

Gillian Martin MSP
Convenor Health, Social Care and Sport Committee
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Dear Gillian,

Following their private session with the Health, Social Care and Sport Committee on 31 January 2023, my officials offered to write with further information on a number of points raised by Committee members in relation to the Patient Safety Commissioner for Scotland Bill. This is provided below.

Will care at home be covered by the Patient Safety Commissioner?

The Patient Safety Commissioner will be free to consider the safety of all healthcare in Scotland, regardless of who provides it. Healthcare is defined in section 21 of the Bill as “services provided for or in connection with the prevention, diagnosis or treatment of illness”. Any such services provided in the home will therefore be within the Commissioner’s remit.

However, since the Commissioner will not cover social care, any such care provided in the home will not be within their remit.

What is the cost associated with the Court of Session enforcement procedure outlined in the Bill and how will that cost be met?

It is very rare for Parliamentary Commissioners to refer matters to the Court of Session. In keeping with the aim that the Patient Safety Commissioner supports openness and improvement in healthcare, I would expect the Patient Safety Commissioner and other organisations to work co-operatively and share relevant information where necessary.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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The cost of legal advice from a solicitor is variable. As an illustrative figure the Review of Expenses and Funding of Civil Litigation in Scotland ⁽¹⁾ noted rates ranging from £200 - 300 per hour¹. It is also usual for parties in Court of Session cases to be represented by counsel which carries an additional fee.

There will also be court fees payable to the Scottish Courts and Tribunals Service to submit the case and for hearings before the Court. Currently the court fee to submit the documents to begin a new case in the Court of Session is £325. Public bodies, including the Patient Safety Commissioner, would be expected to meet these costs from their own budget.

Which alternative options were considered to the Court of Session provision?

In order to fulfil their functions, it is vital that the Patient Safety Commissioner can access robust, accurate information on matters relating to patient safety. The Court of Session provision is the most effective way of ensuring that the Commissioner can compel organisations to supply the required information: the Court of Session can make any order for enforcement it considers appropriate, and referral to the Court of Session carries the additional risk of being found in contempt of court. This provision is intended as a deterrent against deciding not to cooperate with the Commissioner, rather than as a routine measure. The Commissioner may also publicise an organisation's failure to supply information.

The option of empowering the Commissioner to impose fines directly was considered. However, this was deemed less likely to be effective as a deterrent: organisations could simply pay the fine and take no other action.

Officials also considered giving the Commissioner no recourse to fines at all, whether levied by the Court of Session or by the Commissioner themselves. This option was rejected as it would not give the Commissioner the necessary ability to compel organisations to give them the information they need.

Has consideration been given to how many patients will write to the Commissioner and how much staff time is allocated to this role?

The Scottish Government has based the Patient Safety Commissioner's likely staffing complement on consideration of the role's proposed functions – including receiving and considering information from patients and the wider public – along with comparison against the arrangements for existing Parliamentary Commissioners.

The Commissioner's focus will be on system-wide patient safety issues; they will not replicate existing functions that are there to provide remedy or resolution for patients in individual complaint cases. It will of course be for the Commissioner to decide exactly how to consider the information they receive from patients and the public. However, we would expect that when deciding which issues they wish to investigate further, they will also take other information into account, such as patient safety data shared by other bodies.

¹ Paragraph 22, Chapter 2 of the Review of Expenses and Funding of Civil Litigation in Scotland, chaired by Sheriff Principal James A. Taylor, published 28 October 2013

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I hope the Committee finds these responses helpful. My officials would be pleased to provide any further information the Committee may require.

Regards,



Maree Todd MSP

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