



CROWN OFFICE  
25 CHAMBERS STREET  
EDINBURGH EH1 1LA

Telephone: 0300 020 3000

Sue Webber MSP, Convener  
Education, Children and Young People Committee  
Scottish Parliament

By email: [ecyp.committee@parliament.scot](mailto:ecyp.committee@parliament.scot)

27<sup>th</sup> June 2023

Dear Convener

**Children (Care and Justice) (Scotland) Bill – Stage 1 report – Recommendation on Lord Advocate’s *Guidelines on offences committed by children***

I refer to the Committee’s Stage 1 report, dated 13 June, on the Children (Care and Justice) (Scotland) Bill. At paragraph 330, the Committee made the following recommendation in respect of my *Guidelines on offences committed by children*:

*‘The Committee recommends that when the Lord Advocate’s Guidelines are next revisited, careful consideration is given as to how the views of the child or young person are factored into the Procurator Fiscal’s decision-making process when identifying a) if a prosecution is in the public interest and b) whether a case should be disposed of via the courts or via the Children’s Hearings System. In making this recommendation, the Committee is mindful that this process should include the views both of the young person accused of an offence and any young person harmed as a result of that behaviour.’*

In its response to the Committee’s report, the Scottish Government has already explained why it disagrees with this recommendation and why it does not consider it appropriate for the Committee to have issued the recommendation in the first place. As a Minister in the Scottish Government, I fully endorse that response. I write separately to put on record my concern with the Committee’s approach and to emphasise the underlying issues of constitutional principle.

It is a fundamental principle of Scots constitutional law that, as the independent head of the systems of criminal prosecution and investigation of deaths in Scotland, the Lord Advocate takes decisions independently of any other person. That doctrine pre-dates devolution, but is reflected in section 48(5) of the Scotland Act 1998:



*'Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person.'*

This principle is not restricted to independence in prosecutorial decision-making. It extends to the content of prosecution policy, for which I am responsible. It runs counter to this constitutional principle for the Committee – or any other person – to seek to influence the content of prosecution policy, including the *Guidelines*. With respect, it was inappropriate for the Committee to make a recommendation of this nature and I am disappointed that it did so.

I wish to emphasise that this does not detract from the importance of the substantive issues at which the Committee's recommendation was directed. As the Scottish Government has said in its response, the Crown Office and Procurator Fiscal Service, under my direction, is reviewing the *Guidelines*. Consideration of the Crown's legal obligations, including under the United Nations Convention on the Rights of the Child, is a core component of that review process. This of course includes the requirement to give due weight to the child's views according to their age and maturity. I trust that this is of reassurance to the Committee.

I am copying this letter to the Presiding Officer, the Clerk to the Parliament, the Cabinet Secretary for Justice and Home Affairs, the Cabinet Secretary for Education and Skills, the Cabinet Secretary for Social Justice and the Minister for Children, Young People and Keeping the Promise.

Yours sincerely

**RT HON DOROTHY BAIN, KC  
LORD ADVOCATE**