS) currently operating: assuming that they adhere to existing information sharing legislation as noted above.

“Many local authorities and health boards currently operate a non-statutory Named Person scheme as part of their approach to ‘Getting it right for every child.’ The court judgement does not apply to these policy-based schemes. It is the statutory scheme, not yet in force that the court judgement applies to.” ([SPICe August 2016](#))

The [Information Commissioner’s Office](#) and [Scottish Government](#) responses to the Supreme Court ruling highlight the challenges relate solely to the information sharing provisions that were intended to come into force under the CYP SA 2014, not to practice under [GIRFEC policy](#).

In September 2016 Deputy First Minister, [John Swinney](#) stated that it was necessary to continue current practice and share information in accordance with the relevant current legislation:

“It is important that public authorities continue to share information appropriately and in accordance with the requirements of the legislative such as the Data Protection Act and the Human Rights Act, when providing services to children and families.” (Swinney, 2016)

The Supreme Court ruling has created an opportunity to reflect and consider the robustness of existing information sharing practice within the EEI processes to ensure their adherence to existing legislation and best practice principles.

Following the outcome of the current challenge to CYP SA 2014, Named Person updated guidance and materials will be published.

Some considerations as to what this means for EEI practice

EEI is a response to wellbeing need indicated by a child's alleged involvement in offending behaviour. However, wellbeing concerns do not replace child protection procedures and the thresholds are very different. It is important to recognise and consider what, if any, response is required to well-being concerns, as system contact in itself can have a negative impact thus often doing nothing can provide the best outcome for children ([McAra and McVie, 2010](#)). We must be quite clear about the criteria we must meet for sharing any well-being concerns and what this entails.

For EEI practice, the gaining of consent would seem paramount to its continued successful implementation and links with the NPS as well as promoting collaborative working with children, parents and guardians. Professional understanding of the differences between consent and explicit consent as they relate to personal data and sensitive personal data as defined in the DPA [schedule 2 and 3](#) is critical and the importance of actively seeking such consent should surely be the norm in relation to sharing well-being concerns. The importance placed on this action does not seem to be fully understood or to have filtered into practice in relation to well-being concerns. It is important that agencies avoid protectionist positions, which fail to actively promote seeking consent in order to expedite EEI processes. Would this not be a failure to adhere to DPA, HRA and United Nations Convention on the Rights of The Child ([UNCRC](#)), as this is an opportunity to gather the child's views and hear their voice? The Scottish Governments proposed [Information Sharing bill](#) to address the concerns highlighted by the Supreme Court has highlighted the need to understand consent and explicit consent regarding sharing well-being concerns.

By ensuring that children and their families are provided at the earliest stage in the process with the correct and full details as to what information would be shared, with whom and for what purpose, they will be able to make informed choices and give consent/explicit consent. Where such consent/explicit consent is not given, agencies need to be clear about how and if they should proceed, bearing in mind the threshold for well-being concerns does not equate to that of child protection. In gaining such consent at the earliest possible stage this also provides an opportunity to seek and hear the child and their parent's views. This also promotes the role and responsibility of parents and guardians in responding to the needs of their children and the state's role in offering support that would assist them to do so in an informed and collaborative manner.

Those involved in the EEI process also need to be clear about the voluntary nature of the NPS and ensure a method by which they can ascertain whether children and their families are in agreement with information being shared with NPS or not.

[Barnardos \(2010\)](#) highlights that many of our children involved in offending behaviour are predominantly drawn from the poorest and most disadvantaged families and communities and have multiple problems:

- 60 per cent have significant speech, language or communication difficulties

- 24 to 30 per cent have a learning disability
- 18 per cent suffer from depression
- 10 per cent have anxiety disorders
- 5 per cent have psychotic-like symptoms

By identifying well-being concerns this provides the opportunity to offer proportionate and appropriate intervention to reduce the risk of escalation or more serious concerns forming. By provision of such responses by universal services, rather than waiting until statutory services are required, promotes the use of preventative and diversionary measures, which could have significant positive outcomes for children, young people and their families. Any provision of intervention and support should clearly be provided within a proportionate and appropriately assessed framework with due regard to rights and existing legislation.

This is an opportunity to rejuvenate EEI locally and nationally, ensuring practice adheres to data sharing legislation in place and the pending General Data protection Regulations which will be in place from May 2018 (ICO website provides [information and guidance](#) to prepare for this implementation), and that the right multi-agency partners are round the table supporting each other. It is important that EEI practitioners and partners be supported to have confidence in sharing information appropriately, their role and purpose in sharing, when sharing is required being clear as to the conditions permitting the sharing of information and commitment to gaining explicit consent as appropriate. Revisiting existing Multi-agency information sharing protocols to ensure agencies and practitioners are clear and confident in these matters would be beneficial.

Evidencing the outcomes of EEI for children and their families is crucial; gathering their experiences of the process will also inform developments. This is an opportunity to reflect on practice, to do things differently if needed, to be more transparent, collaborative not just with professionals but with children and their families ensuring respect for their rights and sharing of their information.