Scottish Government submission of 22 December 2017

I am writing to provide the Scottish Government’s comments on the above petition. The petitioner has raised a number of issues relating to Child Protection and Looked After Children, as well as the children’s hearings system, and is calling for an independent QC-led inquiry into the operation and running of child protection services in Scotland.

While sympathetic to the distress experienced by, and the concern expressed by, the petitioner, his petition tends to conflate wide-ranging concerns spanning distinct but related processes. Specifically, the petition seeks to take in voluntary and informal measures reached in agreement with families, the legal systems and processes engaged around children’s hearings and connected proceedings, and emergency child protection measures where children may be at significant and immediate risk of harm.

The Committee will be aware that the Scottish Government has a Child Protection Improvement Programme (CPIP) in place, which looked at child protection systems and links to the children’s hearings system. The CPIP Report, published in March this year, concluded that the child protection system in Scotland works well overall. However, there were some areas for further improvement. The Report therefore included a commitment to reconvene the Child Protection Systems Review Group in April 2018 in order to review progress made on the recommendations. My predecessor also made a commitment to take fresh legislative action, should real demonstrable progress in delivering improvements not be made.

The petitioner also makes reference to looked after children, particularly those who are taken away from their home, and calls for an independent inquiry into child protection systems.

The Committee will be aware that the First Minister has put in place an independent root and branch review of the care system, with a focus on learning from care experienced young people and from others like the petitioner with experience of interaction with child care systems. The “Care Review” is chaired by Fiona Duncan, Chief Executive of Lloyd’s TSB Foundation. We would encourage the Petitioner to engage with that review: link www.carereview.scot

In relation to specific issues raised by the petitioner around ‘opinion and supposition’ supporting child protection measures, I refer the Committee to a relevant Supreme Court Judgement. In the matter of EV [2017] UKSC 15, the Supreme Court considered an appeal from the Court of Session against the granting of an application for a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (the ‘2007 Act’).

The 2007 Act requires a number of tests to be met in considering whether to grant an application, including the key test of whether “the child’s residence with the person is, or is likely to be, seriously detrimental to the welfare of the child.”
It was agreed by all parties to the appeal that to meet this test the court must make future predictions on a specific finding of fact as to past conduct, proved on the balance of probabilities.

The Supreme Court judgement gives a thorough and precise analysis of what is required to satisfy the statutory tests in section 84 of the 2007 Act which will be of assistance to those applying to the courts in future applications.

In the following section, I have sought to summarise the petitioner’s key concerns and offer the Government’s comments.

‘Scotland has the highest ratio of children in care compared to other countries’

Care must be taken when drawing comparisons between the looked after children, child protection and secure care accommodation statistics of the four UK countries. Clear differences exist between respective legislation, children’s social work systems and the definitions of categories that will affect these figures. The definition of “looked after children” varies across the countries within the UK which makes cross UK comparisons difficult.

Scotland’s Getting It Right For Looked After Children And Young People Strategy sets out our ambition to reduce the number of children being looked after. In particular it focuses on building on the assets of families, early engagement, early permanence and improving the quality of care.

The Scottish Government recognises the importance of families, including the wider family and friends, in providing early support which helps children to retain a sense of family, identity and heritage and in turn helps them to feel safe, protected and valued. The Scottish Government believes that every child should have a stable home which offers them nurturing relationships, in order to support their wellbeing. Families should be supported to provide that home wherever possible.

In relation to decisions of children’s hearings, Scottish Children’s Reporter Administration advise that for the year ending 31 March 2017, 4486 out of 9996 total orders were for children to reside with their parents and a further 1943 with relatives or friends so the majority of children are placed with their family, even on the basis of compulsory supervision orders.

The Scottish Government has provided additional funding to support kinship carers who are able and willing to take on the responsibilities and rights of a parent and potentially avoid a complex and time-consuming involvement by statutory services where it is not required.

The strategy sets out four linked ambitions for improving how we support children likely to become looked after children at home:

(i) Services should engage before the need for compulsory supervision orders, such as through section 22 of the Children (Scotland) Act 1995 or Part 12 of the 2014 Act.
(ii) Families should have high quality care planning, assessment and support to prevent those children who become supervised at home drifting in the system for years, or until their situations reach crisis point.
Local authorities should plan for permanence for children supervised at home in the same way as for children accommodated away from home.

Resources should be focused on high impact services and support.

To meet these ambitions, local authorities should provide early and intensive support to the family using multi-disciplinary teams. They should provide support when the children are on the edge of care, rather than waiting for a compulsory supervision order and, where the children are known to them, before they reach the edge of care.

The Scottish Government is committed to supporting Community Planning Partnerships, through our Realigning Children’s Services Programme, to ensure that the right services are in place to meet the needs of all children and young people, including those who are looked after at home. We are evaluating the impact on the wider system of the numbers of children looked after at home and will collaborate with our partners on how to ensure this promotes better outcomes.

‘Non-availability of legal representation’

You will recall that there were detailed discussions around the involvement of legal representatives in children’s hearings in the context of the Education Committee’s inquiry into children’s hearings reforms. One of that Committee’s concerns was the perceived over-involvement of lawyers.

The Scottish Legal Aid Board (SLAB) offered a submission to the Education Committee in support of their 29 March 2017 session. That indicated that some 750 solicitors across Scotland are authorised by SLAB to participate in the Children’s Legal Assistance Scheme which includes assistance with children’s hearings.

