

## Article

## The Named Person: Surveillance and the wellbeing of children and young people in Scotland

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### Abstract

The Scottish Parliament's 'Children and Young People' Act has extended statutory responsibilities for the welfare of children to include their wellbeing. This article focuses on the Named Person service, arguing that an attenuated understanding of surveillance by politicians and other stakeholders has contributed to a failure to adequately consider the surveillance dimensions of this new universal provision.

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### Introduction

The Scottish government has declared its intention to make Scotland 'the best place in the world for children to grow up' (Scottish Government 2012a: 3). (Devolved government in Scotland, within the UK, commenced in 1999 and the Scottish National Party (SNP) secured an overall parliamentary majority in the 2011 General Election.) In February 2014 the parliament passed the Children and Young People's Bill into law as a keynote piece of legislation. It specifies the duties of government ministers and public bodies in relation to the rights of children; sets out the future of children's services; details the requirements of plans to address a child's specific needs; extends early learning and childcare provisions; and sets out other measures including corporate parenting, school closure processes and juvenile justice. A crucial figure in this vision is the Named Person, typically a health visitor or senior teacher, to whom a child and/or her parents can turn for advice in negotiating the diverse services available for supporting welfare and wellbeing. Controversially, in the eyes of some, the Named Person is also the one to whom initial concerns, both minor and serious, about a child are brought. The Named Person is responsible for making an initial assessment, entitled to receive and required to be given appropriate information about a child and her family.

This paper focuses on the Named Person and the paucity of debate in the parliament around the surveillance dimensions of this role. Politicians—and it seems advocates of the Bill within the social services—conceive of surveillance solely in terms of 'Big Brother' and reject this as a caricature of themselves. In the absence of nuanced understanding of surveillance, the surveillance aspects are summarily dismissed. The paper first considers the roots of the Named Person provision before placing it in a wider context of the surveillance of children. Political debates around the role of parents and the assessment of risk take the discussion into contentious aspects of the Named Person service, particularly with regards to shifts from intervention on welfare grounds to obstacles to a child's or young person's wellbeing. This brings the paper into surveillance issues where we observe that how easily Orwellian

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allusions can be dismissed at the expense of more subtle consideration of discipline and social control. By looking in particular at the debates in committee and on the floor of the parliament we can see the discourse deployed that is also disseminated to the wider public in the two issues of a pamphlet, *Wellbeing*, that have been issued by the Scottish Government so far. The notion of ‘moral panics’ is used to further interpret the context of the Act. The paper concludes with two criticisms. It questions unarticulated assumptions within the *definition* of wellbeing that may clash with some parents’ legitimate standpoints. Secondly, whilst legislators have given some attention to data-*sharing*, little notice has been paid to more fundamental questions around the small, inconsequential pieces of the jigsaw of each child’s life that the Named Person, it seems, will need to gather and retain so that, sometime in the future, the bigger picture might be required. With the Statutory Guidance, that will put flesh on the bones of the Named Person service, yet to be published this paper is a contribution to important debates that are by no means over although the Bill itself has been passed by the Parliament with nation-wide implementation scheduled for 2016.<sup>1</sup>

## Roots

The origins of the Children and Young People (Scotland) Bill lie in the White Paper ‘For Scotland’s Children’ that was produced by a Labour/Liberal Democrat coalition administration in 2001. The emphasis was placed on universal services, rather than targeted provision, in order to enhance the wellbeing of all children in Scotland, not only those whose welfare was at significant risk requiring the intervention of statutory services. The roots of attending to wellbeing, not only welfare, are found in the United Nations Convention on the Rights of the Child (UNCRC) 1989. In Scotland, this vision unfolded in a policy of ‘Getting It Right For Every Child’ (GIRFEC) that was piloted in Highland Council with the intention of eventually embedding it in nation-wide practice and legislation. Integral to GIRFEC is a model of wellbeing (encompassing eight distinct, but inter-related, indicators), the ‘my world triangle’ and the ‘resilience matrix’.

Wellbeing is understood as being safe, being healthy, achieving, being nurtured, being active, being respected, being responsible and being included. The initial letters of the indicators form the acronym SHANARRI. The significant shift in policy is to place an important emphasis on wellbeing, rather than only upon welfare. As part of this development, wellbeing is, for the first time, given a statutory definition (SHANARRI)—part 13 of the Bill.

The piloting of GIRFEC in Highland Council has been considered a success, delivering benefits of a single point of contact and clarifying existing good practice (SP OR EC 10 September 2013, col. 2747). The Government minister for Children and Young People, Aileen Campbell, conscious of criticisms that additional responsibilities were being placed on already-busy professionals (not least senior guidance teachers in large schools), pointed to Highland to argue that the Bill would not change action—good teachers were already performing the actions envisaged for a Named Person—but would enhance how this role was viewed (SP OR 25 September 2013, col. 22912). The Highland pilot had also shown the need to clarify data-sharing protocols but, rather than a fear of being deluged with information, teachers had found it easier to know than not to know (SP OR EC 24 September 2013, col. 2861). The Bill was intended to make compulsory the sharing of necessary information with the Named Person.

