

Public Communications Unit, LG36,  
Department for Education,  
Mowden Hall,  
Staindrop Road,  
Darlington, DL3 9BG.

**Tuesday, 18 December 2012**

Dear sir/ madam

**Office of Children's Commissioner's response to DfE's consultation on proposed amendments to individual pupil information prescribed persons regulations**

The Office of the Children's Commissioner welcomes the Government consultation on 'individual pupil information prescribed persons regulations' and wishes to make a number of points based on our position and remit.

While we welcome the ambition, principles and intention of the proposals, we also suggest a number of amendments that we believe will strengthen the protection of the data, so that it is used for beneficial purposes. Our comments are designed to increase the effectiveness of the data and how it can be used to safeguard and protect children and young people. The points set out in detail below concern:

- o clarifying why any body or organisation needs to access and use pupil information;
- o further clarification required regarding what is meant by "robust checks" on who can access data;
- o unease regarding the use of data by and for commercial purposes; and
- o extending the list of prescribed persons and definition of who has access to the information (following appropriate checks)

Our comments are based on our statutory remit and experience in this area which will be useful to reiterate before providing our detailed comments on the current proposals.

**About the Office of the Children's Commissioner**

The Office of the Children's Commissioner (OCC) is a national organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. The post of Children's Commissioner for England was established by the Children Act 2004. The United Nations Convention on the Rights of the Child (UNCRC) underpins and frames all of our work, and the Children Act 2004 sets out a number of powers that the Commissioner and her Office can use in undertaking her work.

The Children's Commissioner has a duty to promote the views and interests of all children in England, in particular those whose voices are least likely to be heard, to the people who make decisions about their lives. Following an independent review of the Office the Secretary of State accepted that the remit of the Office would be amended to that of 'protecting and promoting children's rights,' and should operate in the spirit of its future remit following the Children's Minister WMS setting out the Government's intentions for the Office in November 2010.

**Key Child Rights to consider**

Therefore, in light of our role and remit, we welcome the opportunity to respond to this consultation and remind the Government that any proposals should be consistent both with domestic legislation and the United Nations Convention on the Rights of the Child – especially the following articles:

Article 3: The best interests of the child must be a top priority in all things that affect children.  
Article 16: Every child has a right to privacy. The law should protect the child's private, family, and home life.

Article 19: Government's must do all they can to ensure that children are protected from all forms of violence, abuse neglect and bad treatment.

Article 29: (As well as the right to an education in article 28) Education must develop every child's personality, talents and abilities in full. It must encourage the child's respect for human rights, as well as respect for their parents, their own and other cultures, and the environment.

These articles apply to all children up to the age of 18 (articles 1 and 2 of the Convention).<sup>1</sup> While OCC has not had an opportunity to work directly with children and young people on this consultation we do encourage the Government to consider how article 12 of the Convention can also be realised in this context – children and young people's right to have a say in all matters affecting them, and to have their views taken seriously.

### **OCC's experience in relation to data sharing**

Part 1 section 2 of the Children Act 2004 sets out the Children's Commissioner's powers.

These include the power to "(a) enter any premises, other than a private dwelling, for the purposes of interviewing any child accommodated or cared for there; and (b) if the child consents, interview the child in private."

Furthermore subsection 9 states that "any person exercising functions under any enactment must supply the Children's Commissioner with such information in that person's possession relating to those functions as the Children's Commissioner may reasonably request for the purposes of his function under this section (provided that the information is information which that person may, apart from this subsection, lawfully disclose to him)."<sup>2</sup>

Within the scope of these powers, and those set out in following section of the Act, OCC has undertaken two major Inquiries during 2011 and 2012, both of which encountered issues around the sharing of sensitive information and data.

The first Inquiry involved School Exclusions. As part of its first Inquiry the OCC wanted to undertake new analysis of school attendance, exclusion and behaviour data. Following discussion with officials at the Department for Education we were aware of the rich and detailed pupil-level data held by the Department.

