Briefing for the Public Petitions Committee

**Petition Number:** PE1418

**Main Petitioner:** Katherine Alexander

**Subject:** Safeguarding vulnerable people

Calls on the Parliament to urge the Scottish Government to compel all local authorities to ensure that all social work management posts are held by professionally trained and accountable registered social workers.

**BACKGROUND**

The petition discusses a number of issues. However, the Petitioner’s principal concern relates to the qualifications of those holding senior positions in social work departments. Other concerns raised include what powers certain regulatory bodies have over the matters raised in the petition, including the handling of complaints. This briefing provides some key background information on these matters.

**The Adult Support and Protection (Scotland) Act 2007**

The Petitioner discusses how the Adult Support and Protection (Scotland) Act 2007 was introduced to protect vulnerable people and the importance of social workers in determining when best to apply its provisions. The Act came into force in October 2008. It seeks to provide protection to “adults at risk of harm” (see Appendix 1) not covered under the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003. It places a duty on councils to make inquiries about an individual’s well-being, property or financial affairs where the council knows or believes that the person is an adult at risk, and that it may need to intervene to protect him or her from being harmed. Additional information on the Act, its purpose, definitions and the actions that can be taken are contained in Appendix 1. There is further reference to the Act in the section below.

**Qualifications of senior social work department staff**

Under the Social work (Scotland) Act 1968 (the 1968 Act), all local authorities must have a Chief Social Work Officer (CSWO). They must be a qualified social worker, registered with the Scottish Social Services Council (SSSC) (see below). In 2009, as part of the 21st Century Social Work Review, the Scottish Government issued guidance on their role and function. Where the

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1 The Scottish Social Services Council is responsible for registering people who work in social services and regulating their education and training.
CSWO is not the Director of Social Work, they must have direct accountability to the Chief Executive.

The CSWO’s main role is to ensure the provision of appropriate professional advice in the discharge of local authorities' statutory social work duties. Among other things, they should:

- support and advise managers in maintaining and developing high standards of practice and supervision
- ensure that only registered social workers undertake those functions reserved in legislation or are accountable for those functions described in guidance
- ensure that significant case reviews are undertaken into all critical incidents either resulting in - or which may have resulted in - death or serious harm

However, there is no such statutory requirement for other senior social work staff below this. Depending on the nature of the service, it may not be necessary for it to be managed by an individual with a social worker background or qualification. For example, in the case of multi-disciplinary teams, this brings together staff of various disciplines, as can be the case in mental health services.

In the situation where there is a line manager who is not a qualified social worker but has social workers in their team, it would be expected that when the social worker undertakes functions reserved to them in legislation then they would receive additional professional supervision. This is emphasised in ‘Practice Governance Framework: Responsibility and Accountability in Social Work Practice’, which was published by the Scottish Government in March 2011. Within the ‘information sharing and joint working’ section it urges employers to ensure that professional supervision is provided to social workers where their line manager is a professional from another discipline.

In terms of the 2007 Act specifically, the Scottish Government’s 'The Role of the Registered Social Worker in Statutory Interventions' (March 2010) states that there is no requirement for the “council officer” (who can take actions under the Act – see Appendix 1) to be a registered social worker.

The role of regulatory bodies

Scottish Social Services Council (SSSC)

Although the Petitioner is principally concerned with those managing teams which include social workers but don’t have a social work qualification themselves, it is worth noting the process of regulation for social workers.

The SSSC began operating in October 2001. Under the Regulation of Care (Scotland) Act 2001, it is responsible for registering people who work in social services and regulating their education and training. This includes all social workers. Its key functions include setting up registers of key groups of social service staff and publishing Codes of Practice for all social service workers and their employers. Employers have a legal responsibility to ensure that all of their staff are appropriately registered.
All social workers and their employers (in this case local authorities) must adhere to the Codes of Practice for Social Service Workers and Employers relevant that have been instituted by the SSSC. If the SSSC carries out an investigation and finds a social worker guilty of misconduct, it has a variety of sanctions open to it. Ultimately, a worker can be removed from the register, which would effectively mean they could not carry out their role as a social worker.

