

# Cause for concern: the absence of consideration of public and ethical interest in British public policy

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In the UK, many fundamentally important policy decisions that are likely to affect the relationship between citizens and care services are now made at the sublegislative level and without adequate ethical consideration and scrutiny. This is well exemplified in the proposed guidance on the disclosure of information on children. A recent consultation paper by the UK government on the subject proposes an approach that seeks a simple technical solution to a complex problem, emphasising control and surveillance. This reflects pressure to be seen to act. The document fails with regard to ethical reflection appropriate to the complexity of the issue, an appreciation of complex relationships of trust, and a proper sense of the richness and complexity of the public interest. Such policies would, if implemented, fundamentally change the relationships between citizens and their carers, and among carers and the law and the state. This and similar proposals require far more ethical scrutiny and consideration of the public interest in the widest sense.

will eventually be rolled out in public services; they will affect the lives and relationships of citizens with the health professionals and other public sector workers with whom they interact.

So, for instance, the introduction of an information spine that holds all information on every patient centrally, without either the consent or the ability of people to change it, may inhibit either doctors or patients from disclosing some material facts about the ways in which they behave—for example, in relation to child abuse and other issues. This may fundamentally change the relationship of trust between individuals and professionals.

It is not necessarily that there should not be central data on patients without their ongoing consent—although this would be a matter of concern and would need to be done carefully. In the present context, the concern is that important and far-reaching policies such as this are debated by a small group of professionals in the health services and in information technology instead of the whole issue being exposed to wider public scrutiny. Arguably, the very complexity of the technology makes it too difficult for the public to understand and engage with effectively. But it would seem, *prima facie*, that major policy issues that affect ordinary people should have some real, active and informed consent from those whom it will ultimately affect.

## AN EXAMPLE

Some of the worrying factors that pertain to policy and guidance documents emanating from the central government are well illustrated by a recent consultation document providing cross-government guidance produced by the department for education and skills. *Sharing information on children and young people*<sup>2</sup> seems to be, from the perspective of ethical analysis, in many ways an inadequate piece of work. The document is intended to provide statutory guidance for all those working with young people, especially those, such as teachers and health and social care workers, who are employed by the public. If and when its recommendations are implemented, the onus will be on such workers to share any information or suspicion of sexual contact, abuse and harm with other relevant agencies, including, often as a matter of course, the police. Doctors, for example, will be encouraged to contact the police if they suspect any kind of sexual contact (undefined) or abuse occurring to young children under 16 years, and the police may then keep a record of the inquiry, so that many years later an adult may be confronted

Human history is full of examples of “simple solutions” to moral problems.<sup>1</sup> Several far-reaching policy documents emanating from the central government and its departments have been distributed for public consultation in the UK over the past few years. These include the proposals to set up a Biobank that takes DNA samples from a wide sector of the population and is then empowered to sell information gleaned from these samples to commercial firms; a proposal to make all patient information, however acquired in the health service, computerised and the property of the central government’s information spine; and recent moves towards increasing the amount of information that doctors and others are obliged to give to other professional groups in the interests of preventing child abuse.

The issues dealt with may be urgent and apposite, and proposals made in the relevant documents may be appropriate to deal with particular concerns or problems. But there are several features common to these documents and to their approaches that cause concern in a civil democracy. These consultation documents are mostly not precursors to primary legislation—if they were, they would perhaps receive intense public scrutiny in the parliament. Instead, they are precursors to sublegal guidance or policy that

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with suspicions that are themselves grounded in nothing more than prior suspicions, formulated years previously.

Here, then, are some critical points about the style, argumentation and content of this document and documents like it that worry us as academics concerned with ethics. We think they should be of much greater concern to the citizenry than they presently are. It should be noted that we are emphatically not trying to argue that guidance about information disclosure in relation to the abuse or maltreatment of children should not be attempted. The way this kind of guidance is formulated and consulted on is in the present instance dysfunctional and unduly and arbitrarily limited, given the enormous, not to mention draconian, effects that they may eventually bring about in relationships among public servants of social order, welfare and care and the citizenry that they are supposed to serve. Thinking about what kind of information should be shared about children and young people is everybody's business; all citizens should desire that they grow up in an environment that will support them and allow them to flourish. The goal of protecting children is not in question; however, the assumptions and moves made by, and in, the document may (a) be counter-productive from the viewpoint of this goal and (b) serve other ends such as tacit forms of social control and the management of political discourse and process.

