CONSIDERATION OF PETITION PE1551 (Calling on the Scottish Parliament to urge the Scottish Government to introduce legislation that makes it a criminal offence to fail to report child abuse)

The Care Inspectorate is the independent scrutiny and improvement body established under the Public Services Reform (Scotland) Act 2010 the "Act", which brings together the scrutiny work previously undertaken by the Care Commission, HMIE child protection team and the Social Work Inspection Agency. Our role is to regulate and inspect care and support services and carry out scrutiny of social work services. We provide independent assurance and protection for people who use services, their families and carers and the wider public. In addition, we play a significant role in supporting improvements in the quality of services for people in Scotland.

The Care Inspectorate welcomes the opportunity to respond to the public petition raised by Mr Scott Pattinson. The early recognition of harm or potential harm to a child is critical for all adults who come into contact with children be it through the care system, education or community activity. The understanding and ability to intervene and/or report such concerns are also critical. The Scottish Government and lead Child Protection agencies have worked hard over the years to increase the level of public and professional awareness, increasing the confidence of their staff and the public in recognising and responding to and sharing these concerns with each other. The issues and challenges of recognising and responding effectively to abuse, and accountability, has been brought into focus with recent events around child sexual exploitation (CSE).

The mandatory reporting of abuse would be in line with discussions south of the border where mandatory reporting is being considered. The Care Inspectorate is supportive of actions to strengthen further the protection of children and other vulnerable groups and have responded in a measured but supportive manner to current consultations on Wilful Neglect and Duty of Candour.

Mr Pattinson’s petition is triggered by his concerns about abuse and the responses of institutions, in particular care homes, and the ability of staff to raise such concerns without fear. The Care Inspectorate regulates all residential provision for children and young people in Scotland. In addition, we also conduct joint inspections of services for children and young people, and report on the Community Planning Partnerships ability to improve outcomes for children in their area including, protection and early and sustained intervention for those who are vulnerable and at risk of abuse.
In the joint inspection of Community Planning Partnership’s we work closely with agencies including social work, police, health and education to assess risk and responses. We publicly report on the effectiveness of the strategic leaders and operational staff to deliver effective resources and practices that support improved outcomes for children and young people.

In regulated care services, through inspection and complaint investigation, where we find issues, including staff not recognising or reporting promptly concerns, we take action to improve this and where improvement is not forthcoming we can take enforcement action.

Many lessons have been learned over time and more recently about listening to children and young people. Our inspection processes ensure that young people have a voice and they are able to raise concerns easily and confidently, and we ensure these are responded to appropriately and in good time. This may include ensuring access to help lines or through child care advocacy and children’s rights groups such as Who Cares? Scotland. We ensure that the voice of the child is demonstrated in the inspection processes undertaken.

Within the care sector all providers and staff have to be registered with the Scottish Social Services Council (SSSC). To be registered and remain registered individuals have to meet professional qualification criteria and sign up to a Code of Practice. The SSSC state - “The Codes of Practice form part of the wider package of legislation, practice standards and employers’ policies and procedures that social service workers must meet. Workers are responsible for making sure their conduct does not fall below the standards and that no action or omission on their part harms the well-being of people who use services”.

Similar codes of practice or conduct apply to other professionals such as those working in health and education where registration with a professional body is mandatory. For joint inspections, which have multi agency teams, the Care Inspectorate has added to these codes with a stand alone code of practice which sets out responsibilities and accountability for reporting of child protection concerns if these are identified in the course of an inspection.

In addition to these professional codes of practice there are also other legislated safeguards to allow employees of a service to raise concerns of practice in a safe secure way. These safeguards include the Public Interest Disclosure Act 1998 which gives statutory protection against victimisation and dismissal to workers who raise concerns about malpractice or corruption. The protection of individuals is ensured where the disclosure is made in good faith. This principle is further applied in the sharing of information which may be seen to potentially breach data protection legislation. The Information Commissioner has set out in a letter dated 28 March 2013 that sharing of information is unlikely to constitute a breach of the Data Protection Act if the person sharing the information believes, in their professional opinion, that a child or young person may be at risk of harm.

In addition, for regulated care services complaints can be made to the Care Inspectorate about poor practices that impact on the safe care of service users.
The updated National Guidance on Child Protection, issued in May 2014, sets out robust and clear expectations and processes for individuals and agencies involved with children with clear accountability and legislative frameworks by which professional responsibilities must be discharged. Chief Officers Groups are responsible for the effective work of their agencies, collectively and individually, and the role of Child Protection Committee's in demonstrating systematic approaches to self evaluation and quality assurance. These processes focus on the experiences and outcomes for children and families and establish effective systems to monitor the quality of key child protection processes such as core groups, risk assessment and Child Protection Plans.

During joint inspections of services for children we assess and report on the effectiveness of the Child Protection Committee in discharging its responsibilities.

We know that where there is strong multi agency practice supported by training opportunities this generates a safe culture to challenge across professional and agency boundaries, creating shared understanding about the needs of the child and thresholds of intervention. Where GIRFEC works well staff are more comfortable to question others and less bound by agency norms.

All of these safeguards support the professional accountability of staff who work with children. In addition, other processes identify where professionals fail to meet the standards of accountability – this includes supervision and support processes in agencies and at the other end quality assurance activities such as Significant Case Reviews. Where failures are evidenced other actions can be brought into play such as staff development or disciplinary procedures.

Mandatory reporting itself will provide no guarantee that child abuse will be reported on every occasion. Child protection is one of the most challenging of areas of work, it is therefore crucial that we also support and encourage discussion and debate around professional judgment to ensure a culture of openness, challenge, learning and support is further developed. The effective leadership of child protection is a vitally important factor in promoting this culture that supports staff to challenge and be challenged within and across professional boundaries, including adult services, about their practice and decision making.

The Care Inspectorate notes from the Committee minutes the examples of mandatory abuse reporting being seen as effective in some other countries but it is not clear as to what has brought success and how the policing of such legislation is supported. We would have concerns about resources being used to support this legislation rather than supporting the direction of travel in Scotland of implementing legislation to support GIRFEC as an early intervention model and one which allows clarity of responsibility for professionals in meeting the individual needs of child.

In conclusion the Care Inspectorate supports the direction of travel of improved policies, guidance and legislation that seeks to protect children. However, we are also mindful of other consultations such as those on Wilful Neglect and the Duty of Candour and that these should be fully considered in the context of child protection processes, practices and responsibilities. The Care Inspectorate would be supportive of further discussion that allowed exploration as to how mandatory reporting of child
abuse was linked to, and supports, the current and emerging child protection legislation, policies and guidance to ensure they are not conflicting and add value.