The controversy around the Named Person service has lain not in its role in the welfare of particular children at risk but in the Named Person’s place within a system that watches out for all children’s wellbeing. Government ministers—and indeed other supportive politicians and lobbyists—studiously

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<sup>1</sup> A proposal for the development of the Statutory Guidance was published in April 2014 and formal consultation processes are expected in the Spring of 2015. As this paper was going to press the guidance was published and consultation opened on 6th February 2015.

avoid the word ‘surveillance’ but, as we will see, prefer terms such as ‘the bigger picture’ or ‘pieces of the jigsaw’; all such references are located within a discourse of responsible care. This paper does not take issue with the aims of caring for children and young people for which the Named Person service is established. Rather, attention here is paid to the attenuated understanding of surveillance that (because it is only conceived negatively) inhibits a fuller discussion. We will deal later with the questions around the dilution of the role of parents in a culture in which assessment of risk is not necessarily uniform and in which a precautionary principle comes into play. But it is important first to set the Scottish discussion within a wider context.

### *The wider context*

Public administration is deeply impregnated with surveillance practices: ‘It is the information intensity of our relations with the state, embedded in and reflected by the provision of new surveillance technologies, that determines and characterizes the nature of modern society and the extent to which society is dominated by surveillance relations’ (Webster 2012: 319). At almost every turn data is demanded from us, scraped up from the digital trails we deposit, and much of it surrendered willingly by us as our side of the contract with the state to keep us safe and provide services (in popular parlance, ‘to us but not those who are ineligible’).

Many of us engage in mutual or peer surveillance of our friends. We watch and are watched on social media networks where our willingness to be told about our friends’ activities (albeit often mundane) and to reciprocate with information our own lives is monetarised by advertisers. The more engaged citizens in our communities may turn their sights towards recording the activities of public servants, whether these be officers policing a demonstration or local council contractors issuing parking tickets.

Children are increasingly the subjects of surveillance (Marx and Steeves 2010). This can be both as victims and as threats (Steeves and Jones 2010). Even if they are generally spared the almost prison-like environment of some US public schools, Scottish children are familiar with CCTV systems in playgrounds and corridors and staff are well acquainted with the bureaucratic surveillance of auditable outcomes (Apple 2010). Working-class ‘teen mums’ experience a particular focus of intervention and monitoring whilst motherhood is reframed in idealised modes that bring stress for middle-class mums and their children (Henderson et al. 2010; McCahill and Finn 2010). Preventing disease and minimising its risks is a message carried in cyberspace where particular lifestyle choices are valorised, medical information and (self-)diagnostic tools are offered and, through the medium of digital entertainment devices such as the Wii, health is consumed and disciplined (Rich and Miah 2009).

It is within this wider context of surveillance, which of course needs to include many other domains such as the workplace, movement over borders, and criminal justice, that children and young people experience monitoring and its concomitant endeavours to influence their behaviour.

A number of commentators have raised concerns around the development of extensive and often interconnected collection, storage and analysis of children’s data (Tregeagle and Darcy 2008). Terri Dowty has been particularly critical of a tracking culture and has argued for more advertising of services because, she contends, many service users already know what they need; their problem is securing access (Dowty 2004). Dowty also engages with the common misconception that protection and privacy are set against one another instead of being understood as mutually dependent. Protection is not merely required from dangerous persons but from any degradation of autonomy and from an over-reaching state (Dowty 2008: 397).

A case has been made that rather than enhancing the provision of public services, the development of integrated IT systems has diverted resources into a managerialist and technological response, typical of a surveillance culture (Anderson et al. 2006). Ian Angell has called this type of approach the ‘pixie-dust

school of technology' in which, 'computation is a magic substance to be sprinkled over problems, that, hey presto, then vanish' (Angell 2008). Eileen Munro's report into child protection identified, amongst so many aspects, the need for a shift from a compliance to a learning culture within departments of social work (Munro 2011). It is an audit and managerialist response, epitomised in the rush towards data-gathering and integrated systems that diverts not only resources but the time and attention of otherwise people-centred professionals (Gillingham 2012). The results of a two-year ethnographic study of 'everyday practice' in children's services directorates in England and Wales point to evidence that 'social workers report spending between 60% and 80% of their available time (that is time when they were not travelling, or in meetings) at the computer' (White et al. 2010: 410). Even more worryingly, 'As the space for professional judgement is increasingly squeezed, through rigid workflows of ICS, key social work activities, such as assessment, can become meaningless and mechanistic' (White et al. 2010: 412).

Furthermore, the intrusion and almost inevitable standardisation (if not actual normalisation) of 'good parenting' and 'a good childhood' (Sparman and Lindgren 2010) can too-readily ride roughshod over family values, therapeutic effectiveness, trust and privacy: 'Government documentation and guidance is mostly unbalanced in that it ignores the dark side [...] By failing to respect the users of the social-care system, it risks deepening rather than ameliorating social exclusion' (Anderson et al. 2006: 3).

### Political debates

Returning to the Scottish context and specifically to the progress of the Children and Young People (Scotland) Bill (subsequently 'the Bill') from its pre-legislative consultation, committee and full parliament stages, we can identify a number of political questions around the Named Person. Concerns arose about the role remaining for parents, the qualification of the Named Person to make initial assessments of a child's wellbeing, as well as the whole matter of assessing risk especially as it impacts upon the sharing of personal data.

