

# Citizen Participation and Public Petitions Committee

14th Meeting, 2023 (Session 6), Wednesday  
4 October 2023

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

**Lodged on** 3 November 2022

**Petitioner** Neil McLennan, Christine Scott, Alison Dickie, and Bill Cook

**Petition summary** Calling on the Scottish Parliament to urge the Scottish Government to launch an independent inquiry to examine: concerns that allegations about child protection, child abuse, safeguarding, and children's rights have been mishandled by public bodies, including local authorities and the General Teaching Council Scotland (GTCS); gaps in the Scottish Child Abuse Inquiry; and establish an independent national whistleblowing officer for Education and Children's Services in Scotland to handle these enquiries in the future.

**Webpage** <https://petitions.parliament.scot/petitions/PE1979>

## Introduction

1. The Committee last considered this petition at its meeting on [8 February 2023](#). At that meeting, the Committee agreed to write to the Children and Young People's Commissioner Scotland, COSLA, the EIS and Unison trade unions, the General Teaching Council for Scotland (GTCS), and the Scottish Social Services Council (SSSC).
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.

3. The Committee has received new responses from the GTCS, the Children and Young People's Commissioner Scotland, SSSC, EIS, COLSA, and three submissions from the Petitioners, which are set out in **Annexe C**.
4. The Committee agreed at its meeting on [31 May 2023](#) to accept an unsolicited submission on this petition, and to publish the submission anonymously. A copy of this submission is also included in **Annexe C**.
5. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
6. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
7. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).
8. Every petition collects signatures while it remains under consideration. At the time of writing, 1,810 signatures have been received on this petition.
9. The Committee may wish to note that the Scottish Government published an update to the [National Guidance for Child Protection in Scotland](#) in August 2023, which includes a new paragraph on whistleblowing, and a new section on concerns relating to a person of trust (page 93).

## Action

The Committee is invited to consider what action it wishes to take.

### Clerk to the Committee

## Annexe A

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

### Petitioner

Neil McLennan, Christine Scott, Alison Dickie, and Bill Cook

### Date lodged

3 November 2022

### Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to launch an independent inquiry to examine: concerns that allegations about child protection, child abuse, safeguarding, and children's rights have been mishandled by public bodies, including local authorities and the General Teaching Council Scotland (GTCS); gaps in the Scottish Child Abuse Inquiry; and establish an independent national whistleblowing officer for Education and Children's Services in Scotland to handle these enquiries in the future.

### Previous action

Have written to the Cabinet Secretary for Education and Skills in July 2021 and received a response in August 2021. We are also aware that Oliver Mundell MSP and other MSPs have corresponded with the Cabinet Secretary for Education and Skills on this issue.

We support the #Unfeartie campaign, which was set up by the Children's Parliament in 2017.

### Background information

The #Unfeartie pledge is to have courageous conversations regarding children's issues and speak up and stand alongside children. We take

these principles very seriously, and have supported whistleblowers in raising historic and current allegations about child protection, child abuse, safeguarding and children's rights matters.

The alleged mishandling of child safeguarding concerns in many public bodies (Edinburgh, Borders, Aberdeenshire, East Lothian and the GTCS) have been well publicised, with whistleblowers calling for a public inquiry, open to existing or new whistleblowers and the public to raise recent or historic concerns.

A number of written and oral parliamentary questions highlighting these concerns have been lodged by MSPs. These include questions to the First Minister from Christine Grahame, Willie Rennie, Meghan Gallacher and Douglas Lumsden.

The Scottish Child Abuse Inquiry focuses on historic abuse and is specific to children in care. A wider inquiry into safeguarding concerns and enquiries from parents, guardians, carers, professionals and the public, which have been mishandled, is needed. This should consider gaps in the existing inquiry; mainstream and specialised settings; and regulated children's activities.

## Annexe B

### Extract from Official Report of last consideration of PE1979 on 8 February 2023

**The Convener:** Our next new petition is PE1979, regarding the establishment of an independent inquiry and an independent national whistleblowing officer to investigate concerns about the alleged mishandling of child safeguarding enquiries by public bodies. The petition has been lodged by Neil McLennan, Christine Scott, Alison Dickie and Bill Cook. I see that some of the petitioners have joined us in the public gallery to observe our consideration of the petition today and, as far as they are all here, we welcome them to our proceedings.

The petition calls on the Scottish Parliament to urge the Scottish Government to launch an independent inquiry to examine concerns that allegations about child protection, child abuse, safeguarding and children's rights have been mishandled by public bodies, including local authorities and the General Teaching Council Scotland, and concerns that there are gaps in the Scottish child abuse inquiry; and to establish an independent national whistleblowing office for education and children's services in Scotland to handle those enquiries in the future.

The petitioners tell us that they have supported whistleblowers in raising historical and current allegations about child protection, child abuse, safeguarding and children's rights and, while acknowledging the work of the Scottish child abuse inquiry, the petitioners believe that a separate and wider inquiry into safeguarding is required.

In responding to the requests of the petition, the Minister for Children and Young People states that learning from the Scottish child abuse inquiry, the independent inquiry into child sexual abuse in England and actions such as implementation of the revised national child protection guidance, mean that the Scottish Government does not consider that there is a need to extend the scope of the SCAI or to establish a separate inquiry to explore concerns that allegations about safeguarding have been mishandled by public bodies.

