1. We are writing with some further comments for your consideration after the evidence from Lorna Patterson and Tom Shaw, and from the Minister.

2. Tom Shaw and Lorna Patterson made a powerful case for improving the culture of record keeping with the public, private and voluntary sector as it relates to the personal records of vulnerable adults and children. We recognise Scotland’s historic failings in this area, including by the voluntary sector, and are completely committed to taking appropriate and proportionate action to tackle it. However, as Lorna Patterson, highlighted “I agreed it would be challenging, time consuming and costly for organisations to record absolutely everything…There needs to be some debate about, or guidance, on what is classed as important and having an impact”.

3. Having heard the Minister’s evidence, we are still not convinced that there is recognition on the part of the Government and the Bill team of the potential impact of the Bill for voluntary organisations, and therefore the need for the kind of proportionality and risk-assessment Lorna Patterson described. We welcome the Ministers commitment to bringing forward amendments to clarify the role of the keeper, and to work with CoSLA and the children’s voluntary sector on issues of content, policy and scrutiny, but these amendments still do not go far enough.

4. We were not reassured by the Minister’s argument that “Voluntary sector concerns about dealing with different records management systems in different authorities will largely be met through common records management plans”. As was highlighted in the voluntary sector evidence, even very small differences between records management plans in different local authorities will create a major burden for organisations that work with a large number of public bodies. George MacKenzie, the Keeper of the National Archive argued in his supporting evidence last week. argued that he “expect[ed] there to be a definite convergence of record-keeping practice, so the likelihood of there being quite different forms of record keeping among children’s homes would probably dwindle over time.” Sadly, an expectation that differences will be reduced over time will not provide much reassurance to an organisation struggling to cope with an additional bureaucratic load.

5. The Minister went on to say that “If a voluntary sector organisation felt pressure from the plan, I would advise it to inform the keeper. He could then, in his role, work with local authorities and say, “Look, we need a more generic plan. You are asking for receipts when there is no need. You have to work out whether that is a public function.” We consider it unlikely that this would be the way the relationship between a public authority, a
voluntary or private organisation in receipt of a contract and the Keeper would work in practise, not least because of the sheer volume of voluntary sector organisations working with public authorities.

6. We would therefore reiterate our position as stated in our original written evidence. The voluntary sector very much wants to work with the Minister and Bill team to find a solution that achieves the core aim of improving public record keeping in a proportionate and measured way. But as it stands, the Bill has the potential to cast a very wide net across our sector that tangles us all up in a resource intensive bureaucracy disconnected from the original policy intent of the legislation. We do appreciate that this is not the intent of the Bill, but that is the way it is currently drafted. We need more certainty about how this Bill will address the high risk areas in a way that does not duplicate, lead to inconsistency across public authorities, or place additional burdens where there is no resource to meet them or risk to justify them.

7. We feel that the Bill will still require major amendment to narrow the scope of the definition of public record, and minimise the potential disruptions caused to the work of voluntary organisations.

8. Therefore we strongly feel that withdrawal of the Bill is still the most appropriate action at this time. This is because, we are concerned that given the limited time left in this session of Parliament there may not be time to properly rework the Bill to make it fit for purpose.

9. However we recognise that it is the Parliament that must vote on the general principles of the legislation at stage 1, and if the Bill is agreed at stage 1 we would be happy to work with Committee members to try, within the very limited time available, to amend the Bill in such as way as to meet the needs of the sector.

Nancy Fancott
Policy Officer, SCVO
25 January 2011