#### *Diluting the role of parents*

The Faculty of Advocates, a body of independent lawyers admitted to practice before the Scottish Courts, responded to the Bill's proposals in written evidence to the parliamentary committee. The Faculty found aspects of the Bill 'potentially insidious' in its 'assumption by the state of functions that have historically in Scotland been the responsibilities of parents'. The Faculty was exercised over the 'indiscriminate provision for possible interference in the lives of all children' rather than an approach that would focus intervention when specific needs arose. The Named Person was particularly problematic:

This part of the Bill dilutes the legal role of parents, whether or not there is any difficulty in the way that parents are fulfilling their statutory responsibilities. It undermines family autonomy. It provides a potential platform for interference with private and family life in a way that could violate article 8 of the European Convention on Human Rights.

(Faculty of Advocates 2013: 9)

The Minister, Aileen Campbell, was at pains to defend the principle of early intervention but addressed the Faculty's concerns directly:

There is no dilution of the role of parents. The role of the named person is very different from that of the parent. We know that the parent is the most important person, and the most important educator, in a child's life. The named person offers a framework for the provision of additional support if a family decides that it needs it or for the identification of issues that might be a cause for concern. At such a point, the named person can seek to support the child to ensure that they have better outcomes in life.

(SP OR EC 8 October 2013, col. 2946)

The government seemed to be giving something of a mixed message as regards the role of the Named Person. The Minister was here clearly identifying the two basic scenarios: (a) a family perceived that some additional support would be helpful for them and/or (b) the Named Person becomes aware of a threat to a child's wellbeing. The 'if they need it' caveat was given some prominence in the Committee's report at the end of the first stage of the Bill's passage (Education and Culture Committee 2013: para 82). On the other hand, a number of the more specific duties would be provided for the Named Person in statutory guidance (not yet published). This is not insignificant given the flexibility that was retained for some Named Persons (specifically midwives and health visitors) to be involved in preparation and even management of a child's plan (required when issues need intervention beyond that available through access to universal services) (Education and Culture Committee 2013: para 93).

The Named Person both acts and reacts. If a health visitor, she may directly observe a change in a child's behaviour. In a large Secondary School, the Named Person will more regularly be the recipient of others' concerns. However, a teacher in senior management (typically the group from whom the Named Person will be appointed) may still have classroom teaching where she may act on what she sees. In the case of family bereavement, existing good practice would likely lead a Named Person to check-in with a young person in order to express sympathy and availability, without any problem having yet surfaced.

The Cabinet Secretary for Education and Lifelong Learning, Michael Russell—the Minister's boss—was sensitive to concerns around quite what interventions a Named Person might be expected to make when, in the debate in Parliament at Stage 1, he stressed the assisting role:

The named person provision is about enabling, not enforcing. It is about not interference or approved parenting, nor substituting professionals for parents, but helping and assisting. It is a very important innovation.

(SP OR 21 November 2013, col. 24832)

The Conservative Party members of the Scottish Parliament (MSPs) were sufficiently exercised to use one of their opposition debates in September 2013 and continued to propose amendment to the Named Person service until the final stages of the parliamentary process. Late in the day they elicited a further clarification by the Minister—this time from a child's standpoint: 'If a child or young person does not wish to engage, they do not need to—unless there is a more serious concern about the child which demands that services become involved' (SP OR EC 7 January 2014, col. 3227). As ever, the crucial distinction lies in what determines 'more serious concern'.

Whilst supporters of the Named Person talked about early intervention not being the same as early compulsion (SP OR EC 3 September 2013, col. 2701) and the Minister emphasised a light touch regime (SP OR EC 8 October 2013, col. 2945), some did not help to assuage parental anxieties over intrusion into family life with statements such as that of Alex Cole-Hamilton (Aberlour Child Care Trust), 'if a child presents and their indicators in the SHANARRI triangle are not being met, we need to act' (SP OR EC 10 September 2013, col. 2726). It is unlikely that critics of the Named Person concept would have found much to quell their concerns when the government's official GIRFEC magazine carried an article in its August 2013 issue entitled 'Parents as Partners in GIRFEC' (Woolnough 2013). In a magazine clearly aimed at the community, rather than welfare or educational professionals, such a title could be misconstrued to present GIRFEC looming over parents. Parenting, so this article's title could imply, is to be subject to GIRFEC. Enlisting parents to GIRFEC subtly shifts the balance of power towards the system at the expense of families. (It is important to remember that GIRFEC is about wellbeing, not only the welfare of children. Evaluating parenting in terms of the *welfare* of children is supported universally; testing against *wellbeing* is potentially much more contentious.)



*Assessment of risk*

The rhetoric of GIRFEC is set towards children and young people reaching their full potential as successful learners, confident individuals, responsible citizens and effective contributors (Scottish Government 2012b: 10). We need only select one of the eight indicators to demonstrate the challenge in assessing risk to wellbeing. Achieving is described in the following terms: ‘Being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community’ (Scottish Government 2012b: 10). Self-esteem is explained, in the Resilience Matrix, in this way:

I am...a person other people can like and love; a person who is happy to do nice things for others and able to show my concern; a person who is respectful of myself and of others; a person who is willing to be responsible for what I do; a person who is sure that in the end things will be alright.