Although the petitioners have welcomed comments about improving systems as a result of the inquiries into cases of non-recent child abuse, they have restated the call for a distinct inquiry into wider allegations and whistleblower concerns about unresolved child protection issues that relate to organised criminal child exploitation and trafficking. The petitioners also highlight in their response that national child protection guidance is non-statutory, and they consider the guidance to be confusing, complex and somewhat contradictory.

The committee has also received a number of written submissions in support of the petition. Colleagues will recall our consideration of the eligibility criteria around some

of the submissions that we have received and previously considered, many of which share details of families' experiences in pursuing child protection and safeguarding concerns, and the difficulties that they encountered in trying to resolve concerns with a variety of public bodies.

Do members have any comments or suggestions for action? I am certainly not inclined to follow the Scottish Government's initial response that it does not see any further merit in this.

**David Torrance:** Like, I assume, most of the committee, I would like to keep the petition open and gather more evidence on what the petition asks for. I would like to write to several stakeholders, including the Children and Young People's Commissioner Scotland, the Convention of Scottish Local Authorities, the Educational Institute of Scotland, Unison, the General Teaching Council for Scotland and the Scottish Social Services Council.

**Alexander Stewart:** I agree with that. I think that the petitioners have found that there is a gap, and there is no doubt that the process is confusing and complex. A whistleblower might well be what is required. By getting information from those organisations, we will get a better flavour of how the process is working. There is guidance in place but, as I said, I think that there is a gap in the process, which that action might help us to understand. Also, we should ask the Government how it plans to progress the issue, if the gap is perceived to be real, and we should ask to what extent it is focused on addressing it.

**Fergus Ewing:** I agree with all the comments thus far. I do not think that the Scottish Government's reply is adequate or sufficient by any means. I note that several MSPs from all parties have raised individual cases, which I think is an indication that the matter is not being sufficiently well dealt with at the moment.

I make a plea to the petitioners who are present here today and who have an interest. Without further evidence from petitioners or others who have specific concerns, it is a little difficult for us to move forward and identify solutions, although suggestions have been made that are worthy of serious consideration. So, I make a plea that further information be provided. Of course, it would be required that information about particular cases be kept confidential.

The last point that I will make is that people in such circumstances probably feel that they are in a kind of David and Goliath situation—where they are David and the public authorities are Goliath—and feel very lonely, isolated, disempowered, hopeless and powerless to act, and often believe that the public authorities are not really listening. That is what I gather from experience over many years as an MSP. We need to give David the sling in order to be able to take on Goliath.

**The Convener:** We could also draw Mr Ewing's comments to the attention of colleagues in the Scottish Parliament who have raised the issues, to see whether

there is anything more that they might be able to offer the committee by way of a testimony or consideration. That would be helpful.

I think that we are all agreed that we will keep the petition open and that there are serious issues underpinning it that need to be properly examined and pursued. We have outlined a number of open workstreams that we will pursue ahead of our next consideration of the petition. Are colleagues content with that?

**Members** *indicated agreement.*

**The Convener:** Thank you. That might not have felt like a long period of consideration, but I hope that the petitioners see that we are taking practical steps forward.

## Annexe C

### Petitioner submission of 3 March 2023

PE1979/O: 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 write to thank the petitions committee for their initial consideration of our petition in February. We greatly appreciate the thoughtful contributions of members during the short session and also for the actions agreed.

In support of our call for a **distinct inquiry into unresolved allegations**, we can confirm that we would be happy to speak to our concerns. Some of these are necessarily confidential as highlighted during committee.

In speaking to our concerns, we thought it might be useful to committee members to take you through several actual case studies highlighted by whistleblowers and victims. It is also our hope that some whistleblowers will be prepared to speak directly to the committee with our support. You will appreciate that there will be understandable reluctance for some to do so, given their experiences. Again, it may be necessary for such evidence to be heard in private session.

To further aid the committee, when considering case studies that might be presented by petitioners or the evidence presented by individual whistleblowers, we would suggest that the committee request from the public bodies referenced any relevant investigation reports<sup>1</sup> commissioned by the institution concerned together with their response to allegations.

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<sup>1</sup> For example, City of Edinburgh Council commission independent reports from the company Safecall.



Petitioners have noted that it is not uncommon for there to be a mismatch between what whistleblowers allege and report, and the conclusions of the associated investigation (including the institution's public utterances). This is one of the **most significant claims by whistleblowers** which is why we strongly urge that initial reports alongside investigative reports are shared with those presenting; so that any disparity can be highlighted. We believe this would be a powerful aid to the committee in considering our petition.

Regarding our call for the **gaps in the extant SCAI** to be closed. The petitions committee should be advised that it has been well publicised that a legal note has been submitted to the inquiry on **Child Trafficking Through Prostitution of Children in Care in Scotland**. It is claimed there is insufficient transparency relating to this report<sup>2</sup>, the locust of which is undoubtedly within the SCAI's remit, as defined by its terms of reference. We believe this evidence should be fully and transparently considered by the SCAI. Petitioners would suggest the petitions committee call for this evidence in considering whether there are gaps in the implementation of the current SCAI.

Generally, with regard to public inquiries we note that last month a question was posed during [First Minister's Questions](#) in relation to the recent BBC Disclosures<sup>3</sup> documentary relating to abuse. The First Minister replied saying "*... under the Inquiries Act the remit and the conduct of a Public Inquiry is entirely for the inquiry and for the chair of the inquiry and Ministers cannot intervene in that*".

