

PE1785/B

Social Work Scotland submission of 27 April 2020

Social Work Scotland is the professional body for social work leaders, working closely with partners to shape policy and practice with a view to continuously improving the quality and experience of social services in Scotland. We do not provide social work services ourselves, but rather we represent the collective views of senior managers within the profession. Our comments in this response should not be taken to be judgements on specific cases.

In general terms we acknowledge and appreciate the concerns expressed in this petition. Social work is a profession practiced in highly-sensitive areas of people's lives, often at times of vulnerability, emotion and distress. Social work can involve balancing the interests of a number of people, each with their own perspectives and rights, some of which are in conflict. And many social workers are bound by statutory duties, set by parliaments and governments, to use their skills and judgement to keep individuals safe; sometimes against their own wishes and those of people close to them. Taken together this all constitutes a role of significant complexity and responsibility, and it is important that our practice is open to scrutiny and review.

Responding to the specific points in the petition itself (PE1785), in respect of **information sharing** the SPICe briefing¹ explains clearly and correctly that social workers are bound by UK data protection legislation. Our legal framework includes the common law duty of confidentiality, Data Protection Act 2018 and Human Rights Act 1998. We would strongly support the expectation that social workers (and all organisations handling personal information) comply with the highest standards in respect to data processing, including recording and storing.

On the matter of **'guardianship'** for children, we agree with the Petitioner that local authority social work should properly consider placements with family members ('kinship care') first when any placement apart from parents is necessary. The development of kinship care in recent years, both at a national and local levels, reflects a determination to secure children within family networks when it is safe and appropriate to do so. This determination is reinforced by a Children's Hearings System which understands the value of placing children with family or friends with whom they have existing relationships. The value and centrality of kinship does not, however, mitigate the need for local authorities (coordinated through its social workers) to fulfil its duties; specifically, to assess the child's needs and to find solutions which are in their best interests. Critically, where a social workers' recommendation is contested by a family member, decision-making is entrusted to an impartial children's hearing panel.

Relatedly, the petition states that "**children should not be removed from home without going through a Children's Hearing or court hearing**" and that "**the parent should**

¹ Scottish Parliament Information Centre (14.02.2020) Briefing for the Public Petitions Committee: PE1785; p.2

attend these hearings”. Apart from some exceptional circumstances in which children may be removed by police to a place of safety (away from their regular carers), no child in Scotland can be removed from their home without a legal order issued by a Hearing or a Sheriff. There are a number of checks and balances within the process for making such decisions, including the Children’s Reporter, the Children’s Hearing, the Courts, legal representatives, Safeguarders and Curators ad Litem, each in its own way designed to ensure the state does not exercise undue power. Social work recommendations, which usually arise from a multi-agency assessment processes (involving other professional opinions) are scrutinised and tested through the legal process. There are provisions for parental participation at all stages, support for representation and rights of appeal. Social work practitioners and managers recognise and welcome these checks and balances as a necessary part of ensuring fair and effective processes for children and their families.

On “**contact**”, the key point we would emphasise is that social work does not in itself determine contact arrangements for children of any age. As the SPICe briefing explains, a Children’s Hearing or Sheriff must consider whether to make a direction regulating contact between the child and a specified person or class of person. Social workers undertake assessments, provide recommendations and support the implementation of legal orders, but decisions sit within our Children’s Hearings infrastructure. Furthermore, the petitioner specifically refers to young people over the age of 16. The UN’s Convention on the Rights of a Child (UNCRC) defines a child is as any individual under the age of eighteen. It is indeed the case in Scotland that children aged 16 and 17 are subject to some different legal rules to younger children. For ‘looked after children’ (i.e. children for whom a local authority has assumed some parental responsibilities) one of these differences is that children aged 16 and 17 may choose to cease to be ‘looked after’. For this reason, among many others, social work does not ‘stop’ young people seeing their family; if a social worker has concerns about the impact on a young person of a particular relationship they may make a recommendation to a Children’s Hearing or Sheriff, but more importantly, they will work with all concerned to find a safe and appropriate way to facilitate the relationship.

The petitioner calls for an **independent panel to have the final say on complaints about social work**. We would draw the Committee’s attention to the established mechanisms for review of individual’s complaints, involving initially the relevant local authority processes, followed if necessary by the independent Scottish Public Services Ombudsman or Scottish Social Services Council.² In addition, the Care Inspectorate examines how social work and local partnerships provide care, protection and support for children and their families, and services must act in response to its recommendations. Its reports are based on a broad base of information from services, children and families. The Inspectorate also draws together themes from various inspection reports or Significant Case Reviews over specific three year periods, providing essential learning for social work, health, police, education and other relevant services. This is an important strand in supporting a culture of continual improvement within social work, with learning on the basis of evidence.