Social Care and Social Work Improvement Scotland (SCSWIS)

SCSWIS, or the Care Inspectorate as it is now known, is the body responsible for regulating and inspecting social care and social work services. It was created through the Public Services Reform (Scotland) Act 2010 and, principally, took on the roles previously undertaken by the Care Commission, HM Inspectorate of Education (in respects of services to protect children) and the Social Work Inspection Agency.

In terms of social work services, the Care Inspectorate’s performance improvement process\(^2\) is comprised of:

- an initial scrutiny level assessment (ISLA)
- targeted and proportionate scrutiny response
- on-going support and capacity building in self-evaluation and improvement

The ISLA is the means by which the Care Inspectorate determines the extent of scrutiny needed by a local authority, based on an initial assessment of risk. The assessment includes amassing information and data gathered on the local authority (including from the social work department’s own performance management system), and case file reading and analysis. It scrutinises evidence against key areas through asking nine questions on a number of topics including effective management and support of staff and evidence of good quality assessment and care management.

Using the ISLA the inspection team will then decide on an initial assessment of risk, and confirm the level of scrutiny that will take place with the local authority. There are three levels, where one is low risk two is moderate risk and three is significant risk. The level of risk will determine the amount of scrutiny that local authorities will receive. Once this process is completed the findings of the Care Inspectorate are published.

In relation to the specific issues raised by the Petitioner, through the ISLA processes, the inspection team will want to ensure that all professional social work standards are being upheld in the local authority, including that concerning the professional supervision of social workers being line managed by someone of a different discipline. It should be noted that the Care Inspectorate, unlike in the case of social care services, does not handle complaints from the general public about social work services or departments. This is not to say that Ministers may request the Care Inspectorate to investigate matters that have been drawn to their attention.

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Scottish Public Sector Ombudsman (SPSO) and social work service complaints

The SPSO provides an independent and impartial service for dealing with complaints about public bodies. However, what the SPSO can investigate differs between public bodies.

In the case of social work services, under the 1968 Act, councils must operate a specific social work complaints procedure for an individual using a social work service or a person acting on their behalf. This procedure has three stages:

1. informal problem solving stage – the council will seek to mediate and resolve the complaint
2. make a complaint in writing – the council should reply in 28 days, and advise in the letter that the individual has the right to refer their case to a Complaints Review Committee (CRC)
3. Take the complaint to the CRC – this must be requested within 28 days of the council’s letter and the CRC must meet and report its findings within 56 days of the individual’s request.

The CRC must be chaired by someone independent of the council, and it can consider a number of matters including the quality and extent of social work services, the operation of social work services and the way decisions were made and the decisions themselves. The CRC reviews the evidence and can make a recommendation to the appropriate council Committee in an attempt to resolve the complaint. However, the Committee is not obliged to accept it.

If an individual remains unhappy they can take their complaint to the SPSO. The SPSO can look at how the complaint was handled and dealt with by the Council. Areas of complaint can include: the issues raised in the complaint weren’t considered; the CRC did not operate according to national guidance; and, the council did not adequately consider a CDC recommendation, act on it or have adequate information about it.

However, the SPSO cannot look at a number of matters relating to complaints, including:

- the subject of the complaint, such as decisions or professional judgements about a person’s needs or the services they get. A CRC would normally look at this.
- complaints about anything that’s been to court or is subject to other legal procedures.
- whether or not the council should accept a CRC recommendation.

Scottish Government Action

As regards the matters outlined in relation to the qualifications of social workers, outlined above, the Scottish Government has advised it is not considering any further work on this.

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3 Scottish Public Services Ombudsman (2010). What to do is you have a complaint about a council Social Work Department. Available at: http://www.spsso.org.uk/files/webfm/Leaflets/Social%20Work.pdf
However, it recently published a consultation\(^4\) on the review of the social work complaints procedure. This is due to close on 18\(^\text{th}\) March 2012.

