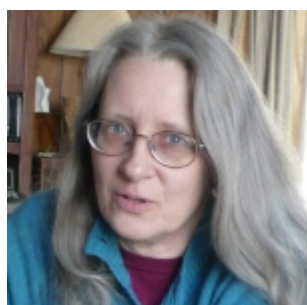


The controversial named persons provision in Scotland

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*Wendy M. Grossman discusses the problems surrounding the Named Persons provision in Scotland and the state's role in children's lives. She argues that the controversy surrounding this policy is exceptionally hard for parents to navigate. Wendy writes about the border wars between cyberspace and real life. She is the 2013 winner of the **Enigma Award** and she has **released** a number of books, articles, and music. [Header image credit: B. Flickinger, CC BY 2.0]*

Sonia Livingstone has previously written about the risk of **blaming the internet even when we can't identify it as the cause of children's problems**, arguing for a set of specific **children's rights that include keeping online risks in perspective**. She has also often talked about the **problem of conflating risk and harm** in deciding how children need to be protected: the severest harms that people worry most about are extremely rare.

These are at least some of the issues at play in the controversy over the state's role in children's lives that have been brewing since last year as a result of the '**Named Person**' provision of the **2014 Children and Young People Support Act** (Scotland). At first glance, the policy seems to have little to do with the internet and related technologies, but the details tell a different story.

The Named Person policy

The policy will assign to each of Scotland's one million children a 'Named Person', someone responsible for ensuring their wellbeing, who will act as a single point of contact for the children, their parents, and, if there are concerns, social services. The Named Person will be the health visitor for pre-schoolers and a 'promoted teacher' for those in school. Most children will exit the scheme at 18, but there is some flexibility to cover those still in school. The law was due to come into force nationally by 31 August 2016. Although it **has already been rolled out in some areas**, by mid-July the Scottish government was admitting that a delay might be necessary.

Incompatibility with family life, and other complaints



The government claims that 'Named Persons' merely formalises the status quo and will help identify and protect children at risk. Nonetheless, four charities – the Christian Institute, Family Education Trust, The Young ME Sufferers (Tymes) Trust and Care (Christian Action Research & Education) – are taking their legal challenge, previously dismissed by the Court of Sessions, to the UK Supreme Court, which ruled in late July 2016 that the policy, in its current form, breached the right to privacy and family life, of the European Convention on Human Rights. As a result, the Scottish government moved to halt the planned implementation until amendments to the Children and Young People Act were made, now projecting an August 2017 start for the scheme.

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The scheme didn't look controversial when it sailed through Scottish Parliament 103 votes to 0 with the support of Action for Children and other children's charities. However, besides their legal challenge, the four charities named above almost immediately launched the No2NP campaign and the No to Named Persons conference. The Christian groups' objections are based on religious liberty; The Young ME Sufferers Trust fears the consequences if parents disagree with doctors about how to treat this incurable disease. All sides agree on this: most Scottish children need no intervention.

The controversy had grown throughout 2016. In February, the leader of Aberdeen City Council argued that the scheme aggravates an existing crisis surrounding finding teachers. The public services ombudsman charged with being the scheme's watchdog said that the complaints scheme is outdated and inflexible. In *The Scotsman*, freelance columnist Dani Garavelli (who elsewhere found car safety laws intrusive) called No2NP's complaints 'scare tactics' and said cases like Jimmy Savile make Named Persons necessary. Commenters replied that Named Persons risks entrenching an abuser in a position of power over dozens of children's lives, citing the recent case of a Moray teacher who qualified as a Named Person but who was struck off for sending graphic child sex abuse messages.

Opponents also point to the Isle of Man's prior, similar-sounding scheme, Every Child Matters, which even ministers supporting Named Persons have called a mistake. In testimony to the Scottish Parliament during the debate on the 2014 Act, the Manx civil liberties campaigner Tristram C. Llewellyn-Jones explained that as conceived in 2010, Every Child Matters granted the Manx government a broad remit to intervene in children's lives, proposed a universal database flagging all children not meeting five outcomes (including 'being healthy' and 'enjoying and achieving'), and allowed information-sharing among public authorities. By July 2011, the government was requesting nearly £500,000 to fund 10 additional social workers to handle the resulting six-fold caseload. On an island seeing 1,000 annual births, 959 children were referred to social care and 689 proved to be false referrals. Eventually, 60 children were placed on the child protection register. The case overload led to high turnover among both social workers and the dozens of locums required. The same rate of false-positives in Scotland, which saw 56,239 births in 2014, would mean nearly 54,000 referrals.

The Scottish government's February 2016 consultation on the scheme and its draft guidelines for schools raised new concerns. As the system is meant to spot everything from child abuse to radicalisation, the guidelines require schools to ensure that, '... children are safe from terrorist and extremist material when accessing the internet in schools' and notes, 'governing bodies and proprietors should ensure appropriate filters and appropriate monitoring systems are in place.' The consultation document also proposes considerable latitude in data sharing despite the Data Protection Act: 'Fears about sharing information cannot be allowed to stand in the way of the need to promote the welfare and protect the safety of children' (original emphasis).

Cause for concern

Noted privacy experts Professors Ian Brown and Douwe Korff, blogging their consultation response, argue that many schools will interpret the guidelines as a requirement to closely monitor all children's online use. Based in part on their findings in the 2006 report *Children's databases – Safety and privacy*, they noted the risks of conflating safeguarding children and promoting their welfare, mirroring Sonia Livingstone's concern about distinguishing risk and harm. The difference

is between an approach narrowly targeted at helping children known to be in trouble versus one legitimising broad, intrusive surveillance looking for children who might be in trouble. Managing the overload of the second approach is only possible through computerised data mining; decisions made by algorithms are notoriously hard to challenge or audit, and may have the results of past prejudice embedded within them. Brown and Korff suggest that the guidelines as drafted are open to challenge in the European courts

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The continued tangled mess surrounding this policy is exceptionally hard for parents to navigate. The combination of opponents' 'nanny state' rhetoric and the government's poor communication, apparently on the basis that its good intentions should be assumed, has created enormous uncertainty and fear for families that already feel vulnerable. In this case, the vagueness of the criteria for intervention and the guidelines requiring monitoring within schools provide valid causes for alarm.

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