Petitioners note that the **remit of an inquiry** is defined by the Minister in setting or amending the inquiry's terms of reference and that the Minister has wide powers under the Inquiries Act. It follows that the failure to adhere to the remit of an inquiry is a matter for public concern.

The First Minister in responding to the question went on to state "*... it is really important that all the matters raised in whatever way is necessary are properly scrutinised, probed and investigated*". Petitioners believe

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<sup>2</sup> Scottish Daily Express 28<sup>th</sup> December 2022, 8<sup>th</sup> January 2023, 14<sup>th</sup> January 2023, and The Sunday Times 22<sup>nd</sup> January 2023

<sup>3</sup> BBC Disclosures 'Beneath the Magic Circle Affair'

this commitment by the First Minister, accompanied by necessary and essential transparency, accords with the aims of our petition.

## General Teaching Council for Scotland (GTC Scotland) submission of 13 March 2023

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

GTC Scotland welcomes the opportunity to respond to Petition 1979.

We are the teaching profession's independent registration and regulation body.

We care deeply about the safety of children – our communities place their trust in teachers, and we work to maintain that trust.

### **What we do**

GTC Scotland was established in 1965 following calls from teachers for a body to ensure teacher standards.

We keep a public register of teachers and set and uphold the high standards teachers in Scotland must meet to enter and remain in the teaching profession.

There are over 81,000 teachers on our Register.

We are independent from government. Our work is funded by the fee that teachers pay. What we do and how we are governed is set in legislation.

### **Role in child protection**

Roles in child protection and safeguarding in education must be rigorous, transparent and understood.

As the Committee has discussed, it's a busy landscape involving Police Scotland, Disclosure Scotland, councils and others. GTC Scotland works collaboratively with all involved, however we have been advocating for some time that improvements can be made.

### **Our regulatory role**

Our communities place a high degree of trust in teachers. They rely on teachers to interpret what is right and wrong, keep children safe and be positive role models. Scotland's teaching profession sets high standards for itself for this reason.

Our Fitness to Teach (FTT) process exists to maintain trust in teaching. It is about determining who belongs and does not belong within the teaching profession.

GTC Scotland's regulatory role means that we respond to concerns raised with us about teachers.

GTC Scotland undertakes thorough investigations, involving evidence gathering and hearings. There is an opportunity to appeal against a decision to the Court of Session.

We remove teachers from our Register who present a real risk of harm. Removal means an individual cannot be legally employed as a teacher in a Scottish school.

We inform local authorities and Police Scotland of teacher child protection concerns because they are the key agencies with the legal powers and responsibilities to handle child protection concerns in education. They can ensure teachers are removed from the classroom and manage immediate identified risk.

Local authorities are required by law to make FTT referrals about the teachers they employ in set circumstances. We received 61 referrals from local authorities in 2022.

Disclosure Scotland (DS) can bar people from the children's workforce under the PVG Scheme. We must remove from our Register any teacher who is barred (5 in 2022). We make referrals to DS when risk/harm referral grounds are met.

We also receive referrals from members of the public (53 in 2022).

## **Our process**

FTT is a legal process. It must follow rules and comply with the law.

By law our FTT process must be proportionate, transparent, consistent and targeted only where action is needed. Our process engages human rights.

To justify investigating there must be a real, ongoing risk of harm and no other way to address that risk effectively. This is why concerns about teachers must be raised with the school, local authority and police (where relevant) first. This meets identified best regulatory practice.

We investigate thoroughly. We must gather enough evidence to prove allegations on the balance of probabilities. Our investigation process is independent – we cannot legally rely on the findings of others with limited exceptions (e.g. criminal convictions).

GTC Scotland inform the local authority about a referral - whether we investigate it or not - and inform the Director of Education. We also report referrals to the police as required but given the stage referrals are made to us, they are usually already aware.

Our FTT hearings and final case outcomes are public.

Where we remove a teacher from our Register, they can appeal to the Court of Session.

We are still recovering our process from the impact of Covid-19. We have experienced other challenging factors over recent years too, information sharing particularly. The impact is cases have been taking longer.

## **Improvement opportunities**

We are actively involved in the Scottish Government's work on roles and responsibilities in child protection. The outcome of this work must be an agreed, system-wide data sharing framework and clarity for all on roles and responsibilities. We have proposed that GTC Scotland is included in the National Guidance for Child Protection and believe other bodies should be included too.

We have also raised that national education reform must address the role an inspectorate agency will play in ensuring that education providers do what is required of them.

We are hopeful that the SCAI leads to positive system-wide improvement.

We are a listening and learning organisation. We always look for ways to make our processes as good as they can be.

We are ready to do anything more that we can to help keep children safe.

## 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 19<sup>4</sup> places duties on States Parties to take all appropriate, legislative, administrative, social and educational measures to protect the child from

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<sup>4</sup> CYPCS, 2023. Article 19. <https://www.cypcs.org.uk/rights/uncrc/full-uncrc/#19>

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 safety<sup>5</sup>.

There is a clear positive obligation on the State to ensure that child protection, safeguarding and whistleblowing investigations (in terms of 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 seclusion<sup>6</sup>, 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,

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<sup>5</sup> CYPCS, 2023. *Article 3*. <https://www.cypcs.org.uk/rights/uncrc/full-uncrc/#3>

<sup>6</sup> CYPCS, 2018. *Restraint and Seclusion in Scotland's Schools*.  
<https://www.cypcs.org.uk/resources/no-safe-place/>

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 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.<sup>7</sup> 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.<sup>8</sup>

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<sup>7</sup> 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/>

<sup>8</sup> Scottish Government, 2022. *Children’s Social Work Statistics, Scotland 2020-21*. Chart 5: Concerns identified at Case Conferences of children on Child Protection

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 **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](#)) 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 partnerships<sup>9</sup>.