**Scottish Parliament Action**

The Parliament has undertaken a range of work considering related matters to the issues raised in the petition. Most recently this includes the scrutiny of the Public Services Reform Act and the Health and Sport Committee’s recent inquiry into the *regulation of care for older people*. However, there has been no work on the specific matters of the qualifications of managers in social work departments.

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**14 March 2012**

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What is the purpose of the Act?
The intention is to help identify and to support "adults at risk" and to achieve an appropriate balance between the rights of individuals to live their lives as they wish, to provide support to them when they need it, and to provide the means to reduce the risk of harm to adults.

Who are adults at risk?
The Act defines adults at risk as individuals, aged 16 years or over, who:

- are unable to safeguard themselves, their property, rights or other interests;
- are at risk of harm; and
- because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than others who are not so affected.

The presence of one particular condition does not automatically mean an adult is an "adult at risk" - all three of these elements must be met.

When is an adult at risk of harm?
An adult is at risk of harm if:

- another person's conduct is causing (or is likely to cause) the adult to be harmed, or
- the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.

The purpose of the Act is to provide protection from both deliberate and unintentional harm.

What is the definition of 'harm'?
Harm is defined in the legislation as including all harmful conduct and, in particular, includes:

- conduct which causes physical or psychological harm (e.g. by causing fear, alarm or distress);
- unlawful conduct which appropriates or adversely affects property, rights or interests (e.g. theft, fraud, embezzlement or extortion);
- conduct which causes self-harm.

Therefore, harm can be physical (including neglect), emotional, financial, sexual or a combination of these. The definition should not be read as an exhaustive list. It has been drafted broadly so as to include a wide range of behaviours. Just because a particular category of harm is not listed this does not mean it is not included in the definition.

What are the principles underlying the Act?
At the heart of the Act is achieving a balance between respecting individuals' rights and taking actions where necessary to support and protect individuals who are at risk of harm. The Act includes a set of principles which are intended to guide people when they are undertaking investigations or considering taking actions under the Act. The overarching principles in Section 1 of the Act, underpin the Act and must be taken into account at each stage of any decision-making process. Any intervention in an adult's affairs under the Act:

- must provide benefit to the adult; and
should be the least restrictive to the adult's freedom of the range of options available to meet the object of the intervention.

The above principles are further supported by a set of guiding principles in section two which those performing functions under the Act must have regard to, where relevant. These principles state that:

- consideration must be given to the wishes and feelings of the adult at risk;
- the views of the adult's nearest relative, any primary carer, guardian or attorney, and any other known individuals with an interest in the adult's well-being or property;
- that the adult should also be encouraged to participate as fully as possible and must be provided with the information and support necessary to enable them to do so;
- to ensure that the adult is not, without justification, treated any less favourably than an adult in a comparable situation, and
- due regard should also be given to the adults' abilities, background and characteristics.

**What action can be taken under the Act?**

The Act places a duty on councils to make inquiries about an individual's well-being, property or financial affairs where the council knows or believes that the person is an adult at risk and that it may need to intervene to protect him or her from being harmed. It authorises council officers to:

- carry out **visits**;
- conduct **interviews**;
- to be accompanied by a health professional to undertake a **medical examination** in private; and
- require **health, financial or other records to be produced** in respect of an adult at risk.

In line with the principles of the Act, any intervention must provide benefit to the adult, that this benefit could not have reasonably been achieved without intervention and that any intervention will always be the least restrictive to the adult. There are also a range of **protection orders** that may be applied for where the adult is considered of being, or likely to be, at risk of serious harm. This can take one of three forms:

- an **assessment order**: which allows the adult to be taken to a place to be interviewed or medically examined in private. This should be undertaken in the quickest time available. The order does not allow the adult to be detained against their will;
- a **removal order**: which allows the adult to be removed to a place for up to seven days, but again does not allow the adult to be kept there unless they choose; or
- a **banning or temporary banning order**: which bans some-one from a place or vicinity.

Protection orders should only be applied for in exceptional circumstances.

Further information is available through the Scottish Government’s [Adult Support and Protection Act FAQs](https://www.gov.scot/Topics/Law/AdultProtection) web page.