² <https://www.mygov.scot/care-complain-feedback/complain-about-a-social-work-department/>

We fully agree with the petitioner that changing school can significantly disrupt a child's **education**, compounding other challenges inherent with becoming 'looked after'. School can be an important protective factor for the child at a time of stress, and wherever possible a change in schools should be avoided. However, every child's situation is made up of unique combination of circumstances and needs, which evolve over time. Care and support planning for a looked after children should be a continuous process, considering how all aspects of a child's needs are met as a whole. This includes considering needs in relation to education and how that fits with ongoing care and support for key relationships.

In the supplemental information to the petition (document PE1785/A) the petitioner identifies some additional points. Turning to these, we fully agree that a child should not be **taken away "from their families without a risk assessment"**. The actions of social work are informed by careful assessment, balancing many factors, often informed by a range of other professionals (e.g. police, teachers, health visitors). We also agree that all allegations which may lead to the removal of a child (through child protection or children's hearings processes) should be investigated carefully.

Behind these statements and others in the list, we assume that the petitioner is making a broader point about the decision to place a child apart from their birth parents, arguing that this should be based on a careful assessment of needs, risks and strengths in a child's current context, with past events and patterns irrelevant to current concerns. However, while we believe that no situation should be prejudged, background information is important in making a holistic assessment. And if new information arises, this needs to be taken into consideration too.

Relatedly, we believe there is a general point about assessments (in relation to children who are looked after or subject to child protection processes) being kept under close review. This is the case currently, with review timescales set out in legislation for different processes.

On the point about **placement of mother and child**, we are not completely clear about the concern being raised, but if this relates to the possibility of a young mother in care being able to have a placement with her baby (so that both care and assessment can occur without separation) then this certainly an approach which can be effective in some situations. In practice, however, it has proven difficult to recruit appropriate carers and to sustain such placements.

We are also unclear about the point relating to **children being 'forced' to do things they do not want to do**. There are some instances where for the safety of a child or others, carers and care services must exercise limits, rules or restrictions. However, the manner in which boundaries were maintained would fall within nationally prescribed Health and Social Care Standards (set by the Scottish Government and Care Inspectorate). In most instances, explanation, negotiation and guidance are the approach needed so that children and young people are supported in making good choices. Children should also be able to expect that, if their independence and choice are restricted, the decision complies with relevant legislation and specific process or criteria, is kept to a minimum and is carried out

sensitively. They should also rightly expect to be as involved as they can be in agreeing and reviewing any restrictions to their independence, control and choice. **A child's feelings, views and experience, as well as their needs, should be a central concern in all decision making and action.**

In conclusion, we would emphasise that local authority social work teams (which appear to be the focus of the petition) must already work closely with other agencies to protect children from significant harm and promote their wellbeing. Especially in situations where a child may be placed apart from their parent(s), social work will seek to work the family wherever possible. Local authorities are under duties to promote the upbringing of children by their families, so far as it is consistent with their duty to promote the welfare of the child. Although the public's perception of social work is of a process done to families, in reality is usually done with. Even where children require to be placed away from their parents, at 31 July 2019 nearly 20% of looked after children were in care through a voluntary agreement between parents and local authority (referred to as 'accommodated under Section 25').³ Unfortunately, in some cases partnership and agreement are not always achievable. There are times when children will be placed without parental consent, following application for the appropriate legal measure. Decisions are taken by courts and Children's Hearings' panels, with checks and balances built into the process.

It is also worth restating our acknowledgment that the systems relating to the care and protection of children are complex and imperfect. We fully support work to improve the way the system makes decisions for and about children. An example of progress is the introduction of a statutory right to advocacy for children within the Hearings system. And looking ahead, this petition is raised at critical juncture in the development of Scotland's children and family system. February 2020 saw publication of the **Independent Care Review's findings**.⁴ These provide social work services with an opportunity to work with partners to make significant and long-lasting improvements to the way Scotland's protects and cares for children and families. By following through on this collective commitment we believe that the general concerns identified by the petitioner will be addressed.

Finally, we would also note that the petition was lodged not long after Scotland committed to incorporating the **UN Convention on Rights of the Child** within Scots Law. As we made clear in Social Work Scotland's response to the public consultation⁵, welcoming this development, this important legal step will help underline social work's current and continuing commitment to the principle that a child's best interests should be the primary consideration in all actions.

³ Scottish Government (31.03.2020) Children's Social Work Statistics Scotland 2018-2019; Additional Table 2.5a

⁴ <https://www.carereview.scot/destination/independent-care-review-reports/>

⁵ <https://socialworkscotland.org/wp-content/uploads/2019/08/Incorporation-of-UNCRC-Social-Work-Scotland-Response-27.08.19.docx.pdf>