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

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Register <https://www.gov.scot/publications/childrens-social-work-statistics-scotland-2020-21/pages/5/>

<sup>9</sup> SPSO, 2023. *Independent National Whistleblowing Officer*. <https://inwo.spsso.org.uk/>



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.

## **Scottish Social Services Council (SSSC) submission of 15 March 2023**

**PE1979/R: 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 thank you for the opportunity to contribute to this petition. The Scottish Social Services Council is the regulator for the social work, social care and children and young people workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce.

We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

We:

- publish the national codes of practice for people working in social services and their employers
- register people working in social services and make sure they adhere to the SSSC Codes of Practice

- promote and regulate the learning and development of the social service workforce
- are the national lead for workforce development and planning for social services in Scotland
- are an ONS statistics provider.

We note that the petition calls on the Scottish Government to launch an independent inquiry to look at:

- concerns regarding mishandling of allegations about child protection, child abuse, safeguarding and children's rights by public bodies
- settings not covered by the Scottish Child Abuse Inquiry
- establishing an independent whistleblower for education and children's services in Scotland.

Our views on the issues presented by this petition align with those of the Minister for Children and Young People, as given in their submission of 28 November 2022.

We work closely with the General Teaching Council Scotland and have a memorandum of understanding with them to allow our organisations to share information relevant to carrying out our respective public protection functions. We work closely with other public bodies and regulators relevant to child protection information sharing.

We continue to support the Scottish Child Abuse Inquiry (SCAI). We have given evidence to the SCAI in phases six and seven and are due to give evidence to phase eight of the inquiry on the role the SSSC's Codes of Practice for Social Service Workers and Employers and our fitness to practise process have in addressing allegations relating to child protection issues and how organisations work together. This evidence provided SCAI with information about past fitness to practise referrals to the SSSC concerning registered individuals in educational settings. The evidence also highlighted how the SSSC's fitness to practise process ensures allegations of misconduct are investigated and acted upon.

SCAI's terms of reference, sections 6 to 8, already give the Inquiry the following powers:

6. To consider the extent to which failures by state or non-state institutions (including the courts) to protect children in care in

Scotland from abuse have been addressed by changes to practice, policy or legislation, up until such date as the Chair may determine.

7. To consider whether further changes in practice, policy or legislation are necessary in order to protect children in care in Scotland from such abuse in future.
8. To report to the Scottish Ministers on the above matters, and to make recommendations, as soon as reasonably practicable.

We believe that these powers are sufficient to allow SCAI to make recommendations to address concerns about how allegations have been handled by public bodies. We also believe that the Children and Young People's Commissioner Scotland currently has the whistleblowing powers that are proposed by this petition. Therefore, we do not believe that a whistleblower for education and children's services in Scotland as set out in the petition is necessary.

We hope that the committee and petitioner find the information we have provided useful and we would welcome the opportunity to discuss our role further.

## Petitioner submission of 16 April 2023

**PE1979/S: 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 write to the Petitions Committee to respond to recent submissions related to our petition, calling for a distinct inquiry into unresolved allegations, the closure of gaps in the current SCAI and for the establishment of a national whistleblowing office.

We thank those taking the time to provide submissions and would make the observations below. Before doing so however we would at this point emphasise again the imperative for a **distinct inquiry into unresolved allegations**, in addition to the improved safeguarding structures we are

calling for. Our observations on these recent submissions are as follows.

1. The submissions from victims reinforce earlier submissions and add further to the catalogue of institutional child safeguarding failures.

These submissions include distressing and deeply worrying disclosures. One parent describes the “litany of failings that have had life-long consequences” for their daughter. Reference is made to illegality and maladministration. Another parent refers to “... a culture of coercive control”. Yet another refers to “significant negligence and incompetence”. Another parent laments “we have nowhere to go”.

Reinforcing the lived experience of such families a local authority employee submits they have seen “... a dramatic decline in child safeguarding over the past twenty years”.

Committee members will have already noted that the Edinburgh Peace Institute in [their earlier submission](#) stated that “... the empirical evidence clearly demonstrates that institutions ... are particularly prone to fail to visualise potential safeguarding issues”.

Collectively these submissions stress again the importance of the committee accessing available whistleblowing reports and hearing directly from whistleblowers and victims. These testaments, together with deeply disturbing disclosures of which petitioners are aware, reinforce the absolute need to **investigate unresolved allegations** to ensure the safety and well-being of our children.

2. The petitioners very much appreciate the thoughtful and informative analysis submitted by the Children & Young People’s Commissioner. This gives clear advice to the committee. We hope that the Commissioner will agree that an investigation into unresolved cases will also help achieve greater protection **providing certainty of the systems and people** involved in safeguarding.

We particularly commend to the Committee the CYPSC’s observation that international human rights law states, “that children are entitled to higher standards of protection” and that “there is a clear positive obligation on the State to ensure that child

protection, safeguarding and whistleblowing investigations are sufficiently thorough, independent and robust”. The petitioners believe this is a standard to which, we as a society, should aspire.