(Scottish Government 2012b: 21)

This is a tall order and unlikely to be achieved in every circumstance and to the fullest possible extent by even the most mature of adults. Every person on the planet is at some degree of risk that their self-esteem will be insufficiently developed through others’ support and guidance. Whilst these may be wholly admirable aspirations for parents, teachers and community workers, there will always be room for improvement in the environment, systems and personnel charged with this lofty vision. To put it bluntly, any hint of pessimism is a diminishing of a child’s wellbeing. What, then, is the threshold for early intervention that, despite being couched as non-compulsion, could demand to be compulsory in order to pre-empt later, more significant distress?

The explanatory notes that accompany the Bill (as amended at Stage 2) leave a wide scope for interpretation: ‘A child has a wellbeing need if the child’s wellbeing is being, or is at risk of being, adversely affected by any matter’ (Scottish Government 2013d: para 80). A Child’s Plan is to be drawn up when such a wellbeing need cannot be met, or fully met, without a targeted intervention. In other words, a formal plan is required when the provision of universal services will be insufficient fully to meet a wellbeing need. Scotland’s Commissioner for Children and Young People, Tam Baillie, acknowledged, in the context of proportionate sharing of confidential information, that the Bill represents a ‘significant shift from instances in which there is a risk of harm’ (SP OR EC 1 October 2013, col. 2907).

It is not difficult to see how parents could be concerned that too low a threshold might be set, requiring intervention into family life that would be considered highly intrusive and counter to parental rights to make decisions based on their own values, perhaps including some religious beliefs. From an early stage in the discussions it was evident that professional cultures are not uniform. John Stevenson (of the trade union Unison) observed in his oral evidence to the committee that a social worker (whose principal role is in child welfare) might see a child’s environment as adequate whilst it might be viewed as harmful by other professionals who operate within a culture of wellbeing (SP OR EC 3 September 2013, col. 2685). On the other hand, as Aldgate and Rose have noted in their discussion of GIRFEC, social workers hold to a view that there is no harm-free option once questions of a child being at risk are raised. Outside the child protection world risk-taking is viewed quite differently. Risk can be postponed and can be beneficial (Aldgate and Rose 2009: 5).

In a context of defensible decision-making it is no surprise that professionals might opt to intervene, albeit on occasions overzealously. Joan McAlpine (SNP) acknowledged this possibility in her contribution to the Stage 1 debate on the floor of the parliament: ‘I am sure that although most professionals will act responsibly, it is not unreasonable to raise concerns about overzealous individuals applying subjective views’ (SP OR 21 November 2013, col. 24820). Measured contributions to the overall debate recognised the problem of a trigger for intervention being set too low, e.g., Liam McArthur (Lib Dem) (SP OR 25

September 2013, col. 22929). Others, for example Stewart Maxwell (SNP), took a stance rather like that used to justify other surveillance strategies:

If even one child's life is saved, is not that worth it? We give vaccines to babies, even though many of them will never be exposed to the diseases that the vaccines prevent...Who in their right mind would argue against any effort by the Government or other authority to protect our children?

(SP OR 25 September 2013, col. 22917)

It is important to remember that in the first few weeks the midwife will be the Named Person for a newborn child, succeeded, until the child is within the educational system, by the health visitor. Once at school the Named Person will usually be a teacher who has specific responsibilities within the pastoral care / guidance structures. With this in mind it is worrying to see the lack of clarity around what is expected of the Named Person. The triggering of 'not achieving' wellbeing is, according to Martin Crewe (Barnardo's Scotland) based on professional assessment from agencies (SP OR EC 17 September 2013, col. 2802). However, the sophistication of the assessment, in order to ascertain whether the involvement of other agencies might be required, is arguably beyond the competence of even an experienced guidance or pastoral care teacher.

In this respect, the system relies on a distinction between a Named Person and a lead professional. It is the latter who has expertise in social work or other specialist services and who is involved once the Named Person escalates a child's case as requiring input from other than universal services (and more than one agency is involved). The Minister herself seemed to fudge distinctions between welfare-risk and wellbeing-risk. She based early intervention around wellbeing, then went on to talk about 'a professional' making a judgement about sharing information. This seems to imply a significant level of expertise at the point of decision to trigger wider involvement in a child's case; the very decision that the Named Person (often a teacher) is expected to make. In the final debate on the Bill the Minister compounded the lack of clarity by limiting the role to one of making sure that no child slips through the net, but continued then to talk about knowledge of the child in way that assumes sufficient contact to make strategic decisions about their (lack of) progress on the wellbeing indicators (SP OR 19 February 2014, col. 27799).

Such confusion—or at least lack of clarity—is of interest from a surveillance perspective not least because of the data-sharing implications. The Information Commissioner's Office in Edinburgh had issued a statement in March 2013 that sought to reassure professionals and legislators. The ICO considered that:

Where a practitioner believes, in their professional opinion, that there is risk to a child or young person that may lead to harm, proportionate sharing of information is unlikely to constitute a breach of the Act in such circumstances.