SLAB data also showed that - from the inception of the state-funded legal aid scheme in June 2013 to the end of February 2017 - 11190 grants of advice by way of representation had been made and approved, with around 1500 applications not approved. Child protection order applications and 2nd working day hearings were included.

‘Independent review of children’s hearings’

The Petitioner suggests that a review of the children's hearings system, and its predominant focus on “purely child welfare matters”, is necessary. Care and protection concerns overtook offence referrals many years ago, but Scotland has a longstanding integrated holistic approach to children in need or at risk who might need compulsory care, so it does not follow that that of itself presented a difficulty.

The Children’s Hearings (Scotland) Act 2011 (the 2011 Act) was introduced in June 2013. In one form or another, the system had been under review for much of the previous decade. Of course, close review and Parliamentary scrutiny of the structural and procedural reforms formed part of the process of the system modernisation and the introduction of the Act and associated regulations from 2010-13. A recent further post-implementation review was also undertaken following the Act’s introduction, confirming that the changes were working well overall.
In addition, in April 2017, the Education and Skills Committee published its Report “Children’s Hearings System – Taking Stock of Recent Reforms”. My predecessor responded to this Report in June, and a further update is to be sent to the Committee in early 2018. I will ensure that the Public Petitions Committee receives a copy.

‘Removals based on opinion or supposition’

In relation to referrals made to a Children’s Hearing on the grounds of abuse and neglect, the Petitioner is concerned that removal of children is based on probable future harm rather than evidence of actual harm. The Committee will be aware that prior to the Reporter making a referral to a Children’s Hearing, the case is thoroughly investigated. The Reporter’s decision about whether to arrange a Children’s Hearing is based on both facts and the need for compulsion:

In other words, where a section 67 ground (of the 2011 Act) applies in relation to the child i.e. there is both sufficient evidence such that there is a realistic prospect of the ground being proven in court; and, if sufficient evidence exists, it is necessary to have compulsory intervention in the child or young person’s life.

‘Differential timescales for panel papers’

The Petitioner has referred to the time scales for the provision of papers to parties attending the Hearing. He is concerned that families are given a 3 day notice period, whereas the Children’s Panel are given sight of the papers 8 days in advance of the Hearing. In fact, the panel papers are sent out to all parties at the same time - there is no inequality of panel members being sent them ahead of a family. The 3 day timescale referred to is the latest period for papers to be sent, but this is the minimum period allowed by the legislation and the Scottish Children’s Reporter Administration would always strive to provide the maximum notice possible.

‘Relevant person status’

With regard to the Petitioner’s comments regarding deemed relevant person status. Section 200 of the 2011 Act defines a “relevant person”. However, a person can apply to be a deemed relevant person. This very specific issue turns on a determination of fact around Section 81(3) of the 2011 Act, which states that a person can be deemed as a relevant person if the individual has (or has recently had) a significant involvement in the upbringing of the child. That means, for example, making the day-to-day decisions around fundamental issues like the child’s schooling, health, boundaries and bedtime.

‘Assumed parental guilt & definition of abuse & neglect’

The National Guidance for Child Protection in Scotland (2014) identifies that action under child protection procedures is necessary where a child or young person is, or maybe, at risk of ‘significant harm.’ It also emphasises that abuse and neglect are forms of maltreatment of a child and that somebody may abuse or neglect a child by inflicting, or by failing to act to prevent, significant harm to the child. The Guidance sets out what considerations need to be taken into account in reaching a professional judgement as to whether significant harm has or is likely to have
occurred. It further provides a framework for identifying and managing risk and how agencies should work together in responding to concerns about a child’s safety.

**Child Protection Orders (CPO) (assume this is what is meant by ‘court protection orders’ – the focus seems to be on emergency CPOs)**

Social Workers are required to draw up a statement of facts alongside the provision of any supporting evidence to support the application for a CPO. There are strict criteria around emergency CPOs which limit the granting of an emergency order without the parents having legal representation and Sheriffs will question whether the family are aware of the application. Social workers can only justify not discussing a CPO with a family where the assessment is that to discuss would result in further harm to the child.

A Sheriff can still decide to convene a full hearing rather than hearing a CPO in their chambers to allow parents to be legally represented. Even where an order has been granted this is subject to a second day review through the Children’s Hearing.

**At Risk Register (assume petitioner means Child Protection Register) & Core Group Meetings**

The child protection register is an administrative system for alerting professionals that there is sufficient professional concern about a child to warrant a multi-agency Child Protection Plan. In reaching this conclusion, there has to have been a multi-agency child protection assessment and conference process which the family will have had the opportunity to contribute to. Local authorities are responsible for maintaining a register of all children in their area who are subject to a Child Protection Plan. As part of the Child Protection Improvement Programme, we are exploring the development of a National Child Protection Register that can be securely accessed by all appropriate professionals. In the short term, we are investigating the possibility of Police Scotland using a flagging system on the National Police Vulnerable Persons Database to identify all children placed on a local Child Protection.

**Core Group & “privileged information”**

The National Guidance for Child Protection in Scotland (DATE) clearly sets out the composition of the Core Group but the main criterion for membership is that it is limited to those “with a need to know or those who have a relevant contribution to make”.

The National Guidance for Child Protection in Scotland outlines types of “restricted access information” (information that, by its nature, cannot be shared freely with the child, parent/carer and anyone supporting them) as well as noting the requirement for a “Dispute Resolution” process where the child/young person or their parents and families disagree with decisions.

I hope the foregoing is helpful to the petitioner and to the Committee.