3. The petitioners note that the GTCS in their submission **have not commented** on the three primary requests of our petition. Namely our call for an investigation into unresolved allegations, the closure of gaps in the current SCAI and the establishment of an independent whistleblowing office.

The petitioners observe that the GTCS states “... we are hopeful that the SCAI leads to a positive system-wide improvement”. We would comment that the SCAI inquiry is **limited to abuse in care settings** and does not embrace the wider child safeguarding concerns raised by petitioners. This is why petitioners are asking for a distinct inquiry.

We do note however that the GTCS also states “... we have been advocating for some time that improvements can be made”. This is encouraging. It may be of help to the committee for the GTCS to specifically comment on what our petition is calling for.

4. The petitioners note that the SSSC views “... align with those of the Minister for Children and Young People”. The SSSC does not appear to have taken account of our response to the Minister’s submission. It may be of use to the Committee to seek clarification on this point from the SSSC.

Further, the SSSC assert that with respect to the SCAI’s powers “... that these powers are sufficient to allow SCAI to make recommendations to address concerns about how allegations have been handled by public bodies”. The petitioners note that the **SCAI remit is limited to institutional care settings** and not to the wider child safeguarding concerns this petition highlights.

Neither does the SSSC address well publicised gaps within the implementation of the current inquiry. Again, it may be of value to seek clarification from the SSSC on our call for a **distinct inquiry** into unresolved allegations.

The SSSC state their belief that our call for a national whistleblowing officer is unnecessary. They state “...we also believe that the Children and Young People’s Commissioner

Scotland currently has the whistleblowing powers that are proposed by this petition”. This appears to reflect a misapprehension regarding the powers of the CYPSC which are limited<sup>10</sup>.

In their submission the SSSC state “We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct, we can investigate and take action”. Petitioners believe it would be of aid to the Committee and indeed to the SSSC itself to consider how this mandate was implemented with respect to recent social care scandals in Edinburgh where it was the tenacity of victims and whistleblowers that brought matters a head.

In concluding the petitioners would emphasise that the responses from the GTCS and the SSSC both reflect a fundamental misapprehension regarding the **extent of the SCAI’s remit**. It is therefore likely this has influenced their view with respect to what we are petitioning.

Lastly, we continue to confirm ours and others willingness to attend your committee. Hopefully this will give the Committee the opportunity to hear direct from whistleblowers.

Best Regards

Alison Dickie, Christine Scott, Neil McLennan, Bill Cook

## **PETITIONERS**

**Neil McLennan** former teacher and experienced educator who was a director of the Scottish Colleges for Educational Leadership. He now supports leaders across public services and has written before on safeguarding gaps and called for consideration of an INWO for education and children’s services.

**Christine Scott** has been a representative voice for Edinburgh whistleblowers. She was community programme manager for lifelong learning at Castlebrae High School and made a public interest disclosure regarding a child protection and safeguarding matter in 2014. She was

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<sup>10</sup> <https://www.cypcs.org.uk/faq/when-cant-the-commissioner-investigate/>

the first whistleblower in Edinburgh Council's new whistleblowing service.

**Alison Dickie** is a teacher and previously an Edinburgh Councillor, Vice Convener of Education, Children and Families, and a Scottish Parliament official. During her years as Vice Convener, she raised the concerns and allegations of whistleblowers who came to her for support. She resigned from her group and the post of Vice Convener in January 2022.

**Bill Cook** is a former Edinburgh Councillor. He was the political lead on the introduction of Edinburgh's new Whistleblower System in 2014. This employed independent investigators to examine allegations of malpractice and corruption. Bill believes new legislation is now required to support Whistleblowers. Professionally Bill is a retired Chartered Engineer.

## Anonymous submission of 14 April 2023

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

Up to mid-2022 I was a full-time senior social worker, with over 30 years' experience in child protection and managing high risk sex and violent offenders, at a Scottish local authority.

### **Mismanagement of High Risk Sex and Violent Offenders**

In June 2020, I provided the local authority with a 42 page document, with detailed case examples, highlighting serious failings in the management of high risk sex and violent offenders.

The local authority later assured me it had addressed the issues raised. It failed, however, to interview me about my claims and refused to give details of its findings or actions. It appeared managers were being

protected and serious failings in the council's responsibility to protect the public were being covered up.

### **Chronic Systemic Failings in Risk Management**

The 42-page document, including real/current case examples, detailed the following systemic, failures of risk management across the authority's Criminal Justice Social Work department:

1. Failures to follow the authority's Risk Assessment Policy which states:
  - a. Effective risk management depends on all reasonable steps being taken in the light of reliable assessments that have evaluated and weighed all relevant information; on decisions being recorded and implemented; and on policy and procedure being followed appropriately.
2. Failures to adhere to The National Outcomes and Standards for Social Work Services in the Criminal Justice System which note that defensible decisions include, amongst other factors, evidence that:
  - All reasonable steps have been taken;
  - Information has been collected and thoroughly evaluated;
  - Practitioners and their managers adopt an investigative approach and are proactive.
3. Failures to read critical risk assessment reports
4. Failures to properly document the nature of all serious sexual and violent offending
5. Failures to analyse offending patterns/contextualise offending
6. Failures to read previous case notes
7. Failures to read previous case conference minutes
8. Failures to discuss past and current offences once the sentence has been passed
9. Failures to develop adequate risk management plans before recommending a move to open prison / release on licence.
10. An uncritical acceptance of other agencies risk assessments
11. Failures to take professional 'ownership' of reports i.e. unacknowledged plagiarising/cut and pasting of other people's work
12. Failures to undertake appropriate/systematic victim safety planning
13. Failures to liaise with partner agencies
14. Failures to implement case conference decisions



15. Failures to take adequate family histories (in particular to determine if the offender would have any contact with children)
16. Failures to take adequate relationship histories (e.g. past/present partners and their children)
17. Failures to enquire about trauma the offender may have experienced
18. Failures to seek adequate information to inform a realistic formulation of offending
19. Prioritising 'fairness' to the offender over the risk of harm they pose to the public.

