I am a senior lecturer in social work at the University of Edinburgh, and a registered social worker with over 40 years’ experience of social work.

I support Mr. Mackie’s petition calling for a review of the children protection and children’s care system in Scotland, and now offer my response to the Scottish Government’s submission to the Committee on the issues raised by the petitioner.

**Child protection, children’s hearings and care reviews**

I am aware of the Government’s Child Protection Improvement Programme and the independent ‘root and branch’ review of the care system that is being undertaken at the First Minister’s instigation.

If the Scottish Government submission is an indication of the review’s thinking, then it would seem that the review will fail to engage with the argument that being in ‘public care’ carries risk factors in itself and instead will rely on the assumption that the act of removal to care has enabled the successful rescue of child from harm. Given the evidence that points to poor short-term, medium and long-term outcomes of care for children, and for adults that have been in care, it is important that the Care Review looks at alternatives to child removal to public care. Yet the risks of being in care rarely feature in social work and children’s hearings’ considerations.

There are well evidenced alternatives to care that are whole-family, strengths-based, and empathic. Leading Scottish child welfare agencies such as Circle Scotland, with whom I closely work, can provide many examples of different, successful ways of working with families in difficulties, where there is child maltreatment. However, services such as Circle are not universally available and not emulated by statutory social work services. The result of less preventative, less supportive work with families is rising numbers of children and families who are subject to child protection investigations and rising numbers of children in care (see appendix 1).

There has been a decline in the provision of the kind of supportive services that are needed in times of the growing detrimental effects of austerity. Instead of materially helping, our local authority children and family services now offer very little that is positive. The result is that people avoid contact with social work if they can help it and resent it when they cannot refuse contact.

As regards Children’s Hearings, we have yet to have a robust longitudinal evaluation of the outcomes of our Children’s Hearings. The Edinburgh Youth Crime and Transitions study ¹ found that the outcomes for children taken to hearings on offence grounds was generally worse than the outcomes for children who experienced voluntary support or no intervention at all. This is a challenging finding that needs to be taken more seriously.

¹ [http://www.esytc.ed.ac.uk/findings/published](http://www.esytc.ed.ac.uk/findings/published)
Getting It Right For Every Child – an unsuccessful approach to prevention
The Government submission asserts that Scotland’s GIRFEC policy sets out an ambition to reduce the number of children being looked after. That is a good and legitimate aim, but it is not in line with what is happening, despite being in place for over ten years, as indicated in the table cited above. It is time that this policy initiative was evaluated.

In the best interests of the child? The Supreme Courts and the Scottish Courts - Re EV [2017] and the Children and Young People (2014) Act
The Government’s submission points to the Supreme Court Judgement in the case of EV [2017] 2 which sets out the tests for the granting of a permanence order under the Adoption and Children (Scotland) Act 2007. Yet the UK Supreme Court has found that the Scottish courts had erred by applying the test of “best interests of the child” before establishing whether the test of “significant detriment” to the child’s welfare had been met in the first place. This is concerning. Were the “best interests” of the child to be the primary grounds for removal of children from their parents, rather than “significant harm”, then the removal of children from poor families to the better-off could be justified on the grounds that they would receive more and better food, the good schooling that money could buy and so on. It is imagined that no-one in the Government is advocating this.

Scotland has the highest rate of child removal in UK
On page 2 of its submission, the Government contests Bilson’s argument that Scotland has the highest ratio of children in care compared to other countries by cautioning that there are different definitions of categories across the UK. This is true. Scotland is the only country which counts children on home supervision orders as ‘looked after’ children. However even allowing for this, the Scottish rate of removal from home remains higher than any other UK country. 3

Additionally, whilst it is true that a growing proportion of children on compulsory orders in Scotland are placed with family members, this may also involve moves around the care system and loss of relationship with birth parent(s) and siblings.

The Scottish Government cites the figures for 2016-7 showing that the majority of looked after children were placed with family members. However, the figures for children under 1 year old show that the number removed to ‘out of family’ care more than doubled between 2006 and 2016/7. This is a concerning statistic from a subset of the data.

Legal representation
The problem that the petition drew attention to was the difficulty in getting legal representation to challenge removal of children at an early enough stage to prevent damage to the children in what can be a chaotic and less than careful care system, with multiple carers including emergency, short-term and long-term foster carers, respite foster carers, contact supervisors, escort drivers and so on.

2 https://www.supremecourt.uk/cases/docs/uksc-2016-0220-judgment.pdf
3 Bilson, submitted with Petition
Child Protection orders can be sought ex-parte, without parents being aware of the application. In many parts of northern, rural and island Scotland there are no solicitors willing to take on child and family work. The quality of legal advice is highly variable. Representation by lawyers at hearings is restricted to technical aspects of procedure and not to addressing the evidence or lack of it for a child’s removal.

In these circumstances, it is insufficient and dismissive to point to a list of possible available lawyers as proof of the availability of legal representation for parents.

**Removals to public care based on opinion or supposition**

The government rebuts the suggestion that children are removed to public care and remain removed, on the basis of unchallenged opinion or supposition, and asserts that ‘prior to the Reporter making a referral to a children’s hearings the case is thoroughly investigated’. In the case of two and eight working-day hearings after a Child Protection Order has been secured, the Reporter does not have sufficient time to thoroughly investigate the case. Interim orders are usually made at these hearings based entirely what has been alleged, often ex-parte (parent not present), by a social worker in judge’s chambers. The case made to sheriffs for emergency removals is not taken by them as sworn evidence, and the accuracy or truth or otherwise of assertions is often not tested for many months, if at all. Yet these decisions can be included as proof of legitimacy of compulsory measures of care when matters reach a Children’s Hearing.

The SCRA reports in a recent evaluation of permanence planning for children, that in Children’s Hearings ⁴, panels overwhelmingly agree with social work recommendations for permanent removal of children, and that contact with parents is usually reduced and/or terminated by panels on the recommendation of social workers. However, taken as a whole, there is no opportunity in the process where social work assessments are robustly examined for evidence of recommendations that are not based on opinion, misinformed judgement or prediction of future harm. And Lady Hale in her judgement, argued that the likelihood of future harm should not rely merely on what has happened or may have happened in the past, but on an assessment based on evidence of the actual situation.

All the while, children can remain in care, separated from their parents who may nothing or little of their whereabouts or day-to-day welfare.

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⁴ http://www.scra.gov.uk/2016/03/new-research-permanenceplanning-for-looked-after-childrenin-scotland
Appendix 1

Cross-UK comparison of rate of looked after children per 10,000 children, 2004-2016

(Bilson, 2018)