(Macdonald 2013)

However, Professor Kenneth Norrie (expert in Family Law and child protection at the Law School of the University of Strathclyde) as well as the Faculty of Advocates expressed concern that the first draft of the Bill effectively trumped all other data protection legislation and privacy rights with a much too loose approach (SP OR EC 3 September 2013, col. 2691). In the Bill as proposed, information was to be shared if it 'might be relevant' to a child's wellbeing. It was quickly pointed out that, in effect, all information would need to be shared by a Named Person with other professionals and they would be required to share all information with a Named Person because no-one could know whether, at some point later in time, a piece of information could become relevant.

The Privacy Impact Assessment Report (originally published on 17 April 2013 and updated 19 November that year) noted the change to wellbeing and the more informal approach that the Named Person system had already introduced in its pilot version:

Without the Named Person role in place, a concern can either be raised with Social Work, the Police or the Reporter to the Children's Panel. Often this formal approach is not appropriate or proportionate; or the reported concern is triaged, with any concern less than child protection discarded, even though it may be an indicator of a problem that needs to be addressed.

(Scottish Government 2013e: para. 4.12)

At Committee Stage 2 the Minister proposed an amendment that tightened up the requirement to share information when it 'is likely to be relevant' to a child's wellbeing (rather than the much more encompassing 'might be relevant' of the original Bill) (SP OR EC 7 January 2014, col. 3244).

We can surmise that it would have been public distaste lingering over other governments' attempts to develop national identification databases, that prompted the government to claim at an early stage in the committee process that they were not creating a central database or information system to track the progress of all Scotland's children. Rather, they set out to bring 'relevant bits' together—oral evidence given by Scottish Government civil servant Boyd McAdam (SP OR EC 25 September 2013, col. 2655). However, the Committee, in its report at the end of stage 1, urged improvement in IT systems for information sharing (Scottish Parliament 2013: para 137).

The line between political and surveillance issues is not distinct but has allowed us to present concerns around the Named Person that begin to unfold as specifically questions of surveillance. It is to these that we now turn.

## Surveillance issues: Analysis and critique

### *Big Brother*

The proposals for a Named Person service raised the hackles of some commentators. Christine Jardine (a former special advisor to Liberal Democrat UK ministers) writing in *The Scotsman* (one of the two major Scottish broadsheets) wanted robust assurances that:

every possible safeguard is in place so that this position can never be abused or corrupted into some sort of pseudo-Orwellian control mechanism...It is about allowing too much power to interfere in private lives in any central government.

(Jardine 2013)

Jardine continued:

I can think of few things more intimidating for new parents than the thought that some state-appointed person is watching to make sure they shape up; that there could be someone in authority who thinks they know better for a child than they do themselves, and is writing it down.

(Jardine 2013)

One of the most vociferous lobbying organisations has been Schoolhouse (Scotland's national home education support charity). They opened an online petition calling for MSPs to 'reject GIRFEC surveillance and a Named Person for every child in Scotland' (Schoolhouse Home Education Association 2013a). The organisation considers the child protection arguments to be a 'cover story' for:



a Trojan horse piece of legislation which seeks to undermine parents, abolish the right to family privacy and confidentiality, including medical confidentiality, since all records are to be shared and introduce a national identity register.

Schoolhouse made a written submission to the Committee as part of the public consultation (Schoolhouse Home Education Association 2013b). Schoolhouse instructed a solicitor practising in England to compose their submission that focused largely on a case in England where Haringey Council wrongly intervened in a family; the threshold of ‘significant harm’ not having been met. The sharing of personal and confidential information without consent was at the heart of the complainants’ argument. The relevance to the Scottish Government’s proposals (as they were at that stage) lay, for Schoolhouse, in the blurring of what they perceived to be a vital distinction between protection and welfare. (It is confusing that the Schoolhouse submission sometimes refers to welfare when discussing SHANARRI, which is more accurately termed as wellbeing.) Schoolhouse sets the stakes high by quoting a House of Lords judgement on the freedom of family life that begins, ‘In a totalitarian society, uniformity and conformity are valued’.

Discussions in committee and on the floor of the parliament studiously avoided language of ‘surveillance’ although questions of legitimate sharing of confidential information without consent were rehearsed and—as we saw—prompted a Government amendment to the Bill that raised the threshold somewhat. The only MSP who acknowledged surveillance language was Fiona McLeod (SNP) who seemed genuinely shocked that any credible concerns could draw on this discourse. Speaking in the final debate after which the Bill was passed McLeod observed:

Some of the emails I have received have bordered on the offensive. Indeed, some of them talked about ‘state surveillance’, ‘1930s Nazi Germany’, and ‘Big Brother’. I have to wonder whether some of those emails have been orchestrated.

(SP OR 19 February 2014, col. 27793)

Although Schoolhouse have important points to make, I think they overstate (and thereby harm) their case by failing to appreciate the wider context of human rights and data protection within which the Named Person service is legislated. The UNCRC has not been incorporated into Scots law, nor could it be given the aspirational language in which much of the Charter is written. Parental rights to guide and control a child are not set aside by the Children and Young People Act.