The document related to the management of 'high risk' offenders but also raised valid questions as to how 'low' and 'medium' risk offenders were being managed.

The concerns raised echoed the findings of past and current Serious Case Reviews into criminal justice/probation disasters in Scotland and in the rest of the UK.

### **Raising Concerns With External Agencies**

I raised my concerns with the local authority in question in 2020, using internal council procedures. Following its apparent cover up I then sent my concerns to the following external agencies:

- The Scottish Social Services Council
- The Scottish Public Services Ombudsman
- The Care Inspectorate
- Keith Brown, then Cabinet Secretary for Justice, Scottish Government
- The Scottish Government's Public Protection Unit
- The Risk Management Authority.

Each agency expressed concern but stated the issues I was highlighting were **not part of their remit.**

It is for this reason I support the call for a public inquiry into child abuse and safeguarding mishandling.

It appears that, in relation to revelations about local authorities failing to protect the public, the Scottish Government cannot intervene of itself. It can only set broader policy objectives for the future rather than intervene in ongoing scandals and cover-ups.

The Scottish Government relies on other, ad-hoc/ arm's length, agencies, such as the Scottish Social Services Council (SSSC), the Scottish Public Services Ombudsman, and the Care Inspectorate, to intervene.

The secondary scandal here is the failure of these agencies to get their hands dirty and be pro-active in instigating investigations. They appear not to want to look under the rocks for fear of what they may find.

If need be, I will happily provide the Committee with a (redacted) copy of my original 42-page submission to the local authority and to the other agencies.

## Educational Institute of Scotland (EIS) submission of 19 May 2023

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

The Educational Institute of Scotland ('EIS') welcomes the opportunity to comment on PE1979.

### ***An Independent Inquiry***

In assessing the rationale for the inquiry referenced in the Petition, it is necessary to consider the current framework for child protection and safeguarding in Scotland, its implementation, quality assurance processes and whether there are gaps in provision, necessitating the intervention sought.

- **Legislation, Policy and Practice**

The EIS believes that Scotland has a strong legislative and policy framework, underpinned by a commitment to upholding children's rights.

The Children and Young People (Scotland) Act 2014 sets out the duties and responsibilities of Scottish Ministers and of public authorities in embedding 'Getting It Right for Every Child' policy. The supporting statutory guidance outlines the continuum of wellbeing needs, citing child protection at the acute end of this spectrum.

A range of national guidance also supports multi-agency approaches to facilitate early intervention, inform local policies, reduce risk and promote the wellbeing of children and young people.

Implementation of child protection and safeguarding policies is supported by professional learning, with Child Protection Committees ('CPCs') having responsibility for inter-agency child protection training strategy at a local level.

- **Quality Assurance**

To monitor the implementation of the statutory duties, a range of quality assurance processes are in place at national and local levels. Supervision, critical reflection and self-evaluation are integral aspects of children's planning processes and of the work of CPCs. National frameworks, such as those published by the [Care Inspectorate](#) and [Education Scotland](#), are intended to support self-evaluation and quality assurance, by identifying strengths and areas for development.

- **Child Protection Concerns outwith the Family**

Child protection concerns are not restricted to familial abuse. Where such concerns are raised about an individual in their employment, a range of procedures may apply:

*Child Protection Investigation* – a child protection referral can be made to the core agencies. This can result in criminal proceedings being instigated.

*Disciplinary Procedures* – in employment, an investigation may be instigated to determine whether alleged conduct falls within the ambit of the disciplinary policy and requires action.

*Referral to a Regulator* – once child protection and disciplinary processes have been exhausted, the employer or an interested party can refer the matter to a professional regulator. As the Petition specifically refers to GTCS and the EIS has direct engagement with the GTCS, we have provided some commentary on the regulatory processes in place for teachers.

GTCS, through the Professional Standards, has set high standards of teacher professionalism spanning early career to leadership and management. The Standards highlight core professional values which are central to teacher professional identity. Permeating these values is the commitment to promoting the health and wellbeing of pupils, and providing a safe and secure learning environment in which they can thrive. Teachers reflect on how they embed these Standards in practice through Professional Update.

Anyone can raise concerns about a teacher's conduct through the Fitness to Teach process. The process focuses on maintaining public trust and confidence in the profession rather than punishing teachers. Like other regulators, GTCS adopts a threshold policy and only investigates an allegation if it is considered to be an act of misconduct or criminal offence where there is a realistic prospect of a finding of impairment. Fitness to Teach is impaired where a teacher's conduct or professional competence falls below the standard that would be expected under GTCS's Rules and legislation. We believe that the approach adopted by GTCS through the application of this policy ensures balance and proportionality.