<sup>1</sup> All the descriptions of the UN CRC articles in this document are taken from unicef's "Pocket Book of Children's Rights".  
<sup>2</sup> Children Act 2004 accessed on 18-12-12 at <http://www.legislation.gov.uk/ukpga/2004/31/part/1>.

However we were informed that this could not be shared because of the small sample numbers involved in some of our analysis (i.e. there would be a chance of identifying individual children). Rather than explore the full legal position we worked with the Department, and they undertook the analysis we required in-house. This had obvious implications on the DfE's team and their resources. This analysis could have been undertaken by the OCC had the data sharing position been clearer.

Our second Inquiry, which is also still ongoing, took 2011/12 to examine the nature and prevalence of Child Sexual Exploitation in Gangs and Groups. As part of the Inquiry OCC requested individual level data from every English Local Authority Director of Children's Services, Director of Primary Care Trust, and Chief Constable. This request was for local geographic level information on issues ranging from children being reported missing to children accessing substance misuse services. We also obtained individual level data from DfE on a number of issues including numbers in care, excluded or persistently absent from school. This was England-wide data.

We also collected aggregated level data from DfE, Department of Health, National Treatment Agency, Health Protection Authority, Youth Justice Board, and the Home Office. Similar issues to the first Inquiry concerning legality were encountered, but given the cross-departmental nature of the second Inquiry OCC undertook a comprehensive process of negotiating access to some of the data held by government. Again this was a lengthy and costly process that ultimately relied heavily on our statutory powers to request information. We have also been on site visits to local areas and services where we have reviewed data collection and sharing processes, and have had different government sector, local agency and voluntary sector working groups submit evidence to us in relation to potential effective practice in this area.

As a result of both Inquiries and further work carried out by the OCC across different policy areas and government departments, we feel particularly well placed to comment on these current proposals for accessing pupil and school data.

### **OCC's response to the proposals in the consultation:**

#### **Supporting the principle of using data effectively**

The OCC agrees with the principle that the pupil information under consideration should be shared for purposes other than educational outcomes – and that those defined in the consultation document are correct. This is a worthwhile aim which we support. Equally, we broadly agree with the five bullet points under paragraph 7.1 of the consultation document.

We also support the release of data for persons conducting research where it is “subject to robust approval processes with strict terms and conditions”. This can lead to improved understanding of how to raise standards and improve service provision for children and young people. This is particularly important given the Government's desire for local agencies and statutory bodies to take responsibility for children's outcomes, and less resource being available at the Department for Education to undertake this type of analysis.

We do however have concerns regarding who will be able to access the data, and for what purpose. These concerns are set out below and we expect the government to publish further details with regard to these concerns before any future legislative change can be supported. In any change to the current arrangements we ask the government to consider the impact of change on article 16 of the UNCRC and every child's right to privacy.

#### **Clarification required regarding “robust checks”**

Much of the current proposals rest on the safeguard that “robust approval processes” will be introduced in conjunction with the power to share data more widely. Given the importance of this safeguard and the sensitivity of the data involved we believe it is necessary to receive more information about this aspect of the reforms.

Asserting that it will be a “robust approval process” is not the same as ensuring that it actually is, and great advantage could be derived from providing more clarity on what such a process would look like. OCC and others with experience in this field would be prepared to work with the DfE on ensuring that any new process is fit-for-purpose ensuring both safety and practicality. We are concerned that organisations are being asked to support the proposals when there are no details given about the criteria for assessing applications.

Assuming that others, like the OCC, support the principle behind this consultation, and that work is underway to develop the necessary approval process, we propose that the Government should set as the threshold for applications the best interests of the child (in line with article 3 of the UNCRC).

A consistent application of this article does then raise questions over further proposals contained in the consultation document, especially those concerning the potential use of data by commercial organisations for commercial purposes. The OCC would find it difficult to reconcile *all* commercial activity being in the best interests of children and young people.

