

PE1835/A

Scottish Government submission of 30 November 2020

I am writing to provide the Scottish Government's response to the above petition, calling for the Scottish Government to criminalise the submission of false or misleading information in child protection cases. The petitioner expresses concerns about opinion, presumption and supposition being given with no legal accountability, however the central concern relates to protections against the deliberate provision of false or misleading information to a Sheriff or a children's hearing. It is the Scottish Government's view that proportionate and necessary protections and legal accountability are in place in these proceedings.

Opportunity to Challenge Information

In relation to information that a hearing receives, in addition to the accepted or established statements of grounds, relevant persons have the opportunity to challenge disputed information in writing or orally within the hearing. If a hearing's decision relies on disputed information, and it is contended that it did not deal fairly with the information, it is possible for evidence to be heard on the disputed facts in an appeal before a Sheriff.

The children's hearings system provides significant opportunity for children, parents and carers to challenge information and lodge appeals against decisions, and to secure advocacy or legal representation to help them if necessary. Under the Children's Legal Assistance Scheme, around 4,000 children and relevant persons a year qualify through the Scottish Legal Aid Board for legal representation in children's hearings and associated court proceedings.

Earlier this year the Scottish Government made children's advocacy available to all children in the hearings system, if required. The Scottish Government recognises that advocacy services play an important part in ensuring that the rights of vulnerable people are safeguarded. Advocacy can be accessed by children and young people, and adults themselves through local authorities, third sector organisations or other private providers. The Scottish Independent Advocacy Alliance (SIAA) maintains a directory of independent advocacy services.

Potential for Criminal Sanction

In the background information to this petition, the petitioner draws a distinction between the procedures for offence ground referrals and those for care and protection referrals. It might be inferred from this that there are greater protections against deliberately providing false information in the former than the latter. It is not the case that the offence of perjury can only be committed in relation to offence ground proofs. Perjury is committed where a person wilfully and unequivocally makes a false statement on oath or affirmation in *any* judicial proceedings. It should be noted that the falsehood must be absolute and unequivocal, which is a high test to meet, however it could apply to proof proceedings regardless of the grounds for referral.

It is important to recognise that in some circumstances there may be actions that could lead to a sanction (such as a fine or imprisonment) for individuals in relation to contempt of court. Contempt of court relates to conduct that denotes wilful defiance of, and disrespect towards, the court or that wilfully challenges or affronts the authority of the court or the supremacy of the law itself, whether in civil or criminal proceedings. The test of wilfulness is a high one, and does not include behaviour that is careless or negligent. It can cover a broad range of behaviour for example not complying with an order of the court. In

accordance with the Contempt of Court Act 1981, contempt of court applies to any tribunal or body exercising the judicial power of the State.

Other Potential Sanctions

In addition to these potential sanctions, it is important to recognise that there could be significant professional sanctions for knowingly providing false or misleading information to a hearing, or failing to act on information. Social Workers could potentially face sanction from the Scottish Social Services Council (SSSC) for such conduct, including removal of their registration as a Social Worker. Individual employers may also respond to such conduct within employment law, which could lead to suspension or dismissal.

To conclude, any individual who knowingly provides false or misleading information to a children's hearing risks potential sanction, and children's hearings provide appropriate opportunities for participants to challenge information. The creation of a specific offence in relation to children's hearings proceedings is therefore not considered necessary or proportionate by the Scottish Government.