GTCS is held in high regard, and its work endorsed internationally. The Institute believes that its independence as a professional regulator is key to enhancing teacher professionalism, quality

teaching and learning, and public confidence and trust in the profession.

*Disclosure Scotland* – Disclosure Scotland holds lists of people who are barred from undertaking regulated work with children and vulnerable adults. Teaching is regulated work. If a teacher is ‘listed’, they are barred from teaching. Employers must refer employees to Disclosure Scotland in certain circumstances, including where the employee has harmed a child or placed a child at risk of harm, and as a result the employer has transferred the employee to another role or has dismissed the employee (or would have, had they remained in employment).

The GTCS and courts can make referrals to Disclosure Scotland.

- **Redress if dissatisfied with the outcome or the process**

Given the nature of the concerns, it is important that any party involved in a child protection investigation has the right to seek redress if dissatisfied with the outcome or process. There are various mechanisms which provide scope for review:

- *Complaints Procedures of relevant agencies*
- *The Scottish Public Services Ombudsman (‘SPSO’)* - If the complaint procedure has been exhausted, a referral can be made to the SPSO. It can consider complaints against Education and Social Work Departments within a local authority.
- *Whistleblowing Policies* – the law protects workers in public bodies when they make a disclosure in the public interest. The statutory definition of ‘whistleblowing’ is restricted to workers to ensure that someone employed or in an employment related position is not unfairly treated after raising a concern.

## **Conclusion**

Given the range of investigation and review procedures highlighted, we would question what additionality the role of a National Whistleblowing Officer for Education and Children Services would deliver in practice.

Those working in local authorities are already covered by whistleblowing protections, and policies are in place to facilitate implementation of these protections. Staff in Education can raise concerns about teachers' conduct through child protection procedures; employment policies; and ultimately, can make a referral to GTCS, as the independent regulator of teachers.

Rather than devoting resources to the launch of an inquiry or the creation of a whistleblowing service, funding could be allocated to support greater multi-agency co-operation, ensure sufficient time is available to develop relational approaches, and support the implementation of early intervention measures to address needs before they reach the acute stage of child protection interventions.

## COSLA submission of 24 May 2023

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

COSLA is the voice of Local Government in Scotland. We are a cross-party organisation which champions councils' vital work to secure the resources and powers they need. We work on councils' behalf to focus on the challenges and opportunities they face, and to engage positively with governments and others on policy, funding and legislation. We welcome the opportunity to respond to this petition.

Local Government is committed to supporting and protecting the rights, wellbeing and safety of all children and young people and recognises the crucial importance of the issues raised within this petition. Local authorities treat all matters and concerns relating to child protection, safeguarding and children's rights with the utmost seriousness.

Local authorities take their duties in relation to the care and protection of children extremely seriously, and work to ensure that policy and practice across children's services, including education services, is compliant

with the relevant legislation and guidance, including ensuring the [National Guidance for Child Protection in Scotland](#) is fully implemented. Police Scotland, NHS Boards and local authorities are the key agencies that have individual and collective responsibilities for child protection. The Chief Constable and the Chief Executives of health boards and of local authorities are referred to as Chief Officers, and are members of Chief Officer's Groups, responsible for ensuring that their agency, individually and collectively, works to protect children and young people as effectively as possible. Local Child Protection Committees (CPCs) are the key local bodies for developing, implementing and improving child protection strategy across and between agencies, bodies and the local community. Local authority services such as education and social work are key members of CPCs.

Getting It Right for Every Child (GIRFEC) provides a consistent framework and shared language for promoting, supporting, and safeguarding the wellbeing of children and young people. GIRFEC is embedded across Scotland's local authorities and Children's Services Planning Partnerships, shaping systems and practice for the benefit of babies, infants, children, young people and their families.

Local Government supports the incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into Scots law, sharing the vision of a Scotland where children's human rights are embedded and upheld across all aspects of society and public services, including children's services. Local authorities continue to work to ensure that policy and practice across service areas aligns with the requirements of the Convention.

Local authorities take all allegations relating to child protection, safeguarding and children's rights matters extremely seriously, working to ensure that concerns and complaints are responded to promptly and investigated appropriately and diligently, with the welfare of the child being of paramount concern. Where allegations of this nature are raised in relation to a professional or worker who is in the employment of the local authority, a number of agencies (i.e. the local authority, General Teaching Council for Scotland, Scottish Social Services Council, Police Scotland, Disclosure Scotland) can have a role to play in the response. There can be additional complexity involved in handling complaints

where several agencies are operating with differing but related, and sometimes overlapping, roles and responsibilities, and differing reporting arrangements. Councils are committed to co-operating effectively with the relevant organisations to ensure allegations are handled appropriately, and work to ensure that the appropriate referrals are made, and information is shared with the relevant bodies at the appropriate time, in line with the requirements and circumstances of each particular case.

In such cases, where police, health or social work receive information that that a child may have been abused or neglected and/or is suffering or is likely to suffer significant harm, an inter-agency referral discussion (IRD) must take place to co-ordinate decision-making about such investigation and action as may be needed to ensure the safety of children involved. Through this process and under the National Child Protection Guidance, local authority social work works collaboratively with Police Scotland colleagues as part of child protection investigations, in order to assess risk and put in place a Plan to support and protect a child if needed. As part of the upcoming update to the National Child Protection Guidance, we understand that the intention is that sections relating to a person in a position of trust, and whistleblowing, will be added to strengthen the guidance available.