### THE DRIVERS

Over the past few years, several prominent child abuse scandals have caused huge public concern and official embarrassment, that of Victoria Climbié being the most obvious example. (Victoria Climbié was a young girl who was neglected, abused and eventually murdered by her great-aunt and her partner. Social and other public services knew of her case but failed to act effectively, partly owing to limited knowledge and poor communication between professionals and organisations (Laming Report (2003) The Victoria Climbié inquiry, Report of an inquiry by Lord Laming Cm. 5730). In this particular case, as in others, a major concern was that various professional groups failed to communicate adequately with each other, so that the needs of the child went unrecognised and unmet. This case has apparently prompted the government to resolve that this should not be allowed to happen again and that fail-safe mechanisms and policies be introduced to ensure that blame cannot be laid at the door of politicians for not putting such policies into place. It seems to have been resolved somewhere in the central government that, whatever the cost to confidentiality, privacy or any other principle or practice, the avoidance of abuse of children be made paramount.

### MANAGING RISK AND ANXIETY: A PRACTICAL STRATEGY?

The implicit belief is that systems of exposure, reporting and information sharing will either make it too difficult for abusers to continue to abuse, or ensure that their activities will be detected and the children will then be protected. In a perfect, transparent and mechanical world, this may be possible. It appears, however, that the suggested strategy is not so much about living with and managing risk as about eliminating it. This is no more realistic than hoping that we can live in a world without evil. The truth is that if total transparency is not possible, systems fail, and those who are at risk of their offences being exposed find better ways to hide. The practical effects of a policy that makes all health and social care workers report all their suspicions may be that the abusers and abused find new ways of being invisible. The abused may be deprived of help because all representatives of officialdom are deemed to be spies for the government. The

blanket demand to ensure surveillance and control may thus eliminate the possibility of nuanced care.

### THE THREAT TO TRUST AND DISCLOSURE

If all formal carers and adults outside the family are potential "snitches", then children and those worried about them may fail to engage with and disclose their problems to health workers. If children are then deprived of help as a result of this, the outcome of a policy that is designed to maximise well-being may well, in another and very important way, limit it. This seems to illustrate the point familiar in ethics that when one principle (the prevention of harm) is pursued to the exclusion of others (confidentiality and preservation of personal information), then a less than good result is the outcome.<sup>3</sup> Policy and practice are conducted in a complex environment of competing values. To oversimplify that environment to provide simple solutions to complex problems is to ensure that much that may have been gained is lost and much that is already valued is denigrated.

### LACK OF ETHICAL REFLECTION

With this document, there is no indication that substantial ethical reflection or analysis has occurred in the process leading to its production. As a result of lack of attention to wider social and ethical goods and horizons, the document seems crude and thin in its understanding and in the discernment of benefits and threats. It seems ironic that although local service providers are now subjected to a good deal of formal ethical scrutiny on practice, policy and research, there is no obligation on the central government departments to undergo any kind of public ethical scrutiny at all in the drafting of policy. This is unfortunate because it leads to the kind of policy that, in assuming for itself a moral orthodoxy by virtue of its position, actually threatens many fundamental human values and truths. It is time that policy, having enormous ethical significance and effect in its shaping of human communities, possibilities and identities, was brought far more consciously and proactively into the purview of ethical scrutiny before it is unleashed on the world, even in a consultative form.