The ‘best interests’ of a child can be designated as a primary or the paramount consideration. As a primary consideration other considerations may be brought into the frame whereas the paramount consideration trumps all others. The UNCRC opts for the best interests of a child to be ‘a primary consideration’. However, we find remarkably loose language deployed by the Scottish Government. In its 2013 Policy Memorandum it declared an agenda that included ‘recognising the rights of the child as being of paramount importance to achieving the vision of improving life chances for all children and young people’ (Scottish Government 2013c: para 8). In the consultation paper on the Bill the Government referred to the Children’s Summit it hosted in June 2010 and reiterated the common pledge ‘there is no higher priority than the safety and wellbeing of our children and young people’ (Scottish Government 2012a: 7).<sup>2</sup>

It will be important to watch how Named Persons interpret their role—in the light of statutory guidance that has not yet been published (GIRFEC is not to be implemented nationally until 2016). Parents who adopt a highly laissez-faire approach to constraining their child’s decisions could—from some

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<sup>2</sup> The discussion in the USA around the UNCRC, particularly the concerns of some religious parents, is indicative of misunderstandings of the relationship between constitutional freedoms for parents and the legal status of a UN charter that is not self-executing (Gunn 2006; Smolin 2006).

perspectives—be harming that child’s wellbeing through lack of boundaries. At the opposite end of the spectrum a Named Person might well find that concerns are raised with him regarding the child of rigidly religiously-conservative parents. Requiring a child’s attendance at religious services or defending religious values that are counter to liberal social mores could be considered detrimental to a child’s wellbeing. What thresholds are set that require the Named Person to escalate a concern, including sharing confidential information, will be hugely significant. It will be the statutory guidance rather than the Bill itself that will be decisive in ameliorating or deepening concerns of intrusion.

Because politicians seem only to have ‘Big Brother’ as their paradigm for surveillance (against which they react in offence) they omit any significant discussion of the disciplinary dimensions of the wellbeing paradigm. No-one had a bad word to say about SHANARRI; it was accepted as unequivocally valuable. In this respect a more nuanced understanding of surveillance offers a better critique.

### *Discipline and social control*

It would be quite mistaken to think that simply because the Named Person is available as a point of contact that his/her role is therefore intrinsically and wholly benign. We have to wonder quite what internalisation of wellbeing is taking place when parents are presented—if not bombarded—with government publications within a GIRFEC system.

The government has produced just two issues of *Wellbeing* (both in 2013). In Spring 2013 readers were invited to learn about GIRFEC because, in the words of introduction from the Minister, Aileen Campbell, ‘I know that parents, carers and families want to do the best they can for their children’ (Campbell 2013). Readers were offered ‘GIRFEC for beginners’, whilst acknowledging ‘the majority of children and young people get all the love, support and encouragement they need from their parents and carers, and wider networks’. Yet the spectre of some future need for extra support was floated with the assurance (or is it a veiled threat?) that ‘everyone takes responsibility for nipping things in the bud’ (Scottish Government 2013b). A member of the Scottish Youth Parliament (a non-party political organisation with no statutory relationship to the Parliament itself), interviewed Aileen Campbell, who was reported as describing the Named Person in these terms: ‘one person who knows the whole story and can see the whole picture’ (Deans 2013). Granted that the Minister appeared to be talking in the context of a child with needs requiring intervention, she seemed here to confuse the Named Person function with the role of lead professional (usually a social worker) who takes over in overseeing the construction and implementation of a child’s plan when this is required. The Named Person with responsibility for, in many contexts, a large number of children and without training as a social worker, will not ‘see the whole picture’ and to suggest so only gives rise to the considerable concerns expressed by critics. In the scenario painted by the Minister (but not reflected in the legislation) the Named Person would indeed be a recipient and conduit of extensive personal information about a child and her family.

The August 2013 issue published a leading article that featured the experience of a parent of three children, all of whom were either dyslexic or dyspraxic or both (Woolnough 2013). A case study of a health visitor described aspects of her role as a Named Person, particularly her response to a parent concerned about a two year old’s behaviour. News of how GIRFEC has been implemented in Angus Council was reported under the title, ‘GIRFEC? It’s business as usual in Angus’ (Scottish Government 2013a). The focus in this piece was largely upon staged intervention and the value of ‘a common language to use’, and how this is helpful to parents within a system of professional jargon, ‘and parents really get it’. The claim that parents do not need to understand professional terminology is rather contradicted by the enthusiastic acknowledgement that at meetings with specialists ‘everyone will be talking SHANARRI’.

What the writers of *Wellbeing* were admitting—perhaps unconsciously—is that SHANARRI may be in non-technical language but its complex interrelated components need to be imbibed by parents if they are

to be active participants in a GIRFEC intervention for their child. The ‘good’ parent is the SHANARRI-competent parent. Furthermore, we cannot dissociate SHANARRI from the ebb and flow of moral panics.