A number of local authorities have given evidence at the Scottish Child Abuse Inquiry, which is investigating the historical abuse of children in care in Scotland. In the process of giving evidence, including through written submissions, oral evidence and opening and closing statements, many local authorities have taken the opportunity to include acknowledgement and acceptance of historical failings and abuse, and to issue apologies to survivors.

Local Government is a contributor to the Historical Child Abuse Redress Scheme. As such, a letter of acknowledgement was submitted by COSLA's Resources Spokesperson on behalf of all Scottish local authorities. This [letter](#) confirms Local Government's commitment to providing redress to survivors, collective acknowledgement of and commitment to address the wrongs of the past, and commitment to provide financial as well as non-financial redress, including acknowledgement, apology, and therapeutic support for survivors.



I hope that this information is helpful to the Committee in their consideration of this petition.

## Petitioner submission of 15 September 2023

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

The petitioners thank the EIS and COSLA for their submissions.

We also thank the [anonymous submission of 14th April](#). That submission provided yet another troubling account of the lived experience of a whistleblower. It strongly contrasts with the governmental, institutional and agency perspectives submitted to the Petitions Committee. This anonymous submission provides a deeply disturbing testimony summarising the mismanagement of high-risk sex and violent offenders and catalogues chronic systemic failings in risk management.

The petitioners would make the observations below with respect to the [EIS](#) and [COSLA](#) submissions.

As with other institutional and agency responses both the EIS and COSLA commend the national guidance and existing structures with respect to safeguarding. Neither submission appear to recognise or acknowledge gaps or failings in these arrangements. This is despite well publicised cases in and around Scotland<sup>11</sup>. This assured position would also seem to be contrary to a recent letter from the First Minister to petitioners, which highlights the ongoing improvement work needed in relation to child protection measures.

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<sup>11</sup> Examples include that of Edinburgh's Secure Unit, Special School and the predatory and abusive behaviour of a Senior Social Work Manager. All of which were the subject of whistleblowing disclosures.

The EIS submission refers to the role of the GTCS and states through its Fitness to Teach process “...*anyone can raise concerns about a teachers conduct*”. However, the GTCS have stated<sup>12</sup> “...*many issues regarding teachers are more appropriately investigated by the employer*”. Furthermore, the Fitness to Teach ‘Threshold’ Policy of GTCS is set up such that they only accept referrals from the employer, thereby filtering out referrals from anyone else, regardless of their severity.

The GTCS have further stated “...*it would be disproportionate for GTC Scotland to investigate every referral*” and that “... *where the concerns are more serious, the GTC Scotland expects a referral from the employer*”. The extent of non-referrals is documented in a series of GTCS FOI responses which the Petitions Committee may wish to access.

The EIS acknowledges the need for redress and refers to complaints procedures, referrals to the SPSO and whistleblowing policies.

This perhaps reflects a misapprehension as to what is being called for in our petition. Whilst redress is undoubtedly important to survivors, petitioners would observe that it does not address unresolved or yet unheard allegations of abuse. We would, therefore, highlight that we are calling for a distinct investigation of unresolved whistleblowing allegations and for the gaps in the Scottish Child Abuse Inquiry to be distinctly addressed. The latter will give confidence to any survivors who fall within that gap, knowing their voices will be heard. It is only then that we can be certain about the full truth of child abuse in Scotland and have any assurance about the current and future operation of child protection systems.

Further, the EIS states with respect to whistleblowing policies “*the law protects workers in public bodies*”. This directly conflicts with the thematic Tanner inquiry which concluded that in Edinburgh Council “... *there is not a universally positive, open, safe and supporting whistleblowing and organisational culture*”. This is despite a

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<sup>12</sup> FOI Response from GTCS 2021

whistleblowing system being in place and despite the existence of national guidelines.

The Tanner Inquiry highlighted just over one-tenth of whistleblowers<sup>13</sup> responding were satisfied with the outcome. Shockingly, a third felt they suffered negative consequences. Petitioners observe the EIS perspective does not reflect the lived experience of many whistleblowers. Petitioners and whistleblowers have also from the outset highlighted the importance of independent scrutiny and investigation, for both the distinct investigation, and a national whistleblowing officer for children's services and their public partners.

In concluding the EIS suggest that rather than devoting resources to the launch of an inquiry or the creation of a whistleblowing service, funding could be allocated to support greater multi-agency co-operation.

Petitioners would agree that the EIS suggestions would be of benefit. However, we don't believe this is an 'either or situation' and observe that enormous resources and funds are committed by public bodies to address institutional failings including the redress schemes referred to by the EIS, Public Inquiries, Employment Tribunals, Compensation claims (outside of specific redress schemes), Police Investigations, Legal costs. And of course, this doesn't take account of the human cost of safeguarding failings and the lifelong consequences and financial impacts that victims and whistleblowers are confronted with.

In concluding, Petitioners note that neither the EIS or COSLA make any proposal or suggestions regards to what should happen with respect to unsolved allegations related to child protection and safeguarding. Indeed, it is somewhat disconcerting that the EIS suggest that no resources be devoted to such investigations.

Lastly, to reiterate the earlier point made neither the EIS or COSLA appear to recognise or acknowledge any gaps or failings in the current arrangements despite well publicised cases or whistleblowing disclosures.

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<sup>13</sup> The thematic Tanner Inquiry noted that since the introduction of the Whistleblowing System in 2014 that up to June 2021 there had been 137 disclosures of which 22 had been designated as major.