### PROCEDURE AND TECHNOLOGY DISPLACE ETHICAL AWARENESS AND DEBATE

Related to the previous point is a fundamental point about the self-identity and purpose of policy makers. To the lay eye, it seems as if this policy document, like so many others, is really couched as a matter of managing services and people in the interests of solving what is a real social and ethical problem. The problem, however, is conceived entirely procedurally and pragmatically and without regard for the varied perceptions and consequent behavioural responses of people. A lack of awareness exists about the possible implications of this sort of policy and practice for wider social ends and relationships. Presumably, this is because the people who write policies of this kind see themselves as technocrats at the service of politicians—politicians, moreover, who themselves "do the ethics" elsewhere by setting parameters for policy formulation and implementation. It is then somehow not the business of a particular civil servant or department to be meddling with macro social and ethical theory. Perhaps this is indeed an appropriately modest and realistic stance on the part of people and units. Problems, however, arise if no one, including the politicians, is in fact "doing the ethics" or thinking about wider horizons and ends. Policy is ethics in practice. Perhaps its formulators need more self-consciously to be helped to engage with this dimension, not as an add-on luxury, but as an essential part of creating social policy worthy of respect and implementation by all citizens.

## INADEQUACIES OF DOCUMENTS

There are all manner of shortcomings and inadequacies to the document itself that perhaps emanate at least in part from the generalised kinds of putative shortcomings identified above. In the first place, although the document is for the purposes of consultation addressed to “all adults who work with children and young people”, it is (by apparent contrast with the analytical processes underlying it) lengthy and complex in its presentation and formulation. The nuances of considered ethical reflection leading to the production of policy should rightly be substantial and complex, but the presentation of policy in a consultation document needs above all to be accessible by those whom that policy most directly concerns. The present document, by contrast, is correspondingly less likely to be properly considered by the very people who will have to live with its consequences if it is implemented. It would seem to be an elementary social courtesy and an ethical necessity that, if a policy is to command respect and support, it be written and presented in such a way that those to whom it is directed can access and understand it. We take this to be the consultative equivalent of consent on the part of those who work with children. Signally, the children who are ostensibly the beneficiaries of the changes proposed are not included as partners in consultation. Although it might be difficult to conduct such consultation, it would not be impossible, but here again ethical advice on the production and dissemination of the policy document seems to have been absent.

In the second place, there is a lack of clarity about key terms and definitions. Thus, sexual activity is not clearly defined. (Does it include kissing games among 8-year-olds? Heavy petting among early teenagers?) Nor is the “public interest” that is much invoked as a justification for many of the practical incidents of information disclosure. Appeals to the public interest traditionally rival appeals to patriotism as the last (and recently something more like the first) resort of the political scoundrel. Undefined, the notion begs a parliament full of questions. In what does the public interest lie, and is it identified through the preferences of a simple majority or through the wisdom of an enlightened few? Is there a single, undifferentiated public or are there many? If there are many, and their interests conflict, does one among them command, deserve or claim pre-eminence? How is the relevant interest to be identified, and who conducts the exercises of identification and subsequent corroboration? As language is notoriously freighted and often tendentious, who owns and edits the descriptive vocabulary (or even rhetoric) that purports to capture the interests? And so on. Without specification along these and other lines, the concept of the public interest is liable to be free of content or meaning—in other words, vacuous, tendentious and manipulative. Taken together, these terminological licences contaminate the document in key respects. Not a secure base, then, for making important changes in social policy and practice.

Having failed to clarify key terms, the document, thirdly, descends to a certain kind of moral suasion that is more along the lines of vague threat and arousal of anxiety than appeal to reason. The implication and tone of much of the document seems to suggest (and in at least one place actually to assert) that the “good” workers with children will discharge their ethical and moral responsibilities by free disclosure of information in the public interest. It is only morally benighted backwoods people who will not see and want to go along with this need for information—that is, the kinds of people who have unorthodox ideas about confidentiality, client trust and relationship, and who have not yet been “educated” on the need to act as much as controllers and information providers as professional carers.