### *Moral panics*

Clapton, Cree and Smith (2013: 198) deploy Stanley Cohen’s definition of moral panics to question UK child protection protocols:

A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylised and stereotypical fashion by the mass media...socially accredited experts pronounce their diagnoses and solutions.  
(Cohen 1972: 9)

The important point, which they rightly emphasise, again from Cohen, is that, ‘[t]he argument is not that there is ‘nothing there’...but that the reaction to what is observed or inferred is fundamentally inappropriate’ (Cohen 2002: 172). Integral to a moral panic is, following Goode and Ben-Yehuda, volatility, hostility, measurable concern, consensus and disproportionality (Clapton et al. 2013: 199). Clapton and his colleagues claim that social work tends to react to and participate in moral panics (Clapton et al. 2013: 201). Especially with regard to child protection, the discipline of social work is in ‘a permanent state of readiness to panic—and a readiness to intervene’ (Clapton et al. 2013: 205). Within the wider third sector the authors locate some moral panic in the competitive nature of charities seeking funding: ‘[e]ach has to demonstrate their unique worth in saving children from an ever increasing range of perils’ (Clapton et al. 2013: 213). One result is that resources are directed unwisely in ‘hunting down demons’ whilst the critical role of social work as ‘an agent of social change and social justice’ is downplayed if not actually neglected (Clapton et al. 2013: 213). In a not-unrelated observation, directly concerning post-devolution Scotland, McGhee and Waterhouse conclude that social work is framed only in terms of ‘hard cases’ with the consequence that social workers’ skills are developed around a much narrower set than would otherwise equip them to contribute to prevention work (McGhee and Waterhouse 2011).

When we bring SHANARRI into the context of moral panic the scope for intensification of a surveillance gaze is all too obvious. Of course, we want children to be *safe*, ‘protected from abuse, neglect or harm’ (Scottish Government 2012b: 3). However, legislators ought to be clearer as to the price paid in other spheres when an absolute term ‘safe’ is used as a justification for GIRFEC. Hyper-vigilance is a natural response in moral panics so ‘helicopter parents’ feel it necessary to transport children to and from all events lest they come to harm in traffic or from predatory adults. Climbing trees, jumping fences and countless activities can result in broken bones; from which a ‘good’ parent might believe he is expected to protect his child. Aiming for ‘the highest standards of physical and mental health’ is all well and good but the expectation of a child being supported to make ‘safe choices’ conveys an aversion to risk (Scottish Government 2012b: 3).

The Bill covers young people up to the age of 18 but a 16 year old was deemed mature enough to vote in the 2014 referendum on Scottish independence. The tenor of ‘safe’ from harm could leave little scope for a 16 year old to make a choice that is less than maximal for their own wellbeing. Investing in a friend who is distressed could, over a long period, diminish—but to a small degree only—a young person’s mental health. Encouraging only ‘*safe* choices’ too readily brackets out reasonable self-sacrifice for the sake of another (Scottish Government 2012b: 3) (emphasis added). This is not an argument for self-abnegation but a check against an assumption of safety that denies the opportunity of costly relationship. The rhetoric of

child protection could suggest that a parent would be a less good parent were she to encourage her child in the virtue of self-sacrifice.<sup>3</sup>

Achievement, within this wellbeing model, refers to learning and boosting skills, confidence and self-esteem. But self-esteem is a morally-freighted concept that cannot be disentangled from the ethics of the (safe) choices a child is being encouraged to make. This is not to say that cultivating poor self-esteem is an ethically-valid strategy for a parent. Rather, it is a position that recognises that self-esteem does not float above ethics. Self-esteem can be mistakenly predicated on the, widely-held, notion of the actualising, autonomous individual. Such a model of personhood has been widely criticised by feminists as exalting the rational, male self at the expense of relational theories of personhood. The purpose of autonomy is better understood as for developing relationships and thus differentiated from individualistic concepts of autonomy (Mackenzie and Stoljar 2000). Similarly, self-esteem ought to be framed as a relational concept: where the emphasis is on our calling another forth into personhood. We should not forget that SHANARRI is a *particular* vision of personhood; one that could re-inscribe the autonomous individual at the expense of more relational paradigms. If a parent does not, perhaps for religious or humanist reasons, fully endorse SHANARRI's vision they may be no less a good parent.

Children are to be *active*, with a view to their building 'a fulfilling and happy future' (Scottish Government 2012b: 3). Once again a component of SHANARRI is presented as self-evident without adequately considering what constitutes 'happiness'. Furthermore, there are issues of political and social power around who defines happiness and its implications for a model of the ideal parent. To cultivate a child who believes she has a right to be happy could be to nurture a flagrant disposing of any relationship that proves challenging. SHANARRI is here too in the territory of morality; ethical systems have different conceptions of the good life and thereby of what constitutes happiness.

The *responsibility* component, as valuable as it is, comes heavy with other agenda. To expect children to be helped to take 'an active role within their schools and communities' has political overtones (Scottish Government 2012b: 3). The context, in very broad terms, is disengagement by the public from civic institutions, falling membership of trades unions and low turnout at elections. (The turnout of 84.6 per cent of eligible voters at the September 2014 independence referendum is notable because unusually high.) Perceived emphasis on rights, at the expense of corresponding responsibilities has contributed to politicians and educationalists raising the profile of citizenship in the curriculum for young people. As laudable as encouraging taking an active role might be, there are political questions embedded in this vision. The concept of good/bad citizenship runs the risk of being framed in terms of active participation. This could leave aside important issues around participation in preserving existing structures or taking a more radical, possibly oppositional, approach. Similarly, evaluating people's participation might occlude the structural barriers that force some into nonparticipation.

