



## Scottish Information Commissioner's response to the Education and Culture Committee on: Scotland's Commissioner for Children and Young People's report, "We May Be Children, But We All Have Rights"

### Overview

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1. The Education and Culture Committee asked whether the Scottish Information Commissioner (SIC) had any comment on the reports published by SCCYP, and in particular whether we are content nothing in the reports overlaps with my jurisdiction.
2. At one level I have no concerns as the report acknowledges that, although there are overlaps, where another route to addressing a complaint exists SCCYP will redirect the complaint to the appropriate body.
3. My concern lies in the detail of how complaints will be investigated and I am calling for more liaison with, and involvement of, other regulators at a very early stage. This is to:
  - (i) Enable other regulators to give SCCYP support and detailed expert advice in relation to our roles and remits.
  - (ii) This in turn will enable SCCYP to give comprehensive and informed advice to complainers. This is particularly important in relation to matters that, on the face of it, appear appropriate to another regulator but do not meet the criteria for investigation and so are out of jurisdiction. To make this judgement relies on a thorough understanding of the jurisdiction and knowledge of the remedies available.

### Comments and observations

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4. The underlying issue is that, like many other Commissioners and regulators, the Scottish Information Commissioner's role is subject specific, i.e. Freedom of Information. My governing legislation defines what I can, and just as importantly, cannot do. A key part of this is my Enforcement powers, which are strong and work well in the public interest. The way the SCCYP's powers to investigate complaints are set out is broad and cross-cutting, making it inevitable that there will be overlaps with several "regulatory" bodies.
5. While the proposed methodology, which seeks to capture and redirect complaints to the appropriate regulator, is sensible in theory, my concern is it is too simplistic and in some cases may be unworkable.
6. **It is important that we keep sight of the real issue: the rights, interests and needs of the Child or Young Person (CYP) and how we collectively achieve good outcomes for them.** The challenge for the regulatory bodies is finding a practical solution within the constraints of the various legislative frameworks which meets both the needs of the CYP and of legislation. For some organisations (including mine) there are restrictions on what we can share with whom. For us these restrictions are such that they create a criminal offence and cannot be overcome by a Memorandum of Understanding.
7. The overlap between regulatory bodies (and there may well be more than outlined in the report) is not, in my view, so neatly defined as perhaps the report suggests, as any overlap is determined by the specific content and nature of a complaint so is, by definition, unpredictable and undefinable. For example, a complaint is received worded:



*I emailed my social worker because I wanted to know why I was placed into care, and why I can't be returned to my birth mother. I asked her to give me the report that gave the reasons. She wouldn't tell me or send me anything. She met me but wouldn't listen to what I had to say and treated me as if I was a baby. I tried complaining to another social worker but she did nothing either. They all ignored me as if I didn't exist.*

8. This complaint would potentially overlap with (and this is illustrative not comprehensive) the Local Authority (a complaint has to go to them before it can go to the SPSO), the SPSO, the Scottish Information Commissioner, the UK Information Commissioner and the Human Rights Commissioner. I, for example, could investigate and enforce access to information that was not the personal data of the complainer, but I have no remit to look at why the complaint was ignored. Redirecting this complaint would not be straightforward. Would it end up being sent to all of the regulatory bodies?
9. My own experience of complaint handling has taught me that the role of advocacy is vital. That is both from the perspective of someone acting as an advocate who helps and supports a complainer make a complaint to a complaints handling body or regulator, and from the perspective of the complaint handler who often provides support to help complainers before, during and after an investigation.
10. I accept that a report of this nature is not the appropriate place to put lots of detail about complaint handling procedures, but even at this high level, I would suggest that there could be more consideration about the early stages of the complaint. It seems to me that there is wide latitude for SCCYP to use their investigatory powers in both an inquisitorial way, and in a way which is rooted in advocacy, support and coordination of a complaint being investigated under other jurisdictions.
11. There will be some complaints which SCCYP would either investigate or redirect because the investigation route is clear. However, I can envisage in some cases that SCCYP's role could be as advocate and coordinator for several "regulatory" complaints, the answers to which collectively enable SCCYP to consider the overall interests and needs of the CYP. This is a very different role than the report appears to provide for, as it is focused on using the outputs of others' specialist investigations. It would also enable SCCYP to have a better view of how the overall system works for CYP in Scotland and potentially to identify gaps in provisions by taking an holistic view of a complaint.
12. There is little mention in the report of working with other regulators, as opposed to dividing work between them. In drawing up detailed procedures, I would urge SCCYP to reconsider the early stages and explore whether there is the option for more consultation and collaboration: for example seeking views on the approach that would most be in the complainer's interests in a particular case so that the decision on how to proceed is based on a range of views. In the example given, by working with SCCYP in the early stages we could help their investigator ask the right questions about whether an application to the SIC would even be valid for investigation, and what advice would need to be given to the CYP. If it transpired that there had never been a valid information request in the first place, pursuing that aspect as the same time as a complaint is something SCCYP in an advocacy role could help the CYP with.
13. Whatever the process put in place by SCCYP, it would seem sensible to have a memorandum of understanding in place.
14. We would be happy to engage with you and SCCYP further if that would be helpful.