This is particularly apparent in the document’s use of case studies that are unvaryingly invoked to support the need to disclose information, even in apparently trivial cases. Each of the case studies appealed to becomes a moral tale that is interpreted in a single way only, vindicating the stance of the document and broadening the scope of moral panic rather than allowing readers to enter into the complexities of particular encounters. The cases betray the convictions of their drafters, as in the simplistic assumption that bed wetting in a young child must automatically highlight or even engender suspicion of sexual abuse, regardless of the range of alternative medical causes of this symptom. Thus, case studies become a moral bludgeon rather than an opportunity for reflection.<sup>4</sup>

Paradoxically, this approach (and perhaps we should be grateful for this) makes all too clear the limits and arbitrariness of the kinds of policies that are being advocated as it heralds the extreme penetration of a draconian kind of surveillance mechanism into the lives of both workers and clients in health and social care. If parents have children who wet the bed, then they had better keep well clear of health workers if they want to avoid a full-scale inquisition into all aspects of their personal and familial lives. Such inquisition is likely to be based on suspicion and on ad hoc, ill-grounded or invalid deduction leading to action, rather than on evidence or client disclosure. This is a recipe for distrust and suspicion, as services are seen more and more as part of the mechanism of policing and control rather than as client-focused resources for help and care.

Finally, it is possible to identify, amid all this, a failure to recognise the social and ethical context of the caring relationship. Of course it is important that children should not be abused or prematurely sexually aroused, but the social psychology of personhood indicates that people, including children, are shaped and maintained in a social context. It makes no easy moral sense to treat children as a-contextual monads who have nothing to do with other people. An intervention in a child’s family is likely to have huge implications for the children themselves. These may be damaging in the short or long term, perhaps even more damaging than the harm such disclosure was intended to prevent.

## CONCLUSION

Child protection and the disclosure of relevant information that supports it is an issue of vital importance in contemporary British society. As citizens, we should all be committed to helping children flourish and grow up in such a way that they avoid unnecessary trauma and harm. All persons of good will can agree on this. The matter of child protection is sensitive and morally complex and, of course, it cannot prescind from discussing issues of information disclosure by professionals and other workers. The issue of information disclosure therefore deserves the most rigorous and socially and ethically sensitive response and scrutiny.

Unfortunately, this is exactly what is missing from *Sharing information on children and young people*<sup>2</sup>. This seems to be a document driven by moral panic rather than by a desire to undertake moral discernment or by a considered quest to understand complex, ambiguous situations in an appropriately nuanced way and then to try and act appropriately and wisely within the limits of knowledge, values and competing claims. It is a pragmatic, ratio-instrumental document that fails to consider the wider moral horizons of debate and individual and social development, much less the goods that may inhere in confidential professional relationships of trust. It purports to be a simple technical solution to what is in reality a complex moral problem in which many interests need to be considered carefully and at length. It is difficult

not to think that it has been produced to allow the government to show that it has “done something” rather than to further the sort of understanding and action that will allow children and the families and professionals who support them to get the help and services that they need. Its consequences, if not its tacit agenda, are those of control and surveillance—and this, of course, means that the very people whom it is intended to control will simply seek places to hide. So some needy children may be excluded entirely from the purview of professionals by their abusers and confined to a twilight zone of nameless shame, whereas their abusers avoid the world of accountability and restitution that is sought in professional relationships. The ethical question “Who will benefit from the implementation of this policy?” suggests that although children are the ostensible object of its beneficent concern, many of them will not be helped by its implementation. The only people who will directly benefit may be the ministers and policy makers who can now sleep peacefully knowing that they have put the problem of preventing abuse of various kinds on the plates of local workers, thus removing the possibility of blame and accountability falling on the central government.

The thrust of our paper is not so much to highlight one document with all its narrow focus and many ethical inadequacies but rather to make a general point. The point is that citizens deserve policies that are ethically better informed and expressed before they are placed in the public realm for consultation. Policies of this kind fundamentally change the real everyday relationships that citizens have with those who care for them and the relationships those carers have with the law and the state. They should be subjected to

intense ethical scrutiny and they should have regard to a variety of goods and contextual factors that make all personal relationships complex. Perhaps the central government departments need ethics committees to advise on their policies. Perhaps all of those working in the government need to feel empowered to engage ethically with the policies they are asked to create. Perhaps politicians need to become more self-consciously engaged in ethics and teleology rather than seeking pragmatic solutions. Whatever the possible solutions or improvements, there can be little doubt that children, parents and professionals deserve better than documents such as *Sharing information on children and young people*.

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