



Submission on behalf of the Former Boys and Girls Abused in Quarriers Homes concerning Record Keeping in Scotland-in relation to Children's records-files, 17th July 2010

Annex E: List of Consultation Questions

Q1 Do you agree that a public record is one that is created or received by a publicly funded authority, or do you think that the 'public' status of a record is determined by the information that it contains?

In the care system, the public record is one that is created by an individual within any institution-agency administering the care in relation to an individual. This can either be in a private or charitable setting or a Local Authority- Government administered setting- how do you define public ownership of the record in a care home private setting setting-or care home charity setting or other such setting-such as a religious body setting.

A single document and a record are different in terms of what is retained and what then becomes an official public record in relation to Children's files-records.

Children's files are protected in Law and as such hold a particular important within any organisation dealing with such files-records

Q2 Do you have any comments on the inclusion of those bodies listed in Annex D?

What about publicly, charity funded or other such bodies who subcontract children's records files and data for storage and retention-how will the legislation cover such private bodies and Charities and other such bodies including Religious bodies that carrying out such work on behalf of publically funded bodies and others concerning Children's records in-care?

Q3 Do you believe the proposals should cover more or fewer authorities?

Should cover all public and all private bodies-organisations undertaking work on behalf of Government & Local Authorities and who are involved in the handling of such Children's records including other such bodies which receive public funding – such as private subcontractors via a third party.

Q4 Do you have any further comments on the proposals outlined in this section?

We are concerned about subcontractors, Charities, Religious bodies and other independent and private bodies who carry-out such a role concerning Children's records now or in the future and who may not be covered by such legislation so simply failing to address the past failures concerning children's records. We ask the Keeper and the Scottish Government-Parliamentarians, how do they intend to address such issues through the legislation?

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Q5 Do you agree that the definition of a public record should focus on the informational content rather than the physical format of the record?

The definition of the public record should pertain to the physical and informational content in relation to children's files concerning those in the in-care sector-past and present.

The time scale for the retention of such records and in particular of Children's File is not specified in the consultation- we propose no change to the current 75 year retention period for children's files.

Q6 Are there other issues that need to be considered in relation to technology and future-proofing?

Does the originating agency or body have ultimate responsibility for a record which is subcontracted and how it will be stored and retained by the subcontractor- i.e microfiche, disc etc.

This needs to be clearly defined. What is uploaded in relation to children's files is it the full record or part record and who has responsibility if this is carried out by a third party?

Q7 Do you agree that when voluntary or private organisations deliver public services, using public money, records relating to carrying out that work should be considered to be public records?

Children placed in care- All such Children's records should be considered public interest records regardless of the fact that the record is held by a private agency or a public, charitable body or a religious body or any other such body.

Q8 Do you have any further comments relating to records of voluntary and private organisations delivering public services?

Children's records are protected in law and must be retained in there original format concerning all children in-care regardless of the subcontracting of such records or which organisation is deal or maintaining such children's records.

Issues concerning management, retention and storage of such Children's records by private bodies and charitable and religious bodies have to be clearly defined in the legislation.

Public body policies- contracts should be standardised across the care sector in relation to such work carried out by charitable and private organisations on behalf of others in relation to Children's records on behalf of other bodies public or otherwise-clearly setting out such procedures for retention, storage, and what should be retained and in what format.

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Q9 Do you agree that the Keeper should be responsible for producing and publishing a model records management plan to guide public authorities?

Yes- provided there are sufficient independent checks and balances in the records management processes to ensure compliance by all public and private parties involved in the management of such Children's records

Q10 Do you agree that public authorities should be required to produce records management plans, following the Keeper's model and with the Keeper's approval, within a certain time?

Yes- provided that it is a standard generic plan agreed and approved by the Keepers office.

Q11 Should the proposals allow for the creation of generic records management plans by groups of public authorities rather than separate plans for each authority, where appropriate?

Any plans must be sufficient in content, context and structure to ensure that the information-data is available when and where it is needed in an organised and efficient manner in a well maintained secure environment.

We believe it would be appropriate to have a standardised generic plan set out by the Keeper, local authorities and other bodies can enhance such plans as they see fit pertaining to each local authority as they wish, while retaining the standardise generic plan set out by the Keeper of the Records.

We would not wish the standard to be a minimal standard. The relevant standard should be robust and set appropriately to ensure a high standard on record and management keeping of Children in care files as these files are protected in LAW!

Q12 Do you agree that the existing duty on local authorities to make "proper arrangements" for their records would be adequately covered by the requirement to produce and implement records management plans to be approved by the Keeper under the new proposals? Please give an explanation.

Again our concern is the subcontracting of such children's records to other bodies including the private sector- Will the Keeper have such authority concerning the private sector involved in record storage and retention on behalf of public, charity bodies involved in the care sector?

Q13 Should public authorities who fail to produce a records management plan within the specified time or to an approved standard, or who fail to provide record keeping arrangements specified in the plan, be subject to civil sanctions? If so, what sanction do you consider would be appropriate?

Submission on behalf of the Former Boys and Girls Abused in Quarriers Homes concerning Record Keeping in Scotland-in relation to Children's records-files, 17th July 2010

Sanctions could be imposed for failing to comply with the Keepers request allowing time to adhere to any penalty imposed, failure to improve then additional sanctions-ultimately a funding-fine sanction may have to be considered or impose should the Keeper's dept have to address such serious record keeping issues.

