

Mr Stuart Todd
Assistant Clerk to the Public Petitions Committee
The Scottish Parliament
T3.40
EDINBURGH
EH99 1SP

22 June 2012
Our Ref: KA/KMcC/sb

Dear Mr Todd,

CONSIDERATION OF PETITION PE1430

Thank you for your letter dated 25 May 2012 addressed to Anne Forsyth, PA to Annette Bruton, Chief Executive, which Ms Bruton has passed to me for response.

I note the terms of the Petition and the Committee's questions. The Care Inspectorate's responses to those questions are as follows:-

- What are your views on what the petition seeks?

Childminding is at present defined by the nature of the premises upon which it is carried on ("domestic premises", defined in s105 of the Public Services Reform (Scotland) Act 2010 as "any premises used wholly or mainly as a private dwelling"). The premises of many of the larger childminding services would, despite their size, in terms of numbers of children cared for, still fall within that definition, and the services may properly remain registered as childminding..

While it is arguable that there should be a clearly stated maximum size for childminding services, in terms of the numbers of children they may care for, so as to preserve the "homely" type of care envisaged by most people who think of childminding, we would suggest that any decision such as this should be preceded by consideration as to whether the experience and outcomes for children differ depending upon the size of the childminding service in which they receive care. If there is no discernible difference in experience and outcomes, then the case for limiting the size of childminding services is diluted. While there may be an element of "lack of a level playing field" as between nurseries and some larger childminding services, care must be taken to ensure that any changes do not detract from the positive aspects of childminding enjoyed by many children and parents. For example, changes may have the effect of limiting the availability of affordable local childcare, or making such childcare less capable of responding to parents' needs in a flexible way. The Care Inspectorate has no explicit right in terms of current legislation, to decline to register childminding services, based solely upon the numbers of children to be cared for, where the nature of the premises upon which they will be provided remains "domestic". There is an argument that legislation should explicitly provide a power to refuse registration as a childminding service based on its proposed size, on the basis

that that would enable the needs of children to be met in the manner envisaged by the National Care Standards, which envisage small groups of children, rather than groups of more than 8, with all the routines, procedures and arguably more institutionalised practice that go with a larger group..

It may be of interest to note that Ofsted may register the following 3 types of early years services:-

- Childcare on domestic premises: a group of four or more people working with children in someone's home;
- Childcare on non-domestic premises: a person or organisation providing care on premises that are not someone's home, such as a purpose-built nursery, or a village hall. This provision covers private nurseries, playgroups, after-school clubs and the like;
- Childminder: childminders on the Early Years Register provide care for one or more children aged between birth and five, to whom they are not related, for reward in someone's home - usually their own.

Other factors which might be relevant in considering limits on the size of childminding services might be:-

- the age of children, as there is a difference for the experience of children if they are all 0-3 years or after school etc;
- whether they attending full-time/full year, whether attend other community group care provision
- number of childminding assistants

There is also an issue as to the need for registration of nursery staff with the Scottish Social Services Council - a requirement which does not attach to childminding assistants. That issue might of course, be addressed by changing the registration requirements for childminding assistants.

It should also be noted that annual continuation fees for small nurseries (nurseries which do not employ more than three whole time equivalent persons to provide and manage the service) are currently set at the same level as those for childminding services – although a review of fees chargeable for care service registration is imminent / ongoing.

- Your guidance refers to each childminding service having no more than six children in their care. Can you please clarify whether a childminding service can look after more than six children on domestic premises?

The Care Inspectorate guidance “Registering and running a childminding service: what you need to know” proceeds on the basis that childminders will generally be individuals working alone. In those circumstances, the input standards set out in Annex A to the National Care

Standards for Early Education and Childcare are engaged. These provide that adult: child ratios in domestic premises should be:-

“1:6 for children under 12, of whom no more than three are not yet attending primary school and of whom no more than one is under 1.”

Annex A goes on to state:

“These ratios include the childminder’s own children. The Care Commission will have regard to the number of children aged 12 to 16 who are likely to be in the house regularly, and will have the discretion to vary the ratios accordingly. The Care Commission will also have discretion to vary the ratios to take account of special circumstances, such as siblings under 1, special needs, awkward premises, etc.”

[Note:- The Care Inspectorate has succeeded to the Care Commission since these standards were published and references to the Care Commission therein should be read as references to the Care Inspectorate.]

It should, of course be noted that an individual childminder who complies with the above ratio may nevertheless mind many more than 6 children under 12 in total, in that the children cared for by the childminder may be cared for on different days or at different times.

It can be seen therefore that the ratio of 1:6 children under 12 would apply where the childminder operates alone. The Care Inspectorate has regard to the number of children aged 12 to 16 in the house, including the childminder’s own children and any minded children of this age. Taking into account older children, individual childminders can be registered to care for up to a maximum of 8 children aged under 16 years.

There is no legal bar, however, to a childminder who employs one or more assistant(s) caring for more than 6 children under 12 at any one time. The point at which the service ceases to be childminding by reason of its size is currently the point at which it changes the character of the premises upon which it is provided, so that they are no longer “domestic”. It may be that childminding can be carried on extensively within a private dwelling without changing its character and as a result the definition of the care service provided there.

In short, as the law stands, a childminder working alone would generally be restricted to minding 6 children under the age of 12 at most (subject to the Care Inspectorate’s discretion to allow an increase – for example, to 7 minded children under 12, to accommodate a sibling of an existing minded child in circumstances where numbers will reduce in the foreseeable future, for example due to another minded child commencing school). A childminder who employs one or more assistant(s), or a partnership of childminders may look after as many children as may be cared for (having regard to adult:child ratios and the space available) as can be looked after without changing the character of the premises upon which the service is being provided. It appears that it is

becoming more common for childminders to add assistants to their childminding registration

Some local authorities require planning permission to be obtained where a proposed childminding service exceeds a specified size – this may have the effect of limiting the number of children a childminder may care for at any one time – but would not necessarily change the nature of the service where planning permission was granted.

- In a letter to the petitioner’s constituency MSP, the Cabinet Secretary for Finance, Employment and Sustainable Growth states that SCSWIS “will be addressing the issue of the size of childminding services”. Please detail what plans you have to review the size of childminding services

The Care Inspectorate does not, for the reasons set out above, impose restrictions as a matter of course on the size of childminding services generally, where the relevant regulations and National Care Standards will be complied with. That would not restrict the use of conditions of registration to limit the numbers of children where that was necessary for their safety, health or well-being. While the Care Inspectorate is considering its approach to the size of childminding services, and the extent of its potential role in limiting the number of children they may care for at any one time, it seems likely that any change designed to impose a fixed limit upon the size of services which may register as childminding, would require amendment to the definition of such services in Schedule 12 to the Public Services Reform (Scotland) Act 2010. This issue will be raised through our Sponsor Department, but would require careful consideration, for the reasons set out in our response to the first question above.

We would wish to make clear that at present, the maximum number of children a childminder may look after is fixed on a case-by-case basis, having regard to the needs of the minded children, the need for compliance with the requirements of relevant regulations and the National Care Standards and having regard to the safety, health and well-being of minded children.

I hope that you find these responses helpful –but please do not hesitate to contact me if you should need any further information.

Yours sincerely,

Karen Anderson
Director of Operations
(Planning, Assurance and Reporting)