

Children and Young People's Commissioner Scotland submission of 13 March 2023

PE1979/Q: Establish an independent inquiry and an independent national whistleblowing officer to investigate concerns about the alleged mishandling of child safeguarding enquiries by public bodies

We welcome the opportunity to respond to the above petition.

Human Rights Background

International human rights law states that children are entitled to higher standards of protection to take account of their vulnerability and the inherent imbalance of power between them and adults. Children's human rights are set out in a number of international instruments. For the purposes of this response, the most relevant are the United Nations Convention on the Rights of the Child (UNCRC) and the European Convention on Human Rights (ECHR).

The UNCRC places obligations on the state to ensure children's right to be protected from all forms of violence, abuse and neglect. Article 19¹ places duties on States Parties to take all appropriate, legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Article 34 makes it clear that children should be protected from all forms of sexual exploitation and sexual abuse and Article 3 states that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 3 (3) further notes that States Parties also must ensure that the institutions, services, and facilities responsible for the care or protection of children conform with the standards established by competent authorities, particularly in areas of health and safety².

There is a clear positive obligation on the State to ensure that child protection, safeguarding and whistleblowing investigations (in terms of

¹ CYPCS, 2023. *Article 19*. <https://www.cypcs.org.uk/rights/uncrc/full-uncrc/#19>

² CYPCS, 2023. *Article 3*. <https://www.cypcs.org.uk/rights/uncrc/full-uncrc/#3>

law, guidance and practice) are sufficiently thorough, independent and robust.

Our View

The principal document that directs the approach of public bodies and others towards child protection and safeguarding is the Scottish Government's National Child Protection Guidance. We note however that this guidance is not statutory, nor are there express and standalone legal duties on all public authorities relating to child protection and safeguarding.

The child protection system is directed primarily towards the risk of neglect or abuse from parents, or within a family setting. As a result, the system often fails to respond effectively to child protection concerns that arise as a result of action or inaction by professionals and/or organisations. The work of our office and others, on restraint in particular, has provided clear evidence of professional practice not being recognised as a child protection concern when it should have been.

We have met with the Scottish Government to discuss ongoing concerns about children not being sufficiently protected from harm. These concerns derive from substantive pieces of work undertaken by the office; including our investigation into restraint and seclusion³, and individual cases that have been brought to our attention by children, families and professionals. We identified a number of gaps in the national guidance and a need for stronger accountability mechanisms.

We have expressed a view that lessons have not been fully learned from previous and ongoing inquiries which relate to childhood abuse, neglect, and safeguarding. These include, the Scottish Child Abuse Inquiry conducted by Lady Smith, the review into the handling of school assault allegations in the Borders by Andrew Webster QC, and the Independent Inquiry into Child Sexual Abuse.

Culture change - empowerment of individuals

Staff members can find it difficult to respond to child protection issues in the face of pressures within the service they work, and longstanding organisational practices. As a result, informal practices and cultures have been allowed to persist which are detrimental to children's rights and protection. One of the suggestions we have made to the Scottish

³ CYPCS, 2018. *Restraint and Seclusion in Scotland's Schools*. <https://www.cypcs.org.uk/resources/no-safe-place/>

Government is the development of a new principle for individual professional and agency responsibility. “Empowering and protecting practitioners”, making clear the obligations on organisations to ensure practitioners are empowered, protected, and supported when raising concerns about poor or harmful practice. We suggested the following wording: “All devolved agencies are under a duty to ensure that they facilitate and support staff to raise child protection concerns, including where such concerns arise out of the action or inaction of the agency itself”.

Scope

It is concerning that there are a significantly lower number of child protection registrations per 10,000 children in Scotland compared to England, Wales, and Northern Ireland.⁴ There are gaps in the current process which may be contributing to this. For example, the Commissioner has encountered situations where no inter-agency referral discussion (IRD) has been arranged, after making a child protection referral.

Accountability

Similarly, the Scottish Government’s Social Work Statistics record a low rate of child protection registrations under categories which predominantly affect older young people in public authority institutions.⁵

We have concerns that the following groups may be particularly at risk of harm by professionals, institutions and organisations:

- Child sexual exploitation in the context of care settings
- Children who are subjected to restraint and seclusion
- Unaccompanied asylum-seeking children

In order to remedy these gaps, greater scrutiny and accountability is required.

Whistleblowing

The Children and Young People’s Commissioner Scotland is a prescribed person under the [Public Interest Disclosure Act 1998 \(the 1998 Act\)](#), which provides legal protections for employees who

⁴ Scottish Government, 2022. *Children’s Social Work Statistics, Scotland 2020-21*. Chart 8: Cross-UK rate per 10,000 of children on the Child Protection Register 2004-2021 <https://www.gov.scot/publications/childrens-social-work-statistics-scotland-2020-21/pages/5/>

⁵ Scottish Government, 2022. *Children’s Social Work Statistics, Scotland 2020-21*. Chart 5: Concerns identified at Case Conferences of children on Child Protection Register <https://www.gov.scot/publications/childrens-social-work-statistics-scotland-2020-21/pages/5/>

whistleblow. However, the 1998 Act does not provide any additional powers for prescribed persons to respond to such disclosures beyond those already available to them.

Independent National Whistle Blowing Officer

We are aware that The Scottish Public Services Ombudsman (SPSO) has taken up the role of the Independent National Whistleblowing Officer ([INWO](https://inwo.spsso.org.uk/)) for NHS services. The aim of the role is to make sure everyone delivering NHS services in Scotland can speak out to raise concerns, ultimately contributing to ensuring that the NHS in Scotland is as well run as possible. The INWO has created standards which are applicable across all NHS services. They include: whistleblowing principles, whistleblowing procedures, governance and sector information. The standards must be accessible to anyone working to deliver an NHS service, whether directly or indirectly. This includes current (and former) employees, bank and agency workers, contractors (including third sector providers), trainees and students, volunteers, non-executive directors, and anyone working alongside NHS staff, such as those in health and social care partnerships⁶.

Our office is of the view that a National Independent Whistleblowing Officer for Education and Children's Services in Scotland would merit further exploration. Colleagues within SPSO would be best placed to provide a view to the Committee on the effectiveness of this approach, drawing on the data and experience they have to date.

We are of the view that the tests for any new model would be around the need to increase accountability, provide an independent mechanism for professionals and adults to raise concerns with confidence and lead to more joined up, systemic learning across the sector. Ultimately improving child protection and safeguarding of children and young people.

Conclusion

We would recommend that the Committee explores further the INWO model currently operated by the SPSO.

⁶ SPSO, 2023. *Independent National Whistleblowing Officer*. <https://inwo.spsso.org.uk/>