Being *included* is no less a freighted component than the others in wellbeing. Children and young people should be 'getting help and guidance to overcome social, educational, physical and economic inequalities; accepted as full members of the communities in which they live and learn' (Scottish Government 2012b: 3). There is a clash here with those parents who have an especially elitist understanding of private educational provision. In a similar vein, a parent may hold an economic view that does not aim for economic equality. It would highly contentious if an (unintended) outcome of the legislation was to frame such people as bad, or less than optimal, parents. Similar questions could be posed about the parenting by people who disagree with equality legislation in other domains, such as same-sex relationships. The point is *not* to suggest that inclusion is a poor ideal but rather that enshrining a *particular* vision of wellbeing in

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<sup>3</sup> Whilst it is recognised that expectations are to be appropriate to a child's stage of development and maturity, it is the confluence of moral panic, SHANARRI and absolute terms such as 'safe' that is my contention here.

legislation is much more problematic than Scottish parliamentarians (not only the Government) have appreciated.

## Conclusions

The politics of wellbeing are discussed in the Scottish Parliament with a weak understanding of surveillance, resulting in the too-ready dismissal of concerns. The Parliament's failure to interrogate SHANARRI meant that this discourse was placed beyond criticism. Whilst SHANARRI will find considerable, and warranted, support it should not be considered apolitical and incontrovertible. SHANARRI expresses a *particular* vision of wellbeing. If this is not acknowledged then Statutory Guidance on the thresholds of wellbeing (as distinct from welfare) will not adequately respect the legitimate range of interpretations of concepts. For example, 'happiness' and 'self-sacrifice' are complex moral concepts within which differences in ethical emphases and criteria must be accommodated.

I do not believe that the SNP Government is intending to impose a hegemonic normative order across Scottish society but that does not mean that we ignore the disciplinary dimensions of the Named Person service. Groups such as Schoolhouse misunderstand the status of the UNCRC and do not appreciate the safeguards that come from the wider context of parental rights within which this Act sits. Nevertheless, despite being overstated, their concerns do point to important—yet outstanding—clarifications. Through holding different philosophies of 'happiness' and/or 'self-sacrifice' some parents may fall into a grey area in the view of professionals (or other parents). As Lynne Wrennall has observed, the notion of a child being 'at risk' is far from a stable category. Whereas for some it might more precisely raise a flag of concern about abuse or neglect the 'risk' could rather too-readily be 'redefined to mean, a child at risk of not meeting the government's objectives for children' (Wrennall 2010). In order to avoid the unwanted attentions of the Named Person service such families (with nothing to hide except their non-exact-coherence to SHANARRI), will have to comply or find themselves 'dangerised'. The extent to which a family has the social/cultural capital to negotiate between the expectations of the Named Person service and their own, perhaps but not necessarily, idiosyncratic approach to parenting is worthy of future discussion.<sup>4</sup>

The issue of thresholds of wellbeing are hugely significant for the intervention by a Named Person who perceives a cluster of jigsaw pieces to be forming a picture of harm to a child or young person's wellbeing. This raises questions over what information a Named Person will need to collect about each young person. In other words, what isolated jigsaw pieces, that are of no consequence in themselves, will be required to be recorded lest—at some time in the future—a picture of harm were to emerge?

The *nature* of the information was scarcely discussed during the consideration of the Bill. The focus was upon the appropriate sharing of what had already been authorised for collection. Furthermore, it remains unclear how information is to be retained. Where is the box of accumulating jigsaw pieces to be kept so that it can be passed to successive Named Persons? The impression conveyed by supporters of the Named Person service is that, generally, four figures are in play, consecutively the midwife, health visitor, primary school Named Person then secondary school Named Person. But, as everyone knows, staff move, become ill, retire and resign. If the Named Person service is to function (with its individually insignificant jigsaw pieces) then how these are retained to be passed to the next Named Person is a significant issue. In a school with a high turnover of senior staff this could be a quite frequent scenario. The proposal for the development of Statutory Guidance (as at April 2014) makes it clear that 'information will not automatically follow the child' but will be subject to a number of tests:

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<sup>4</sup> I am grateful to an anonymous reviewer for this observation, an insight that will resonate with Schoolhouse and other home-schooling advocates.



that it is likely to be relevant; that it ought to be shared; that the holder of the information has, where practicable, elicited the views of the child; and that the sharing will not produce a greater adverse effect on the child's wellbeing than not sharing.

(Scottish Government 2014: para. 32)

Policies and procedures as to how information is shared when Named Person functions transfer to another Named Person *within* an agency (that is, not at the child's transition from, for example, Primary to Secondary School) are in the hands of the respective Health Boards and Local Authorities (Scottish Government 2014: para. 47). This could give rise to considerable diversity across the country and makes the thresholds set by Statutory Guidance even more important.

It is all well and good to have rhetoric that asserts the safety and wellbeing of Scotland's children and young people to be of *paramount* importance—but such loose talk is problematic. As a *primary* consideration it would warrant enthusiastic support but not trumping all other rights. This might not be the intention of the Scottish government or welfare service professionals but precision is vital. The Parliament's attenuated understanding of surveillance, conceiving of it solely in 'Big Brother' terms has led legislators to too easily dismiss important concerns over the Named Person service.

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