### **Concerns regarding the use of data by commercial organisations for commercial activity not related to the well-being or welfare of children and young people**

As noted above the OCC is concerned about current proposals that would allow for releasing data to the commercial sector. Included in the consultation document is an allowance for data to be indirectly used to assist planning and/or marketing strategies. While there is a valid discussion regarding the role of commercial organisations in planning some services and products, at present the proposals would (potentially) allow for a wide range of commercial sectors and organisations to access the data. For example we could expect fast food chains to be interested in such data, but providing such a company with access to this information would not be of benefit to children and young people.

Therefore we would propose that the provision to allow for commercial companies and organisations to become prescribed persons and access this data is removed until further consultation and safeguards can be put in place regarding who has access to pupil information, and for what purpose they intend to use it.

### **Clarifying the need to access and use data**

This last point suggests that amendments to the current provisions would benefit from asserting the requirement to demonstrate *why* an organisation wants to access the data; *how* it intends to use the data; and for *what purpose* it will use the information it has gained. Consequently we suggest that no organisation has a general right of access to this data unless it can present good reason and sufficient evidence of the benefit to children and young people. This would guard against any organisation – whatever its status or position – from undertaking “fishing expeditions” in this dataset. The requesting body should specify in advance exactly why it needs the data, what the data will be used for, and how, after it has been used for a specific purpose, the data will be destroyed safely.

Organisations should not be given permission to simply hold on to sensitive data such as this without there being a clear purpose for doing so, and this would be another safeguard against data being used for purposes other than those specified.

### **Extending the definition of who has access to the data (following appropriate checks)**

Although we are concerned that the current proposals may extend access to groups and individuals who may not have children’s best interests as their key concern we also believe there would be great benefit from extending potential access to pupil information to groups and bodies that are not currently covered in the consultation document. For example, OCC would support a proposal that would grant the ability for individual level data to be provided back to local statutory agencies. This is specifically around where it could be used to assist the safeguarding of children and overlaid with other multi-agency data. We propose this addition based on our own work related to the Child Sexual Exploitation in Groups and Gangs Inquiry, where the value of this data could be evidenced from case studies of local multi-agency CSE teams who were unable to access local information around persistent absence or school exclusions.

The bar on accessing this information (known to be some of the key risk factors in identifying children and risk of CSE) was compounded by there being multiple local authorities within the one police force area.

This meant that there was (and is) no single place to obtain relevant data. This acknowledged gap could result in local services and teams not identifying entire groups of at risk children. Opening up this information to local statutory agencies and bodies could enable them to overcome this barrier.

Therefore, OCC recommends that the current proposals include a new provision for "persons or bodies concerned with the statutory safeguarding of children". This would be a simple addition to the current list of prescribed persons and bodies with whom the data can be shared. OCC considers that this would be a powerful tool for local agencies and have the potential to realise real safeguarding gains for children and young people.

In addition we would also welcome the inclusion of the OCC to the list of named persons with whom data can be routinely shared. We are not currently a named party which has led to a number of issues when trying to obtain data for the purpose of the OCC's Inquiries (see section above on OCC's experience of accessing / sharing pupil information). This addition would greatly facilitate our work and provide clarity for the officials we work with.

### **Final comments**

We trust that the views and comments expressed above provide a useful contribution to the current consultation. OCC affirms the government's desire to allow access to the data for purposes that will benefit the well-being and welfare of children and young people. The proposals we have outlined in this letter are consistent with children's rights, especially their right to privacy as outlined in article 16 of the UNCRC.

We have also outlined how the current proposals around pupil information could be extended to additional statutory bodies (including OCC) and local agencies in a way that would directly benefit children and young people.

However we do require further information about the processes that will be put in place to ensure safe and appropriate access, and advocate that commercial organisations are barred from using the data, or at least have their access significantly restricted.

We would welcome further discussions with the Government on how to realise their goals and take these proposals forward in a safe way.

If you require further information regarding any of the points made in this submission please contact [REDACTED] at [REDACTED]

Yours sincerely,  
[REDACTED]  
[REDACTED]

# Proposed amendments to Individual Pupil Information Prescribed Persons Regulations

## Consultation Response Form

The closing date for this consultation is: 18 December  
2012

Your comments must reach us by that date.



Department  
for Education