Q14 Should the Bill allow the Keeper to issue recommendations to achieve compliance to public authorities found to be in breach of the provisions?

Yes- Recommendations set out within a specified time scale-compliance must be achieved by the record keeper. Again issues of subcontracting of Children's records to private bodies-how will you address non-compliance issues?

Q15 Should the Bill allow the Keeper to publish the names and details of those public authorities found to be in breach of the provisions?

Yes within a time frame allowing for the party adequate time to comply with the Keepers request or recommendations. Again issues of subcontracting of records to private bodies-how will you address breach of the provisions issues?

Q16 Do you consider that the Keeper should have an additional role to scrutinise public authorities in the management of their records and archives? If so, what should be the extent of that scrutiny?

Independent overarching scrutiny is essential in relation to Children in-care records to ensure compliance and an adherence to policy and standards that will be laid out concerning such records within such a bill to address past systemic failures concerning such records.

Q17 Should the Bill allow the Keeper to recognise or reward public authorities who are seen to adopt particularly successful records management practices? In what way might this be done?

This could be achieved by issuing a Keepers kite mark to the organisation on a renewal basis (to be determined) allowing the said organisation to promote there successful records management policy publically.

The renewal Kite mark basis must be within an annual set period and not excessively long within each period. Whereby not permitting record holders maintaining such Children's records to fall into lax standards and practices.

Q18 To what extent would a scrutiny and enforcement role for the Keeper enhance or otherwise change the nature of the relationship between the National Archives of Scotland and the creators and potential depositors of public records?

A scrutiny and enforcement role for the Keeper would in our view enhance the management of such Children's records and compliance in the policy and legislation as laid out Parliament and managed by the Keepers office. Provided such a function was adequately funded and not just window dressing.

Submission on behalf of the Former Boys and Girls Abused in Quarriers Homes concerning Record Keeping in Scotland-in relation to Children's records-files, 17th July 2010

Q19 Do you think there is a place for peer assessment, where public authorities are scrutinised by other authorities, either within or across individual sectors?

The assessment in our view must be appropriate and seen to be independent to ensure compliance while ensuring that standards are adhered too concerning such children's records.

Q20 Do you consider that lasting and measurable improvements could be made to existing poor record keeping practice without legislation or sanctions? If so please explain how.

Past Experience reflects that the system of Children's file-record keeping in Scotland within Local Authorities, Private, Public, Charitable and Religious bodies is wholly inadequate and a failure. As such only legislation backed up by scrutiny and compliance measures will address such issues going forward in our view.

We doubt very much that improvements can be made without such legislation and compliance policies in place in the future.

3.5.4 It is proposed that the new legislation would not be retrospective. It is not possible to rectify the loss or erroneous destruction of records which have occurred in the past due to bad record keeping practices. The proposals will apply to all records currently held or which will be created in the future, and will provide a framework on which to build a standard of consistent good practice across the public sector in Scotland.

All bodies regardless of whether they are Private, Public, Charitable and Religious bodies should carry-out an immediate audit of all such Children's records held and provide the outcome of such Audits to the Keeper.

We wish to ensure that no Children's records are destroyed as part of this process. Records are within the systems that have yet to be found- many children who were in care in the past have succeeded in accessing such records through perseverance-others sadly have not due to a number of factors and mismanagement.

Q21 Do you agree with this, and if not, are there reasons why the new legislation should be retrospective?

We take the view that it is in all our interest to ensure that all former residents and children in-care today have access to their individual record and that such records.

We understand the difficulties in making the legislation retrospective however we are concerned that if the legislation is not retrospective then there is the possibility that Children's records which are protected in law, may be destroyed by bodies and parties and Children's records will not be properly collated, managed, retained or stored and not Fit for Purpose if the current status quo remains

An opportunity will be missed in our view to assist a vulnerable group of individuals failed by the past Scottish care system in many cases to locate and find such records which the law clearly allows them to access.



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Q 22, Both Shaw and the Keeper found failings in record keeping across the public sector and considered that new legislation should extend beyond the looked after children sector. Do you agree, or do you consider that this legislation should be restricted to the looked after children sector?

It may be that this may be deemed an appropriate time to address record keeping as a whole across the public sector as a whole in Scotland. We hold no particular position in this regard. Our concerns remain third parties and charitable and religious bodies and any other bodies involved in any capacity with regards children’s records

FBGA’s primary concern is Children in Care and their records with the care system and former residents experiences to-date of such institutions and religious bodies given the past failures and the Tom Shaw recommendations, it is our view that these Children’s record keeping issues are addressed forthwith by the Scottish Government and the Keeper.

We note also that no relevant appropriate standard appears to be laid out within this consultation document about what should be retained within a Children’s file-record for the future.

We kindly draw your attention to the previous FBGA submissions highlighted in the Tom Shaw report, 2007, Historical Abuse Systemic Review:

Appendix D- page 259 Appendix E, page 260 and Appendix K, pages 264-265 concerning the management, retention and storage of children’s records and documents and what should be retained in our view at a minimum.

Tom Shaw –report press release statement 22nd November 2007:

“We all have a right to know about our past, our childhood, our family circumstances, our home – wherever or whatever that was for each of us.”