

SCRA response to the Justice Committee's call for written evidence

Background

The Children's Hearings System is Scotland's distinct system of child protection and youth justice. Among its fundamental principles are:

- That children who offend and children who are in need of care and protection are dealt with in the same system
- That the welfare of the child remains at the centre of all decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with other professionals such as social work, education, the police, the health service and the courts system.

SCRA's vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:

- The voice of the child must be heard.
- Our hopes and dreams for the children of Scotland are what unite us.
- Children and young people's experiences and opinions guide us.
- We are approachable and open.
- We bring the best of the past with us into the future to meet new challenges.

Introduction

SCRA welcomes the opportunity to provide written evidence to the Justice Committee on the Scottish Government's draft budget 2012-13 and the spending review. Our comments will focus on the courts and legal aid, in particular the impacts of the Children's Hearings (Scotland) Act 2011 which is due to come into force in September 2012.

Response

Legal aid

The Scottish Government's budget document refers to the need to ensure that *"legal aid is targeted on cases where other sources of support are not reasonably available, and the nature of the case justifies public funds being used."* We are strongly of the view that legal aid for children in the Hearings System falls squarely within this definition and hope that the budget will be protected to ensure that children can be represented where appropriate and necessary, both at Children's Hearings and in court.

Children's Hearings court proceedings

There are two elements of the Children's Hearings process that involve the courts. The first of these is proof hearings, when the Sheriff is asked to determine whether grounds for referral have been established, either because the child and/or relevant person(s) have not accepted the grounds, or where the child is too young to understand them. The second is where the child and/or relevant person appeals the decision of the Hearing and the Sheriff is required to adjudicate.

The table below shows the numbers of proofs and appeals concluded in each of the last six years.

	<i>2010/11</i>	<i>2009/10</i>	<i>2008/09</i>	<i>2007/08</i>	<i>2006/07</i>	<i>2005/06</i>
Proofs	4039	4289	4063	4004	3946	3451
Appeals	849	775	592	582	435	508

The general trend for numbers of appeals has been upwards in recent years. We consider that in the short-term at least, this trend is likely to continue, and possibly increase for the reasons outlined below relating to the new legislation.

While the headline figures for proofs seem to be more stable, it is noticeable that Reporters are increasingly dealing with more complex proofs that can require a lot of court time to conclude. This not only eats into court resources, but where parties are in receipt of legal aid it can rack up considerable bills, especially where both parents may be receiving legal aid to be represented separately (a not infrequent occurrence).

Although we recognise that all participants in court processes would express a desire for their cases to be expedited where possible, this is particularly important for children as even relatively short delays can be significant in the life of a child. We hope therefore that the reduction in the budget of the SCS will not result in additional administrative delays in Children's Hearings court proceedings.

Impact of the Children's Hearings (Scotland) Act 2011

As Committee members may be aware, the Children's Hearings (Scotland) Act 2011, which was passed by the Parliament in the last session, includes a number of important changes that may impact both on the volume of Children's Hearings cases that come to court and on the legal aid budget.

The expansion of the definition of Relevant Persons, to allow the inclusion of individuals who have (or have recently had) a significant involvement in the upbringing of the child is likely to mean that more individuals are granted this status. Though we supported the need to revise the definition due to a number of recent legal challenges, we hope that Hearings and Sheriffs will take a fairly restrictive interpretation of the new provisions. Relevant Person status comes along with rights to attend Hearings and accept or deny grounds (and potentially to have a state funded legal representative appointed where one is required to ensure effective participation), as well as rights of appeal to both the sheriff court and ultimately the court of session. We suggest that a likely consequence of an increase in the number of individuals with these rights will be a concomitant increase in the number of proof hearings and appeals with all that entails in relation to court resources, as well as potentially an increased call on the legal aid budget.

The Act also provides for a number of new or reworded grounds for referral, the scope of which are likely to be tested in court in the early stages of the Act's life. We are fully supportive of the new grounds and for new legal provisions to be tested in court is not unusual, but again may result in more proof hearings and in more appeals in the period following the Act's implementation.

Set against these two factors is the Act's intention to improve the quality of support provided to Panel Members. This will hopefully contribute to reducing the number of appeals over the medium to long term, as best practice in relation to written reasons for Hearing decisions is disseminated and shared across the country.



Conclusion

While the impact of the new legislation is impossible to predict accurately, current trends suggest that in the short term at least, there will be an increase in Children's Hearings court proceedings and potentially in the call the Hearings System makes on the legal aid budget. SCRA continues to explore with partners non-legislative measures by which children can be supported to participate more effectively in Hearings proceedings. Alongside this, it is important that appropriate provision be made to minimise delays, protect the budget for children's legal aid and ensure that those who find it most challenging to participate in legal proceedings continued to be supported.

SCRA
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