

PE1836/A

Scottish Government submission of 24 November 2020

In response to the Committee's invitation for the Scottish Government's views on the action called for in the above petition, and following consultation with the Care Inspectorate, the Scottish Government can offer the following.

As you will be aware, the Public Services Reform (Scotland) Act 2010 ("the 2010 Act") enables the Care Inspectorate to investigate specific complaints in relation to the provision of care in a care service, as defined in Schedule 12. This does not extend to investigating specific complaints about non-registered services such as intervention by social workers working in children and families teams, assessment and care management teams (adults) or criminal justice social work teams.

In respect of investigating individual child protection complaints as suggested in the petition, there would be several challenges. These relate to:

Definitions

Clarity would be required about what is meant by a 'child protection complaint'. Child protection processes in Scotland sit within the framework of Getting it Right for Every Child. This is recognised in the National Guidance for Child Protection in Scotland 2014. It would be important that barriers were not introduced which might inhibit professionals in raising and sharing concerns about the wellbeing of a child, nor that might inhibit the further exploration or investigation of concerns.

Risk to local accountability and multi-agency working

The Care Inspectorate has a general duty of furthering improvement in the quality of social work services. Child protection is not a matter wholly for social work services, however. Under the Children (Scotland) Act 1995, certain responsibilities in terms of child protection are given to the local authority, generally discharged through the social work service. These include key actions such as deciding on how to investigate concerns when it is suspected that a child is suffering, or is likely to suffer, significant harm; making application for a court order authorising action to protect or assess the child; and referring the case to the Principal Reporter where compulsory measures of supervision may be required. The actions of social workers in protecting children are informed and influenced by the decisions and actions of a range of other professionals. National Guidance for Child Protection 2014 places a clear emphasis on the importance of multi-agency working to keep children safe.

Strong child protection practice and decision making is achieved through the embedding of tripartite discussions involving social work, health and police around the timing and process of investigation of concerns; joint assessment of risk and need; and collaborative planning to ensure safety and meet the child's needs through multi-agency child protection case conferences and core groups. Where children require multi-agency input such as where there are child protection concerns, the role of the Lead Professional will typically be taken by the local authority social worker, but in no way detracts from the multi-agency and collective nature of ensuring that children are kept safe.

The importance of collective responsibility for child protection is reflected in the fact that inspections of child protection activity in Scotland are undertaken under Section 115 of the 2010 Act jointly by scrutiny bodies covering social work, police, health and education

services. Inspections are led by the Care Inspectorate but must involve scrutiny partners in order to properly reflect the multi-disciplinary nature of child protection practice.

Investigating complaints involving child protection activity would require a similar approach. Implementing a new duty would result in having to navigate a complex network of different complaints processes which are relevant for each agency. There could be a risk of duplication or confusion with the functions of the Public Services Ombudsman and the Police Investigation and Review Commissioner.

Risk of undermining legal processes

Critical steps to ensuring children's safety are taken by professionals in the context of decisions by Sheriffs, Courts and Children's Hearings. Children's Reporters and Children's Hearings play a significant role for children who require support and protection on an ongoing basis, whether while living with their families or in alternative provision such as foster care or residential homes. This makes investigation of complaints about the actions of social workers working in the area of child protection different and significantly more complex in many respects than the investigation of complaints about care services.

Existing powers and duties

Finally, the routes to raise and address complaints are already well established. Scottish Government invites the Committee to note that the Scottish Social Services Council (SSSC) already has the power to investigate and take action where it is suspected that a social worker has acted improperly. Furthermore, complaints about social work practitioners can, and are often, made to their employer who has a duty to investigate, or can be directed to investigate by the Scottish Public Services Ombudsman.

Sections 55(1)(b) of the 2010 Act gives Scottish Ministers the power to direct the Care Inspectorate to undertake an inspection into the organisation or co-ordination of any social services that they may specify. They may specify purposes for any inspection under this section. Section 55(4)(c) allows the Care Inspectorate to investigate a specific matter, such as a complex complaint, at the direction of Ministers where Ministers judged it to be a matter of sufficient importance. The 2010 Act does not prescribe what activities constitute an inspection, only that an inspection should result in a published report.

In summary, the Scottish Government recommends that the matters above are considered by Committee. In addition, it would be problematic to extend the Care Inspectorate's duties to include only those aspects of social workers' responsibilities related to the protection of children, while excluding all other aspects of social work practice including the protection of vulnerable adults, and could potentially undermine local accountability and existing multi-agency working.